

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11893

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
June 7, 2005

In the Matter of :
 :
 :
 DAVID A. FINNERTY, et al. : ORDER

The Securities and Exchange Commission commenced this proceeding on April 12, 2005, against twenty Respondents. A prehearing conference is currently scheduled for June 24, 2005. On April 20, 2005, the United States Attorney for the Southern District of New York (U.S. Attorney) filed an Application to Intervene and Motion to Stay (Motion). The U.S. Attorney seeks leave to participate for the purpose of requesting a stay of this proceeding during the pendency of criminal prosecutions arising out of the same facts at issue, pursuant to 17 C.F.R. § 201.210(c). Specifically, the U.S. Attorney requests a stay pending resolution of the parallel criminal proceedings captioned United States v. Finnerty, 05 Crim. 393 (S.D.N.Y.), United States v. Foley, 05 Crim. 391 S.D.N.Y.), United States v. Hunt, 05 Crim. 395 (S.D.N.Y.), United States v. Murphy, 05 Crim. 397 (S.D.N.Y.), United States v. Delaney, 05 Crim. 394 (S.D.N.Y.), United States v. Fee, 05 Crim. 398 (S.D.N.Y.), United States v. DeBoer, 05 Crim. 396 (S.D.N.Y.), United States v. Johnson, 05 Crim. 392 (S.D.N.Y.), and United States v. Bongiorno, 05 Crim. 390 (S.D.N.Y.) (collectively "Criminal Proceedings").

The fifteen indicted Respondents filed an opposition to the Motion on May 10, 2005.¹ Three of the un-indicted Respondents filed an opposition to the Motion on May 10, 2005.² The Division of Enforcement (Division) and the U.S. Attorney filed reply briefs on June 3, 2005.

The U.S. Attorney's request for leave to participate for the purpose of requesting a stay will be granted, and the request for a stay, as limited below, will be granted consistent with 17 C.F.R. § 210(c)(3), which provides that such a "motion for stay shall be favored."

¹ Respondents Michael F. Stern, Joseph Bongiorno, Michael J. Hayward, Patrick McGagh, Jr., Robert A. Scavone, Jr., Richard P. Volpe, Gerard T. Hayes, David A. Finnerty, Kevin M. Fee, Frank A. Delaney IV, Scott G. Hunt, Freddy DeBoer, Robert A. Johnson, Jr., Thomas J. Murphy, Jr., and Donald R. Foley II (Indicted Respondents) have been indicted.

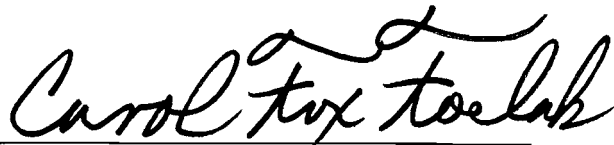
² The opposition was filed on behalf of Respondents James V. Parolisi, Patrick E. Murphy, and Robert W. Luckow. Respondents Todd J. Christie and Warren E. Turk, the other Respondents who have not been indicted, have not filed oppositions to the Motion.

On consideration of the briefs, this proceeding will be stayed as to all Respondents pending the resolution of the Criminal Proceedings. The stay will be limited as follows: the Division will make the items listed in its brief available for inspection, i.e., 1) screenshots; 2) MARS Reports; 3) Respondents' personnel files; 4) Respondents' transcripts from testimonies before the New York Stock Exchange and the Division; 5) daily profit and loss reports; and 6) marketing materials. All other aspects of this proceeding will be stayed. The Division will report by Tuesday, September 6, 2005, and every ninety days thereafter, on the status of the Criminal Proceedings and the continued appropriateness of the stay.

The request of the Indicted Respondents for a hearing on the alleged misuse of process by the Division and the U.S. Attorney will be denied.

Pursuant to 17 C.F.R. § 201.161, the prehearing conference will be postponed to Friday, September 23, 2005.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Carol Fox Foelak". The signature is written in a cursive style with a large, decorative flourish at the top.

Carol Fox Foelak
Administrative Law Judge