

ACT

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11626

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
March 3, 2005

In the Matter of :  
:  
JOHN A. CARLEY, :  
MARK N. DOHLEN, :  
EUGENE C. GEIGER, :  
PAUL A. GILES, :  
ROY E. GOULD, :  
THOMAS A. KAUFMANN, :  
ALFRED PEEPER, :  
EDWARD H. PRICE, :  
CHRISTOPHER H. ZACHARIAS, :  
LE FOND MONDIAL :  
D'INVESTISSEMENT S.A., :  
and SPENCER EDWARDS, INC. :

ORDER

SECURITIES & EXCHANGE COMMISSION  
MAILED FOR SERVICE  
MAR 04 2005  
FIRST CLASS

At the close of the hearing in this matter, I ordered the Division of Enforcement (Division) to file and serve its posthearing pleadings by February 25, 2005 (Transcript pages 2253-54) (Tr. \_\_\_\_). The Division filed its posthearing pleadings by facsimile with the Office of the Secretary on February 25, 2005, as required. However, the Division did not comply with Rule 151(d) of the Rules of Practice of the Securities and Exchange Commission (Commission). That Rule requires the Division to state the method of service used to effect delivery on opposing parties. The Rule also provides that “[i]f the method of service to any party is different from . . . the method for filing with the Commission, the certificate [of service] shall state why a different means of service was used.”

The Division has now submitted revised certificates of service, acknowledging that it served Respondents by commercial courier. Under Rule 150(d) of the Commission’s Rules of Practice, service by commercial courier is complete only upon delivery. The Division’s revised certificates of service still do not explain why the Division chose to serve Respondents by a less expeditious method than it chose for filing with the Office of the Secretary.

Respondents Roy E. Gould (Gould), Thomas A. Kauffman (Kauffman), and Christopher H. Zacharias (Zacharias) state that they did not receive the Division’s posthearing pleadings until February 28, 2005. Gould, Kauffman, and Zacharias move to strike the Division’s tardy

pleadings from the record. They also urge that the proceeding be dismissed. Those requests are denied.

In the alternative, Gould, Kauffman, and Zacharias request that the due date for their posthearing pleadings be enlarged by three days to compensate for the prejudice they will suffer from the tardy delivery of the Division's posthearing pleadings. That alternative request is granted, not only as to Gould, Kauffman, and Zacharias, but as to all Respondents. The due date previously set for Respondents' posthearing pleadings was March 28, 2005. That due date is now extended to March 31, 2005. The due date for the Division's optional reply pleadings remains at April 11, 2005.

In its posthearing pleadings, the Division seeks substantial financial sanctions against Respondents Gould, Spencer Edwards, Inc. (Spencer Edwards), and Edward H. Price (Price). However, based on my preliminary review, the Division's posthearing pleadings do not specifically address the evidence adduced by these three Respondents concerning their inability to pay such financial sanctions. I anticipated that the Division would address these inability to pay issues in its opening brief (Tr. 2290). The Division will be required to address these matters now.

Because the inability to pay issue is subject to a protective order, the Division need not serve its supplemental pleading on any Respondents other than Spencer Edwards, Price, and Gould. The Division's supplemental pleading will be subject to a protective order if it addresses specific financial matters. Spencer Edwards, Price, and Gould may respond to the Division's supplemental pleading when they file their opposition pleadings on March 31, 2005. If necessary, Spencer Edwards, Price, and Gould may do so in separate documents that will also be subject to a protective order.

IT IS ORDERED THAT, on or before March 11, 2005, the Division of Enforcement shall show cause why the documentary evidence and testimony adduced by Respondents Spencer Edwards, Inc., Edward H. Price, and Roy E. Gould on the issue of inability to pay financial sanctions should not be treated as conclusive and why the proposed financial sanctions against these three Respondents should not be waived in the public interest pursuant to Rule 630(a) of the Commission's Rules of Practice. If the Division takes the position that its requested financial sanctions may properly be reduced in part, but not eliminated entirely, it shall identify specific dollar amounts.

  
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James T. Kelly  
Administrative Law Judge