

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
July 20, 2005

In the Matter of :
: ORDER
:
PHLO CORPORATION, :
JAMES B. HOVIS, and :
ANNE P. HOVIS :

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on April 21, 2005. I held a telephonic prehearing conference with the parties on July 14, 2005. The Scheduling Order of June 2, 2005, required Respondents to file and serve a list of proposed witnesses and proposed exhibits by July 15, 2005. The hearing is scheduled to commence on August 8, 2005.

At the prehearing conference, Respondents explained that their witness and exhibit list, due the next day, would be incomplete because they had not yet identified an expert witness or received documents from Charles Schwab & Co. and Depository Trust and Clearing Corporation (DTC). I granted Respondents a reasonable amount of additional time to provide these missing items. I now ORDER Respondents to file and serve a supplemental witness and exhibit list, identifying their proposed expert and their proposed additional exhibits no later than July 25, 2005.

Respondents' proposed exhibit list is partially deficient because it identifies only categories of documents, rather than specific documents. For example, on page 8, the proposed exhibit list states that Respondents may introduce copies of e-mails from DTC to broker-dealers and copies of correspondence with broker-dealers attempting to resolve discrepancies. On page 9, the proposed exhibit list states that Respondents may introduce various e-mails from Phlo Corporation (Phlo) to Sherb & Co., copies of Forms 8-K from unspecified "other companies" who terminated the services of Marcum and Kliegman LLP, and unidentified articles regarding illegal short-selling. Wholly apart from the issue of the relevance of these proposed exhibits, as to which I reserve judgment, the exhibit list lacks the necessary specificity. I ORDER Respondents to file an amended exhibit list no later than July 25, 2005, correcting these deficiencies.


Respondents' proposed witness list presents additional concerns. Respondents intend to question various witnesses about subjects that, at first glance, do not appear to be relevant to the

issues identified in the OIP. These include: (1) complaints of illegal short-selling of Phlo's securities and the role that DTC purportedly plays in permitting such illegal activity; (2) the Division of Market Regulation's purported lack of concern regarding any wrongdoing by DTC or any harm being inflicted on Phlo's shareholders by illegal short-selling; (3) an unidentified expert who will opine that DTC enables the illegal selling of the securities it clears; (4) the Division of Market Regulation's purported knowledge of naked short-selling, its adverse effects on the shareholders of public companies, and the Commission's efforts, if any, to protect such shareholders; (5) the course of failed settlement negotiations between the Division of Enforcement and Respondents; and (6) naked-short selling and other stock manipulations that DTC's system enables and facilitates.

Under Rule 232(b) of the Commission's Rules of Practice, an Administrative Law Judge may require, as a condition precedent to the issuance of a subpoena, that the party seeking a subpoena show the general relevance and reasonable scope of the testimony sought. At this time, Respondents have not asked me to issue any subpoenas requiring the appearance of witnesses at the hearing. Respondents are on notice that, if they submit any applications for such subpoenas, I will require a showing of general relevance and reasonable scope as a precondition of issuing the subpoenas.

Under Rule 320 of the Commission's Rules of Practice, an Administrative Law Judge may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial, or unduly repetitious. I now ORDER Respondents to demonstrate the relevance of the proposed testimony (items (1) through (6) above) to the specific issues identified in the OIP, no later than July 25, 2005.

SO ORDERED.



James T. Kelly
Administrative Law Judge