

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11201

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
November 18, 2003

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

NOV 19 2003

FIRST CLASS

In the Matter of :
:
NEVIS CAPITAL MANAGEMENT, LLC, : ORDER
DAVID R. WILMERDING, III, :
and JON C. BAKER :
:
:

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings on July 31, 2003. On August 29, 2003, I issued a prehearing schedule and ordered Respondents to file their expert report by October 31, 2003.

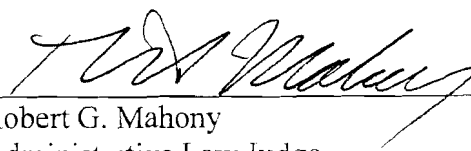
On October 31, 2003, Respondents filed the Expert Report of James V. Jordan, Ph.D., CFA (the Jordan Report). On November 6, 2003, the Division of Enforcement (Division) filed evidentiary motions requesting that I strike the Jordan Report from the record and exclude the testimony of James V. Jordan (Jordan) at the hearing. In support, the Division contends that the Jordan Report does not contain Jordan's opinions, the bases for his opinions, the information upon which his opinions have been or will be drawn, or exhibits or other supporting documentation prepared in connection with this case upon which he intends to rely.¹ On November 14, 2003, Respondents filed a response to the Division's evidentiary motions contending that the Jordan Report fulfilled the requirements of Rule 222 of the Commission's Rules of Practice, 17 C.F.R. § 201.222. On November 17, 2003, the Division filed a reply to Respondents' response.

According to Rule 222 of the Commission's Rules of Practice, each party who intends to call an expert witness is required to make certain prehearing submissions, including, among other things, a brief summary of the expert's expected testimony, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, and a list of publications authored or co-authored by the expert. 17 C.F.R. § 201.222(a)(4), (b). While the Jordan Report complies with most of Rule 222 of the Commission's Rules of Practice, 17 C.F.R. § 201.222, it fails to include a brief summary of Jordan's expected testimony that is

¹ The Division also sought to exclude a portion of the testimony of Marianne K. Smythe, Respondents' other expert witness, but subsequently withdrew this motion.

sufficient to allow the Division to prepare for its cross-examination. However, rather than strike the Jordan Report and exclude Jordan's testimony as a result of partial non-compliance with Rule 222 of the Commission's Rules of Practice, 17 C.F.R. § 201.222, I order Respondents to provide a brief summary of Jordan's expected testimony to the Division and the undersigned by December 1, 2003.

SO ORDERED.


Robert G. Mahony
Administrative Law Judge