

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11909

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

In the Matter of	:	ORDER REVISING
	:	BRIEFING SCHEDULE
	:	AND IDENTIFYING ISSUES
PHLO CORPORATION,	:	TO BE ADDRESSED
JAMES B. HOVIS, and	:	
ANNE P. HOVIS	:	

The hearing in this matter concluded on October 6, 2005. At that time, the parties agreed to file and serve their proposed findings of fact, proposed conclusions of law, and opening briefs by November 7, 2005, and to file and serve their reply briefs by November 21, 2005.

The Division of Enforcement (Division) has now moved for an additional ten days of time, citing difficulties caused by Hurricane Wilma in the Miami, Florida, area. The Division's unopposed motion is granted. Initial posthearing pleadings will be due on November 17, 2005, and reply briefs will be due on December 1, 2005.

The parties are free to organize their briefs as they choose and to discuss any issues they believe to be important. I would find it helpful if the parties could address the matters identified below:

A. With respect to the Office of Compliance Inspections and Examinations (OCIE) letter to Phlo Corporation (Phlo) dated October 31, 2003 (Division Exhibit 2) (DX 2), and Phlo's responses to the Division dated January 15 and 16, 2004 (DX 15 and DX 16), the Division is requested to address DX 2, DX 15, and DX 16 in detail. The deposition testimony of Eric Swanson indicates that, in Mr. Swanson's judgment, Phlo's eventual production in DX 15 and DX 16 was responsive as to items 1, 2, 5, 6, and 9 of DX 2, but not responsive as to items 3, 4, 7, and 8 of DX 2.¹

¹ Responsiveness presents a separate issue from timeliness and completeness. I will reserve judgment on whether to credit Mr. Swanson's testimony until I issue the Initial Decision.

If the Division concedes that Phlo's production in DX 15 and DX 16 was responsive to DX 2, in whole or in part, it should so state in its opening brief. On the other hand, if the Division contends that Phlo's production was not responsive, in whole or in part, the Division is requested to identify in its opening brief the specific documents that Phlo should have produced, but failed to produce. The Division should also identify in its opening brief the specific regulation(s) that require a transfer agent to create and maintain each of the documents OCIE requested from Phlo in DX 2. The Division is requested to address separately each of the nine categories of information sought in DX 2.²

B. The Division is also requested to explain how long the regulations of the Securities and Exchange Commission (Commission) require a transfer agent to retain each of the records sought by OCIE in DX 2. The Division should distinguish between those regulations that require a transfer agent to maintain records "in an easily accessible place" for a fixed period of time and those regulations that permit a transfer agent to maintain older records elsewhere. As illustrations, item 1 in DX 2 requested Phlo to provide data for eight months; and items 6, 7, and 8 of DX 2 requested Phlo to provide correspondence, electronic mail, agreements with the Depository Trust Company, and other documents for a period of sixteen months. The Division is requested to identify the specific regulations governing the required retention periods for each of the materials requested by DX 2. The Division is also requested to state whether a "reasonable" response time by a transfer agent to an OCIE inquiry should be measured differently, depending on whether the applicable regulation requires the transfer agent to maintain the record "in an easily accessible place" or permits the transfer agent to maintain the record elsewhere.


C. Phlo's most recent quarterly and annual reports state that the company has issued several classes of securities: common stock, warrants, Series A convertible preferred stock, Series B non-convertible preferred stock, and Series C convertible preferred stock. The record is unclear as to whether every one of these classes of securities is registered with the Commission. Paragraph II.A.1 of the Order Instituting Proceedings (OIP) asserts only that Phlo's common stock is registered with the Commission under Section 12(g) of the Securities Exchange Act of 1934 (Exchange Act). Nonetheless, Paragraph III.D of the OIP directs me to determine whether registration of "each class of Phlo's securities" should be revoked or suspended pursuant to Section 12(j) of the Exchange Act. The Division's Prehearing Brief and the Division's Notice of Sanctions Sought, both dated July 22, 2005, track the language of OIP ¶ III.D.

In its opening brief, the Division is requested to enumerate each of the specific classes of securities whose registration is sought to be revoked in this proceeding. If the Division's request for relief under Section 12(j) of the Exchange Act is confined to Phlo's common stock, the Division should so state.

² For example, in item 2 of DX 2, OCIE requested Phlo to provide an organizational chart. The Division is requested to identify the specific regulation that requires a transfer agent to maintain an organizational chart. Item 7 of DX 2 requested Phlo to provide copies of electronic mail. The Division is requested to identify the specific regulation that requires a transfer agent to retain electronic mail. If there are no such regulations, then the Division is requested to explain why Phlo's failure to produce such documents for OCIE should lead to sanctions in this proceeding.

D. Respondents are requested to identify in their opening brief the specific pages of DX 15 and DX 16 that show how and when they first notified the Commission that Phlo was no longer conducting transfer agent activities at Budd Lake, New Jersey.

SO ORDERED.



James T. Kelly
Administrative Law Judge