

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-12554

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
January 15, 2008

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In the Matter of :  
: :  
MICHAEL SASSANO, : ORDER FOLLOWING PREHEARING  
DOGAN BARUH, : CONFERENCE  
ROBERT OKIN, and :  
R. SCOTT ABRY :

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On June 8, 2007, I required the Division of Enforcement (Division) to provide Respondents with access to certain non-privileged documents obtained pursuant to an omnibus order of investigation, NY-7220. I also required the Division to supplement the privilege log it filed in this proceeding on March 7, 2007, to identify with particularity any additional documents from NY-7220 that it intends to withhold from inspection and copying.

The Division asked the Securities and Exchange Commission (Commission) to take interlocutory review of the June 8, 2007, Order and to stay the proceeding in its entirety pending the completion of interlocutory review. Respondents opposed the Division's motion.

By Orders dated June 15 and June 18, 2007, the Commission granted an interim stay. It also stayed all other ongoing discovery pending its consideration of the Division's motion for interlocutory review. On November 30, 2007, the Commission denied the Division's motion for interlocutory review. The Commission afforded the Division up to an additional sixty days after November 30, 2007, (i.e., until January 29, 2008) to comply with the Order of June 8, 2007. It then afforded Respondents another sixty days (i.e., until March 28, 2008) to review the documents made available by the Division for inspection and copying.

I held a telephonic prehearing conference with counsel for the Division and Respondents on January 10, 2008. The parties explained that they have made some progress in narrowing the scope of the disputed discovery issues. Some of the Division's regional offices have no responsive materials or few responsive materials (Los Angeles, Salt Lake City, Washington, D.C.). Other regional offices have a large volume of responsive materials (New York, Boston). I am satisfied that the parties have been working together in good faith after November 30, 2007. I impressed upon lead counsel for the Division that he should aggressively monitor the progress of the Division's regional offices in their search for responsive materials, and must intercede with the regional offices if bottlenecks develop.

On January 29, 2008, lead counsel for the Division shall file and serve a status report. The status report must include affidavits or sworn declarations from the individuals responsible for production in each of the Division's regional office. Each such sworn declaration must represent that the individual in question has conducted a diligent search for responsive materials

within his/her regional office. It must identify the volume of responsive materials that is being made available by the regional office for inspection and copying (presumably, all such materials will be Bates stamped). It must state that the search in the regional office is complete, and that there are no more responsive materials. Any claim of privilege must be advanced by lead counsel of record.

#### Revised Scheduling Order

After further discussion, the parties agreed upon the following schedule:

- Jan. 29, 2008: Division to file and serve revised witness and exhibit lists;
- Feb. 29, 2008: Division to file and serve revised written direct testimony of its proposed expert witness, Russell Wermers; Division to provide Respondents with all proposed demonstrative exhibits and with access to all documents underlying the proposed demonstrative exhibits; Division to provide Respondents with revised chart showing disgorgement and prejudgment interest sought against each individual Respondent;
- Mar. 4, 2008: Telephonic prehearing conference at 11:00 a.m., E.S.T.;
- Mar. 14, 2008: Division to file and serve its prehearing brief; Division to provide Respondents with hard copies of all proposed hearing exhibits;
- Mar. 31, 2008: Respondents to file and serve revised witness and exhibit lists, prehearing briefs, and written direct testimony of proposed expert witnesses, Jonathan Macey and Gregory Bell; Respondents to provide Division with hard copies of all proposed hearing exhibits;
- Apr. 7, 2008: Hearing to commence in New York City at a location to be determined; the hearing will continue during the weeks of April 7-11 and April 14-18, 2008.

#### Revised 300-Day Calendar

The Commission issued its Order Instituting Proceedings (OIP) in this matter on January 31, 2007. It directed the presiding Administrative Law Judge to issue an Initial Decision within 300 days after service of the OIP. The Commission served the OIP on the last Respondent on March 9, 2007. I found as a fact that the 300-day period began to run on March 9, 2007 (Order of April 10, 2007). When the Commission stayed the proceeding on June 15, 2007, ninety-eight days of the available 300 days had already run.

When the 120-day tolling period expires on March 28, 2008, the 300-day clock will begin to run again. I find as a fact that the revised deadline for issuing an Initial Decision in this matter is October 17, 2008. If the parties disagree with this calculation, they shall make their positions known within seven days after the date of this Order.

## Miscellaneous Issues

When the Commission entered its interim stay on June 15, 2007, several other discovery issues were pending. Although these issues were not directly related to the Division's motion for interlocutory review, the Commission stayed "all" discovery until it ruled on the Division's motion. Accordingly, it is now necessary to set new due dates for such discovery matters.

First, the Division subpoenaed documents from Sassano. Sassano has now provided the Division with two boxes of responsive materials, but he has withheld other documents on grounds of privilege. Within seven days from the date of this Order, Sassano shall file and serve a privilege log that identifies each withheld document with particularity (*i.e.*, date of document, length of document, subject matter, author, addressee, and all claimed grounds for withholding).

Second, Respondents subpoenaed documents from third parties, including the New York Stock Exchange, Canadian Imperial Bank of Commerce, National Association of Securities Dealers, and various law firms. The return dates on these subpoenas must now be modified. The third-party recipients must produce the responsive materials to Respondents within seven days from the date of this Order.

Third, Respondents subpoenaed documents from the Commission's Office of Compliance Inspections and Examinations (OCIE). OCIE filed a motion to quash on June 13, 2007. The motion to quash is denied, without prejudice to renewal.

It is apparent that Respondents are willing to narrow the scope of their request for OCIE documents. OCIE represented that it needed additional time to gather the responsive materials, but it has now had an additional seven months to complete that task. Respondents shall make a good faith effort to narrow the scope of their requests, taking into account the information that OCIE provided in its June 13, 2007, motion to quash. Within seven days after the date of this Order, Respondents shall serve their narrowed document requests on OCIE. The new return date for the subpoenas will be seven days after Respondents provide OCIE with their narrowed requests. At that time, OCIE shall produce all non-privileged responsive materials. OCIE may renew its motion to quash at that time, if necessary. However, any claims of privilege by OCIE must be tied to specific documents identified on its privilege log.

SO ORDERED.

  
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James T. Kelly  
Administrative Law Judge