

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11909

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
October 11, 2005

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

On September 30, 2005, the Division of Enforcement (Division) moved to strike the affidavit of Anne Hovis, dated September 28, 2005. By pleading dated October 7, 2005, Respondents opposed the Division's motion to strike. The affidavit in question is not limited to supporting Respondents' motion to admit certain documents into evidence. It also attempts to amend ("clarify") parts of Anne Hovis's hearing testimony, given on September 23, 2005.

Insofar as the affidavit seeks to support Respondents' motion to admit certain documents into evidence, I decline to consider new matters that could have been raised in advance of September 12, 2005. That was the due date for Respondents to provide the Division with copies of their proposed hearing exhibits.

Insofar as the affidavit seeks to amend ("clarify") Anne Hovis's hearing testimony, I also decline to consider new matters that could have been raised at the hearing. Accepting revised testimony without an opportunity for cross-examination would be unfair to the Division.

IT IS ORDERED THAT the Division's motion to strike is granted in part. Paragraphs 3 (second sentence), 5 (third sentence), 7, 9, 10, 11, and 13 (sentences three through seven) of the September 28, 2005, affidavit are stricken from the record. In all other respects, the Division's motion to strike is denied.



James T. Kelly
Administrative Law Judge