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ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11716

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
January 19, 2005

SECURITIES & EXCHANGE COMMISSION  
MAILED FOR SERVICE

JAN 19 2005

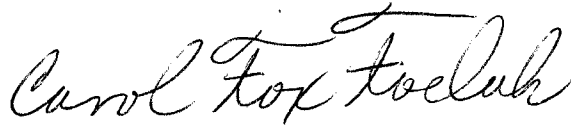
FIRST CLASS

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In the Matter of :  
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THOMAS J. DONOVAN : ORDER  
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The Securities and Exchange Commission (Commission) instituted this proceeding on October 21, 2004. The undersigned has scheduled the hearing to commence February 15, 2005, in New York City, consistent with the public interest and the convenience and necessity of the parties and witnesses. See 17 C.F.R. § 201.200(c). Additionally, the undersigned ordered that the testimony of one witness, Brian Delaney, who is incarcerated, be taken by telephone. Thomas J. Donovan, Admin. Proc. No. 3-11716 (A.L.J. Jan. 18, 2005). Respondent Donovan urges that Mr. Delaney not be allowed to testify by telephone.<sup>1</sup> He states that he should have the right to face his accuser, that Mr. Delaney's testimony will consist of perjury, and that if allowed to testify by telephone, Mr. Delaney will be coached and allowed to read a scripted performance.

Respondent Donovan misapprehends the manner in which Mr. Delaney's testimony will be taken. He will be placed under oath, and Respondent Donovan, as well as the Division of Enforcement, will have an opportunity to examine him in the usual manner in their direct cases and on cross-examination. That is, each party will ask him questions, to which he will respond. Each party will be able to attempt to impeach his testimony in the usual manner. See generally 17 C.F.R. §§ 201.325, .326. In view of the fact that Mr. Delaney cannot travel to the hearing site, this will enable his testimony to be taken while conserving public and private resources. See 17 C.F.R. § 201.103(a) ("The [Commission's] Rules of Practice shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding.") Accordingly, Mr. Delaney's testimony will be taken by telephone, as previously ordered.

IT IS SO ORDERED.

  
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Carol Fox Foelak  
Administrative Law Judge

<sup>1</sup> Respondent Donovan's concerns were raised in a fax that appears to have come from him, although it lacked the sender identification information required by law to be printed at the top (or bottom), which includes the sender's name and telephone number. See 47 C.F.R. § 68.318(d).