

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 55562 / March 30, 2007

Admin. Proc. File No. 3-11909

In the Matter of

PHLO CORPORATION,
JAMES B. HOVIS, and ANNE P. HOVIS

OPINION OF THE COMMISSION

TRANSFER AGENT PROCEEDING

CEASE-AND-DESIST PROCEEDING

SECTION 12(J) PROCEEDING

Grounds for Remedial Action

Failure to Comply with Transfer Agent Turnaround Rule

Failure to Make Records Available for Examination

Failure to Make Timely Periodic Filings

Corporation that issued publicly traded securities and that served as its own transfer agent refused to cancel shares and issue new ones within three business days despite obligation as transfer agent to do so and failed to make records available for examination by Commission staff. Executive vice president of corporation willfully aided and abetted and was a cause of these violations.

Corporation additionally failed to make timely filings of quarterly and annual reports; president and chief executive officer of corporation was a cause of these violations.

Held, it is in the public interest to revoke registration of corporation as transfer agent, to bar executive vice president from associating with any registered transfer agent, to impose cease-and-desist orders, and to impose civil money penalties on executive vice president.

APPEARANCES:

Anne P. Hovis, *pro se* and for Phlo Corporation.

Anthony W. Djinis and Peter E. McLeod, of Pickard and Djinis LLP, for James B. Hovis.

Robert K. Levenson and Scott A. Masel, for the Division of Enforcement.

Appeal filed: March 14, 2006

Last brief received: June 5, 2006

Oral argument: January 31, 2007

I.

Phlo Corporation ("Phlo" or the "Company"), a beverage manufacturer and an issuer of publicly traded securities that also acted as transfer agent for its own securities, its president and chief executive officer James B. Hovis ("J. Hovis"), and its executive vice president, secretary, and general counsel Anne P. Hovis ("A. Hovis"; together, "Respondents") appeal from the decision of an administrative law judge. The law judge found that Phlo willfully violated provisions requiring transfer agents to turnaround at least ninety percent of all routine items received in a month within three business days and willfully failed to make records available for examination by Commission staff. The law judge concluded that A. Hovis willfully aided and abetted and was a cause of Phlo's failure to complete transfers in a timely manner and failure to make records available for examination.

The law judge further found that Phlo failed to make timely filings of annual and quarterly reports with the Commission between March 2003 and November 2005. The law judge found that J. Hovis willfully aided and abetted and was a cause of Phlo's violations of the periodic reporting requirements.

The law judge assessed civil money penalties of \$100,000 against Phlo, \$25,000 against J. Hovis, and \$50,000 against A. Hovis, revoked Phlo's registration as a transfer agent, barred A. Hovis from associating with any transfer agent, and imposed cease-and-desist orders as to all Respondents. We base our findings on an independent review of the record, except with respect to those findings not challenged on appeal.

II.

A. Phlo Asserts that It Is Withdrawing Its
Certificates from the Depository Trust Company

Processing transactions in securities involves the efforts of various entities, including transfer agents and clearing agencies. A transfer agent is a person who engages, on behalf of an issuer of securities, in (among other things) receiving certificates, cancelling them and issuing

new certificates, or transferring record ownership of securities by bookkeeping entry (without physical issuance of securities). 1/ Transfer is accomplished when, in accordance with the presenter's instructions, the transfer agent does everything necessary to cancel the certificate presented for transfer and to issue a new certificate. 2/ Transfer agents are required to register with an appropriate regulatory agency, keep their registration information accurate, maintain certain records, effect transfers promptly, and make records available for examination by the appropriate authority. 3/

The Depository Trust Company ("DTC") is a limited trust company registered with the Commission as a clearing agency and self-regulatory organization. As a clearing agency, DTC is involved in "clearing" trades, *i.e.*, confirming with the parties involved that a trade was executed, and that it was executed in accordance with the directions of the buyer and the seller. 4/ DTC also acts as a depository, holding securities for its participants (broker-dealers and banks) and maintaining ownership records of the securities on its own books. 5/ DTC registers the securities deposited with it in the name of a nominee, Cede & Co., which becomes the registered owner of the securities, while the participants and their customers retain beneficial ownership. 6/ Through its involvement in centralizing and automating securities settlement and reducing the physical movement of publicly traded securities, DTC has served a critical function in the efforts to facilitate the development of a national system for the prompt and accurate clearance and settlement of transactions in securities. 7/

Phlo registered with the Commission as a transfer agent in June 2002. American Stock Transfer & Trust Company previously acted as Phlo's transfer agent, but on December 12, 2002,

1/ Exchange Act Section 3(a)(25), 15 U.S.C. § 78c(a)(25). See also Exchange Act Rule 17Ad-1(d), 17 C.F.R. § 240.17Ad-1(d) (defining "transfer").

2/ Exchange Act Rule 17Ad-1(d).

3/ Exchange Act Sections 17(a)-(b), 17A(c), 15 U.S.C. §§ 78q(a)-(b), 78q-1(c), and Exchange Act Rules 17Ac2-1, 17Ad-6, 17Ad-7, 17 C.F.R. §§ 240.17Ac2-1, 240.17Ad-6, 240.17Ad-7.

4/ See generally Louis Loss & Joel Seligman, Securities Regulation § 7-E-2 (3d ed. 2002 & supp. 2006). DTC is also involved in "settling" securities transactions, *i.e.*, exchanging securities and payment. Id.

5/ See Order Granting Approval of a Proposed Rule Change Concerning Requests for Withdrawal of Certificates by Issuers, Securities Exchange Act Rel. No. 49798 (June 4, 2003), 80 SEC Docket 1309, 1313 (discussing DTC procedures).

6/ Id.

7/ Id.

Phlo gave DTC written notice that it would serve as its own transfer agent. ^{8/} In the same December 12 letter that provided this notice to DTC, A. Hovis asserted that DTC was no longer authorized to act as a trustee or "in any other capacity whatsoever for Phlo Corporation or its securities."

Around June 2003, A. Hovis told DTC that Phlo wanted to withdraw from DTC the securities that it had issued and settle investors' transactions using certificates rather than book entries. ^{9/} Susan Geigel, DTC's Director of Legal and Regulatory Compliance, told A. Hovis that, in DTC's view, only DTC participants (i.e., broker-dealers or banks) had the legal authority to withdraw securities from DTC, and that Phlo, as an issuer rather than a participant, could not withdraw its securities. However, in a letter dated June 5, 2003, A. Hovis again stated that Phlo was "discontinuing DTC's services as a clearing and settlement agency. Phlo will use a certificate-only clearing mode from this point forward." ^{10/}

By letter dated June 17, 2003, Geigel reiterated that only participants, not issuers, could request withdrawal of securities. The letter enclosed a Commission order dated June 4, 2003 ("Order"), which stated that both DTC's existing rules and the proposed DTC rule that was the subject of the Order obligated and allowed DTC to take instructions only from its participants. ^{11/} The Order continued: "Since DTC participants and their customers, not issuers, have ownership interest in the securities, DTC participants and their customers have the authority to determine whether to deposit securities with DTC or not. . . . It would not be

^{8/} Phlo has served as transfer agent only for its own securities, and not for any other issuer.

^{9/} The subject arose during a telephone conversation regarding DTC's uncertainty about Phlo's mailing address. Although in its initial registration form Phlo identified its principal transfer agent offices to be on K Street NW, Washington, D.C., Phlo informed the Commission in August 2002 that it would instead conduct its transfer agent activities principally from Budd Lake, New Jersey. DTC sent several packages to Phlo at the Budd Lake address; they were returned as undeliverable. By correspondence dated May 8 and June 5, 2003, Phlo asked DTC to send requests for transfers of stock certificates to an address in Jacksonville, Florida. Phlo continued, however, to use the Budd Lake address on letterhead stationery as late as August 15, 2003.

^{10/} The letter further asserted that "[f]rom this date forward, Phlo will honor certificates representing its common stock registered in the name of Cede & Co. only for the purpose of transferring shares represented by such certificates into the names of the actual beneficial holders of the securities."

^{11/} Order, 80 SEC Docket at 1313.

consistent with DTC rules to allow issuers to withdraw securities which they have not deposited at DTC or [in which they] have no ownership interest." 12/

B. Phlo Repeatedly Fails to Act on Transfer Instructions From DTC

When DTC sends a registered transfer agent certificates that are to be cancelled and reissued (whether in the nominee name of a registered clearing agency or in the name of other persons or entities), it provides the instructions on a shipment control list ("SCL"). Each line of instructions on an SCL is defined as a separate "item." 13/

Exchange Act Rule 17Ad-2 (the "turnaround rule") generally requires that registered transfer agents turnaround (or complete), within three business days of receipt, at least ninety percent of all routine items received for transfer during a month. 14/ Exchange Act Rule 17Ad-1(e) states that the "turnaround of an item is complete when transfer is accomplished." 15/ Routine items not turned around within three business days of receipt must be turned around "promptly." 16/ A transfer agent must determine whether an item is routine when the item is reviewed upon receipt, and an otherwise routine item does not become non-routine because of internal delays in turnaround. 17/

12/ Id., 80 SEC Docket at 1314 (footnote omitted). The Order also noted that "actions by some issuers of publicly traded securities to require transfer only by certificate and to restrict ownership of the securities by a depository or financial intermediary could result [in] many of the inefficiencies sought to be avoided when Congress promulgated section 17A of the [Exchange] Act." Consistent with a Congressional directive to end the physical movement of securities certificates in connection with settlement, the Commission encouraged the use of alternatives to holding securities in certificated form "in an effort to improve efficiencies and decrease risks associated with processing securities certificates." Id. (footnotes omitted).

13/ Exchange Act Rule 17Ad-1(a)(1)(ii), 17 C.F.R. § 240.17Ad-1(a)(1)(ii).

14/ Exchange Act Rule 17Ad-2(a), 17 C.F.R. § 240.17Ad-2(a). Items received for transfer are considered routine unless they fall within certain specified exceptions. Exchange Act Rule 17Ad-1(i), 17 C.F.R. § 240.17Ad-1(i).

15/ 17 C.F.R. § 240.17Ad-1(e). See text accompanying note 2, supra, defining transfer.

16/ Rule 17Ad-2(e)(1), 17 C.F.R. § 240.17Ad-2(e)(1).

17/ Regulation of Transfer Agents, Exchange Act Rel. No. 17111 (Sept. 2, 1980), 20 SEC Docket 1277, 1286. Non-routine items must receive "diligent and continuous attention" and must be turned around as quickly as possible. Exchange Act Rule 17Ad-2(e)(1), 17 C.F.R. § 240.17Ad-2(e)(1).

DTC issued Transfer Timeliness Reports to Phlo every two weeks. The Transfer Timeliness Reports showed, among other things, the number of transfers submitted during the period in question and the number of transfers returned within specific time frames (1-5 days, 6-10 days, 11-15 days, 16-30 days). They also showed the number of transfers still outstanding, including those from prior periods. According to these Transfer Timeliness Reports, DTC sent thirty-two SCLs containing a total of fifty-four items to Phlo in June, July, and August 2003: nineteen items in June, twenty-eight in July, and seven in August. The Transfer Timeliness Reports show that Phlo failed to meet the three-day turnaround requirement for any of these items, and Phlo introduced no evidence that it turned around any item within three business days during those months. 18/ The record contains no evidence indicating that Phlo determined that any of these items were non-routine when it received them for transfer.

DTC employees tried on eight separate occasions in July and August 2003 to contact A. Hovis about Phlo's delays in completing the transfers. Although DTC employees repeatedly left messages for A. Hovis, she responded only twice. On July 23, she represented that the delay in the transfers was caused by work on a Form 10-K filing and that she would complete the transfers in question later that week. No Form 10-K was filed during the summer of 2003, however. 19/ On August 22, A. Hovis told DTC that she would try to do some transfers shortly.

In August 2003, Geigel contacted A. Hovis about Phlo's outstanding transfers. A. Hovis stated that she would not transfer securities into the name of Cede & Co., DTC's nominee. Although Geigel stated that DTC had the right under the terms of the Order to have the securities transferred to Cede & Co., A. Hovis refused to make the transfers. Instead, in letters to DTC dated August 21, October 14, and October 16, 2003, A. Hovis asked for instructions to "issue such shares in the names of the beneficial owners thereof," instead of in the name of Cede & Co. 20/ During the fall of 2003, A. Hovis refused Geigel's repeated requests to complete the outstanding transfers, contending that DTC had no legal right to have the securities registered in the name of Cede & Co.

In a letter to A. Hovis dated November 5, 2003, Geigel demanded the return of more than thirty-eight million shares of Phlo Corporation stock that DTC had submitted for registration in

18/ The record includes one SCL, dated June 10, 2003, that does not appear on the Transfer Timeliness Report for the appropriate period. We note, however, that Phlo's October 14, 2003 letter to DTC includes a request for instructions related to that SCL, so it appears that at least some of the transfers requested in the June 10 SCL were still outstanding more than four months later. See text accompanying note 20, infra.

19/ We take official notice that our EDGAR database shows that Phlo did not file any Forms 10-K or 10-Q with the Commission during the summer of 2003. Rule of Practice 323, 17 C.F.R. § 201.323.

20/ These transfers were among the items listed on SCLs sent to Phlo during June, July, and August 2003.

the name Cede & Co. Instead, on November 12, 2003, A. Hovis sent Geigel copies of three letters she had previously sent to DTC. Geigel received no other written response from Phlo to the November 5, 2003 letter. Geigel had at least two subsequent conversations with A. Hovis about the outstanding transfers in November or December 2003, in which A. Hovis continued to refuse to return the shares.

C. The Division of Market Regulation Becomes Involved

As these events were occurring, Geigel contacted our Division of Market Regulation ("Market Regulation") for help in resolving DTC's dispute with Phlo. Our staff attempted to contact Phlo and left several messages.

Ultimately, Phlo asked for a conference call, which took place in October 2003. Market Regulation staff explained to Phlo what an SCL was. 21/ The staff also informed A. Hovis that she had certain obligations with respect to the outstanding transfers. The staff tried to give A. Hovis a brief explanation about the scope of certain federal transfer agent rules. A witness testified that A. Hovis started to become "very loud and somewhat irrational" during this part of the conversation. Market Regulation staff also asked A. Hovis for her legal basis for not making the transfers in accordance with the rules. A. Hovis replied that she believed that DTC was facilitating naked short selling and that, by refusing the transfers, Phlo was protecting its shareholders from the naked short selling. 22/ A. Hovis stated that Phlo had no obligation to

21/ Although Phlo registered with the Commission as a transfer agent in June 2002, a staff witness testified that, at the time of the conference call, A. Hovis did not know what an SCL was, or that there were federal transfer agent rules.

22/ "Naked short sale" is not a defined term under federal securities law. As generally used, a "naked short sale" occurs when a seller sells a security without owning or borrowing it and does not deliver the security when due. Order, 80 SEC Docket at 1314. Market Regulation asked A. Hovis to explain the basis for her statement that DTC was facilitating naked short selling, but A. Hovis did not provide further details.

The Order observes: "[T]he issues surrounding naked short selling are not germane to the manner in which DTC operates as a depository registered as a clearing agency. Decisions to engage in such transactions are made by parties other than DTC. DTC does not allow its participants to establish short positions resulting from their failure to deliver securities at settlement." Order, 80 SEC Docket at 1314.

We adopted Regulation SHO (17 C.F.R. § 242.200 *et seq.*) to provide a regulatory framework to govern short sales. The regulation imposes a close-out requirement to address failures to deliver stock on the trade settlement date and to target abusive naked short selling. We continue to propose and adopt regulatory measures. *See, e.g.*, Amendments to Regulation SHO, Exchange Act Rel. No. 54154 (July 14, 2006), 88 SEC (continued...)

effect the transfers requested by DTC and that she would keep the securities sent to Phlo by DTC. 23/

Market Regulation staff informed A. Hovis that, upon instructions from DTC, whose nominee was the registered owner of the securities, Phlo was obligated "under federal and state law to make those transfers." Market Regulation staff urged A. Hovis to "work with DTC to try to reconcile the situation," but A. Hovis continued to insist that she would not effect the transfers. The conversation became more and more irrational as A. Hovis continued to reiterate that she would not make the transfers, but failed to provide any legal basis for her refusal. When Market Regulation staff concluded that their attempts to rectify the situation were not having the desired result, the staff told Phlo that, in accordance with its usual procedure, the staff would refer Phlo to our Office of Compliance Inspections and Examinations ("OCIE").

Before the referral to OCIE, Market Regulation staff telephoned DTC several times to ask whether any of the outstanding transfers had been made. DTC responded that they had not. When the administrative hearing began in September 2005, sixteen of the SCLs that DTC sent to Phlo between June 2003 and August 2003 were still outstanding, involving almost 20.5 million shares of Phlo stock. 24/ A. Hovis admitted at oral argument that some shares had still not been transferred.

D. The Request for Documents

22/ (...continued)
Docket 1511 (proposing amendments intended to reduce further failures to deliver).

23/ Respondents assert in their brief that, during the conference call, A. Hovis informed Market Regulation of various complaints Phlo had regarding DTC. Phlo asserts that it complained, among other things, that DTC initially refused to recognize Phlo as a transfer agent, that DTC refused to send Phlo certificates for registration in the name of beneficial owners, and that DTC was facilitating naked short selling. Phlo further asserts that there is no evidence that either Market Regulation or anyone else at the Commission took any steps to investigate or resolve Phlo's concerns about DTC's actions.

Exchange Act Section 21(a)(1), 15 U.S.C. § 78u(a)(1), entrusts the determination whether to investigate to the Commission's discretion. The decision not to prosecute or enforce is also a matter of agency discretion. See, e.g., Heckler v. Chaney, 470 U.S. 821, 831 (1985); Chicago Bd. of Trade v. SEC, 883 F.2d 525, 530 (7th Cir. 1989). Our decision whether to undertake such matters is separate from our disposition of this proceeding.

24/ Although A. Hovis testified that the figures introduced by the Division of Enforcement ("Enforcement") regarding transfers still outstanding at the time of the hearing were incorrect, estimating that "maybe half of what is listed on the form here" had not been completed, Respondents point to no evidence showing that any of the transfers identified as outstanding by Enforcement had been completed.

In late October 2003, OCIE initiated a cause examination of Phlo. 25/ As the first step in the examination, OCIE staff sent Phlo a document request letter dated October 31, 2003. The letter asked Phlo to provide, among other things, information concerning the number of stock transfers during the last eight months. OCIE also requested certain documents, including an organization chart for Phlo indicating the names and number of Phlo staff engaged in transfer agent activities; copies of any written procedures for Phlo's transfer agent activities; records, journals, and logs that recorded daily transfer activities, including when transfer requests are received, when transfers are processed and effected, and the completion of transfers; and copies of any Phlo internal audit or other management or exception reports submitted to senior management pertaining to transfer agent activities. The letter requested that responsive information or documents be provided "on or before November 7, 2003." The letter was sent to Phlo by both mail and facsimile. 26/

Phlo did not respond. OCIE staff telephoned A. Hovis on November 7 and again on November 10. The staff left messages saying that a response to the document request letter was due and asking A. Hovis to return the call. A. Hovis did not respond. Several days after the November 10th call, OCIE received a telephone message from A. Hovis, confirming that Phlo had received the document request letter and advising that OCIE should expect a telephone call in about two days from Phlo's outside counsel regarding its request.

No one contacted OCIE on Phlo's behalf. OCIE staff again attempted to contact A. Hovis and left a message for Phlo on November 20 and two additional messages on November 24. On November 24, OCIE staff warned that, if Phlo did not contact OCIE by the end of that day, OCIE "would start a proceeding that could result in a revocation of Phlo's transfer agent [status]." A. Hovis called OCIE on November 24 and stated that Phlo had retained outside counsel. By letter dated November 26, 2003, A. Hovis asked OCIE "for a reasonable extension of time (taking into account the holidays) . . . in which to work with legal counsel to respond to your letter and comply with your requests and to address the other issues surrounding your letter." 27/ In a telephone call on December 10, OCIE staff denied A. Hovis's request. 28/

25/ OCIE periodically conducts routine examinations of transfer agents. When OCIE has reason to suspect a potential violation, however, it may conduct a cause examination, such as this examination of Phlo.

26/ In a Wells submission dated April 15, 2004, which Respondents submitted to Enforcement shortly before the issuance of the Order Instituting Proceedings ("OIP") and which was attached to their Answer in this proceeding, Respondents admitted that they received the facsimile the day it was sent. Although A. Hovis testified that she did not remember when she received the facsimile, the law judge gave greater weight to the statement contained in the Wells submission, since it was prepared closer in time to the events in question. We concur in his conclusion.

27/ With this letter, A. Hovis enclosed a copy of Phlo's November 25 engagement agreement with outside counsel. The engaged firm never contacted OCIE staff about the document
(continued...)

During this conversation, A. Hovis stated that Phlo was performing some of its transfer agent work in Washington, D.C. ^{29/} OCIE reviewed Phlo's original transfer agent registration form, Form TA-1, which showed an address on K Street NW, Washington, D.C. OCIE paid an unannounced visit to the K Street address on December 12, 2003. Phlo's name did not appear on the directory of tenants of the building, and the office suite listed in the Form TA-1 was locked. An OCIE staff attorney testified that he looked through a small window in the office door and saw office furniture, but no people, signs, or papers. He concluded that the suite "did not appear to be actually used office space." The receptionist of another company in the building told OCIE that the company and Phlo were sharing office space. A Phlo employee, who coincidentally happened to be visiting the shared offices, told OCIE that J. Hovis and A. Hovis were not present and that no examination could be conducted in their absence. The employee contacted A. Hovis. A. Hovis told OCIE that she could not come to the office, nor could she, at that time, provide a date on which OCIE could return and conduct an on-site examination. A. Hovis never contacted OCIE to schedule a date for an examination.

E. The Division of Enforcement Begins an Investigation

^{27/} (...continued)
request letter.

The November 26 letter also stated that Phlo had "reached an agreement" with DTC and "is currently processing transfer requests in accordance with such agreement." When OCIE staff contacted DTC in early December 2003 to inquire about the "agreement," DTC stated that no agreement had been reached.

^{28/} Respondents contend that, although an OCIE attorney told A. Hovis during the December 10 telephone call that Phlo could not have an "open-ended" extension, the staff attorney asked her to provide a date by which Phlo would comply with the document request letter. Phlo appears to argue that this inquiry as to when OCIE could expect a response should be interpreted as an implied agreement that some sort of extension might be possible.

However, the law judge, who heard both the staff attorney and A. Hovis testify, found that OCIE staff told A. Hovis that it would not grant an extension. In the face of such a statement, A. Hovis had no reason to believe that Phlo could nonetheless set its own deadline for responding to the document request. We also note that A. Hovis does not contend that she provided a date for compliance during the telephone conversation.

^{29/} The record shows that Phlo used various addresses during the period at issue, sometimes using one address as that of its principal executive offices and another address for its transfer agent activities. See note 9, supra. At the time of the conversation, OCIE understood that Phlo was performing transfer agent activities in either New Jersey or Florida.

OCIE referred the matter to our Division of Enforcement (“Enforcement”). On December 18, 2003, Enforcement directed Phlo to respond to OCIE's October 31 document request by December 27, 2003. In a letter dated December 30, 2003, A. Hovis stated that “[a]s Phlo's General Counsel, I handle the transfer agent responsibilities,” but asserted that it would be “physically impossible” for her to compile the materials sought by OCIE before mid-January. ^{30/} She requested an extension of time until January 16, 2004 to provide the requested information. Enforcement did not respond to the request for an extension. On January 15 and 16, 2004, A. Hovis provided Enforcement some but not all of the information requested by the staff. ^{31/} To date, Phlo has not provided the remaining documents.

III.

A. Failure to Complete Transfers in a Timely Manner

Exchange Act Section 17A(d)(1) provides that no registered transfer agent may engage in any activity as transfer agent in contravention of any Commission rule or regulation. ^{32/} As a registered transfer agent, Phlo was required to comply with the turnaround rule, and turnaround ninety percent of routine items within three business days. ^{33/} Exchange Act Section 17A(a)(1)(A) states, “The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership . . . , are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.” ^{34/} Failure to comply jeopardizes the efficacy of the Congressionally-mandated national system for the prompt and accurate clearance and settlement of transactions in securities. ^{35/} During June,

^{30/} In her letter, A. Hovis stated that the delay was primarily due to an unexpected loss of child care, and that she had “numerous other duties” in addition to responding to the document request letter.

^{31/} A. Hovis provided copies of certain requested forms, but provided no records or logs that recorded daily transfer activities. See also notes 40-42, *infra*, and accompanying text (discussing failure to provide such records). In lieu of the requested organization chart, A. Hovis stated, “I was the official engaged in transfer agent and related activities.” A. Hovis did not submit “copies of any Phlo internal audit or other management or exception reports submitted to senior management pertaining to its transfer agent activities,” but she stated that there were no documents responsive to this request.

^{32/} 15 U.S.C. §78q-1(d)(1).

^{33/} See note 14, *supra*, and accompanying text.

^{34/} 15 U.S.C. § 78q-1(a)(1)(A).

^{35/} See also Exchange Act Section 17A(a)(1)(B), 15 U.S.C. §§ 78q-1(a)(1)(B) (“Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.”).

July, and August 2003, DTC sent Phlo thirty-two SCLs with a total of fifty-four items. ^{36/} As of September 4, 2003, all of these items were still outstanding, for periods ranging from thirty to eighty-two days.

Phlo asserts that Enforcement did not prove that Phlo failed to turnaround within three business days ninety percent of the routine items that it received. Phlo states that it received other transfer requests directly from brokers and dealers, so that DTC's transfer requests do not equal the entire number of requests that Phlo received. Phlo argues that, because Enforcement presented no evidence as to the total number of routine items that Phlo received, it is impossible to determine whether the items it failed to turnaround constitute ninety percent of the total.

Enforcement had the initial burden of presenting evidence that Phlo violated the turnaround rule. ^{37/} Enforcement satisfied its burden by introducing, among other evidence, the Transfer Timeliness Reports and the SCLs they summarized, together with related correspondence and testimony. As noted above, that evidence showed that the fifty-four items sent during the summer of 2003 remained outstanding on September 4, 2003. The burden then shifted to Phlo to produce evidence that refuted or rebutted the material introduced by Enforcement. ^{38/}

Phlo was required to keep records that could have demonstrated whether it complied with the turnaround rule. ^{39/} Exchange Act Rule 17Ad-6(a)(1) requires registered transfer agents to make and keep current a log or other record showing the business days that each item is received and returned. ^{40/} Rule 17Ad-6(a)(2) requires registered transfer agents to make and keep current a log or other record of the number of routine items received during the month that were turned around within three business days of receipt. ^{41/}

^{36/} But see note 18, supra (discussing June 10, 2003 SCL).

^{37/} 5 U.S.C. § 556(d). See, e.g., David Disner, 52 S.E.C. 1217, 1221 n.15 (1997); Donald T. Sheldon, 51 S.E.C. 59, 77 (1992), aff'd, 45 F.3d 1515 (11th Cir. 1995).

^{38/} Disner, 52 S.E.C. at 1221 n.15; Sheldon, 51 S.E.C. at 77. Absent such a shift in the burden of proof, Enforcement would be faced with an impossible task; no matter how much evidence the Division presented, a transfer agent could argue that there might be other information somewhere that would prove the Division's evidence to be insufficient.

^{39/} The OIP did not charge Phlo with failure to maintain the records required by Rules 17Ad-6(a)(1) and (a)(2), and we make no findings as to whether Phlo maintained those records.

^{40/} 17 C.F.R. § 240.17Ad-6(a)(1). Rule 17Ad-7(a), 17 C.F.R. § 240.17Ad-7(a), requires that such records be maintained for at least two years, the first six months in an easily accessible place.

^{41/} 17 C.F.R. § 240.17Ad-6(a)(2). Rule 17Ad-7(b), 17 C.F.R. § 240.17Ad-7(b), requires that
(continued...)

Our staff sought these records from Phlo for a period that included June, July, and August 2003. The October 31, 2003 document request letter asked Phlo to provide, among other things, "records, journals and logs that record daily transfer activities, including when transfer requests are received, when transfers are processed and effected, and the completion of transfers." Enforcement directed Phlo to respond to those requests. Phlo did not provide any of these records. 42/ Nor did Phlo submit any documentary or testimonial evidence to show that it received and acted on transfer instructions from anyone other than DTC during the relevant months, even though information about when Phlo received and turned around items would have been more readily accessible to Phlo than to Enforcement. 43/

Phlo did produce, among the records it provided in January 2004, a document captioned "Phlo Corporation -- Transfer Agent Activity -- Requests for Issuance of Common Stock Certificates" ("Activity Document"). 44/ However, the Activity Document has no entries from the months of June, July, or August 2003; so it does not support the argument that Phlo completed ninety percent of transfers in a timely manner during the months in question. 45/

41/ (...continued)

such records be maintained for at least two years, the first year in an easily accessible place.

42/ Phlo's ultimate response to the October 31 letter's request for "records, journals and logs that record daily transfer activities" was to submit, in the words of A. Hovis's transmittal letter, "letters from Phlo to DTC regarding the processing of transfer instructions" and "transfer instructions submitted by [DTC] and a number of broker-dealers."

Only two of the letters from Phlo to DTC are dated June, July, or August 2003; neither of these letters indicates that Phlo completed any transfers during that period. None of the transfer instructions from broker-dealers are dated June, July, or August 2003. OCIE staff testified that nothing in Phlo's January 2004 submissions was responsive to this request.

43/ Cf. Disner, 52 S.E.C. at 1221 n.15 (noting that respondents -- president and director of trading of broker-dealer firm -- were in better position than Enforcement to provide documentation that disclosure was made, where Enforcement charged lack of disclosure to customers).

44/ The Activity Document lists shareholder names, certificate numbers, number of shares, and dates, although it is unclear whether the "date" listed is the date of the receipt of the request or the date that the request was acted upon.

45/ We additionally observe that, because Phlo failed to satisfy the turnaround rule for all fifty-four items shown on the DTC Transfer Timeliness Reports for the months of June, July, and August 2003, Enforcement's case would fail as to a particular month only if Phlo had timely turned around at least 171 other items in June, 252 other items in July, or
(continued...)

Moreover, because the Activity Document shows only one date for each entry, it is not possible to compare dates of receipt and dates of transfer to determine whether any transfer on the list was timely made. The record further contains no transfer instructions from brokers or dealers from June, July, or August 2003.

A. Hovis and Phlo contend "that it was DTC's actions, not Phlo's, which thwarted timely share certificate transfers." They argue that "there is substantial evidence in the record that Phlo repeatedly promised to timely process the transfer requests upon receipt of the information needed." A. Hovis and Phlo cite A. Hovis's letters to DTC of August 21, 2003 and October 14, 2003, which reject DTC instructions to Phlo to issue shares in the name of Cede & Co. and request DTC to provide instructions "so that [Phlo] may issue such shares in the names of the beneficial owners thereof."

Phlo and A. Hovis cannot excuse their failure to comply with the turnaround rule by suggesting that they would have complied with different instructions they sought to require from DTC. DTC and our staff had repeatedly advised Phlo that Phlo could not withdraw from DTC the certificates evidencing Phlo's securities, or refuse DTC's instructions with respect to transferring the securities. Moreover, by the time Phlo sent the August 21 letter to DTC, requesting instructions that would allow Phlo to issue the securities in the names of their beneficial owners, the three-business-day deadline of the turnaround rule had already passed for more than fifty items. By October 14, the date of the second letter, the deadline had passed for all fifty-four of the items.

We therefore find that Phlo willfully violated the turnaround rule 46/ by failing to turnaround at least ninety percent of routine items received within three business days during the

45/ (...continued)
sixty-three other items in August. The record does not show that Phlo satisfied the turnaround rule with respect to any items during any of these months.

46/ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." Wonsover v. SEC, 205 F.3d 408, 414 (2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).

months of June, July, and August 2003. 47/ We further find that by violating the turnaround rule, Phlo willfully violated Section 17A(d)(1).

We also find that A. Hovis willfully aided and abetted and was a cause of Phlo's violations of Section 17A(d)(1) and Exchange Act Rule 17Ad-2. To establish aiding and abetting liability, Enforcement was required to show that (1) Phlo violated those provisions, (2) A. Hovis substantially assisted the violations, and (3) A. Hovis provided that assistance with the requisite scienter. 48/ The scienter requirement may be satisfied by showing that A. Hovis knew of, or recklessly disregarded, the wrongdoing and her role in furthering it. 49/ To establish that A. Hovis was a cause of Phlo's violations, Enforcement was required to show that (1) Phlo committed a primary violation, (2) an act or omission by A. Hovis caused the violation, and (3) A. Hovis knew or should have known that her act or omission would contribute to the violation. 50/

A. Hovis identified herself as "the official [at Phlo] engaged in transfer agent and related activities" in her response to the document request letter. A. Hovis's involvement in Phlo's failure to complete transfers in a timely manner is evident throughout the facts described above. DTC and our staff repeatedly counseled A. Hovis regarding Phlo's obligation to complete

47/ Phlo contends that our adoption of Exchange Act Rule 17Ad-20, 17 C.F.R. § 240.17Ad-20, demonstrates that Phlo's dispute with DTC did not violate Rule 17Ad-2, the turnaround rule. See Issuer Restrictions or Prohibitions on Ownership by Securities Intermediaries, Exchange Act Rel. No. 50758A (Dec. 7, 2004), 84 SEC Docket 1177 (adopting Rule 17Ad-20). If Phlo's position had violated existing Commission rules, Phlo argues, there would have been no need for the Commission to propose and adopt Rule 17Ad-20.

We reject Phlo's argument. Rule 17Ad-20 prohibits registered transfer agents from transferring certain equity securities if those securities are subject to any restriction or prohibition (imposed, for example, by the issuer) on transfer to or from a securities intermediary (such as DTC) in its capacity as such. The provisions of that rule are not relevant to Phlo's failure to complete the transfer of ninety percent of the routine items that it received each month during the summer of 2003.

48/ See Robert J. Prager, Exchange Act Rel. No. 51974 (July 6, 2005), 85 SEC Docket 3413, 3421 & n.17 (citing additional cases).

49/ See, e.g., Monetta Fin. Servs., Inc. v. SEC, 390 F.3d 952, 956 (7th Cir. 2004); Howard v. SEC, 376 F.3d 1136, 1143, 1149 (D.C. Cir. 2004); Graham v. SEC, 222 F.3d 994, 1000 (D.C. Cir. 2000).

50/ Gateway Int'l Holdings, Inc., Exchange Act Rel. No. 53907 (May 31, 2006), 88 SEC Docket 430, 444; Robert M. Fuller, Exchange Act Rel. No. 48406 (Aug. 25, 2003), 80 SEC Docket 3539, 3545, petition for review denied, 95 Fed. Appx. 361 (D.C. Cir. 2004).

transfers in a timely fashion. Thus, the record establishes both her substantial assistance to the violations and her knowledge, or reckless disregard, that her refusal to complete the transfers furthered Phlo's violative conduct. We therefore find that A. Hovis willfully aided and abetted and was a cause of Phlo's violation of the turnaround rule and of Section 17A(d)(1).

B. Failure to Make Records Available for Examination

Exchange Act Section 17(a)(1) requires, among other things, that registered transfer agents make such records as the Commission prescribes by rule and keep such records for prescribed periods. 51/ Exchange Act Section 17(b)(1) provides that "all records" of a registered transfer agent are subject at any time to reasonable investigation by representatives of the Commission as deemed necessary or appropriate in the public interest. 52/

In light of Phlo's repeated refusal to complete transfers, our staff began a cause examination of Phlo. The staff's October 31 document request letter included requests for records that registered transfer agents like Phlo are required by rule to make and keep current -- such as the records showing when transfer requests are received and effected -- and to maintain in a readily accessible place for at least six months. 53/

Phlo did not respond at all by November 7, the deadline in the staff's request. Although OCIE left messages on November 7 and November 10, A. Hovis failed to respond for several days after the November 10th call. Even then, A. Hovis merely left a message stating that Phlo's outside counsel would be contacting OCIE within about two days regarding the letter. In fact, as set forth above, Phlo did not even engage outside counsel until November 25, and no outside counsel ever contacted our staff about the request.

OCIE made further telephone calls but received little response from A. Hovis or Phlo. OCIE denied A. Hovis's request for additional time to respond to the staff's request. While A. Hovis was unavailable when OCIE visited the K Street premises, she failed to propose an alternative time for an examination. When Enforcement notified Phlo that it was beginning an investigation, and directed Phlo to submit the records requested in the October 31 letter by December 27, A. Hovis requested yet another extension, this time until January 16, 2004. Although no extension was granted, A. Hovis waited until January 15 and 16, 2004 before finally making some of the requested documents available to Commission staff. Thus, Phlo waited some two and a half months after receiving the document request letter before submitting

51/ 15 U.S.C. § 78q(a)(1).

52/ 15 U.S.C. § 78q(b)(1). See also Exchange Act Section 3(a)(37), 15 U.S.C. § 78c(a)(37) ("The term 'records' means accounts, correspondence, memorandums, tapes, discs, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language.").

53/ See notes 40-41, supra, and accompanying text.

any records at all, although it was required to maintain many of the records sought in a readily accessible place.

Even then, Phlo failed to provide all the requested information (including, most notably, the requested "records, journals, and logs that record daily transfer agent activities"). Moreover, A. Hovis could have responded immediately to some of the staff's requests. As a member of Phlo's senior management responsible for Phlo's transfer agent functions, A. Hovis must have known when she received the October 31 letter that Phlo had no documents responsive to the staff's request for internal audits and that she was the only Phlo official engaged in transfer agent functions. She could have provided this information at once. If Phlo did not maintain certain documents, A. Hovis should have stated that no such documents existed, thus allowing the examination to proceed accordingly. 54/

Phlo argues that it did not fail to make the requested records available because it submitted some records in January 2004. However, Phlo responded only in part after a lengthy delay and only after our staff had warned A. Hovis of the possibility of enforcement action. Persons subject to Commission examination are not at liberty to set their own schedules for responding. We therefore find that Phlo willfully violated Exchange Act Section 17(b)(1).

We further find that A. Hovis willfully aided and abetted Phlo's violations of Section 17(b)(1). 55/ A. Hovis, who acted on Phlo's behalf in responding to the document request letter and in dealing with our staff, rendered substantial assistance to Phlo's violation by her delays in responding and by ultimately submitting incomplete responses. As set forth above, our staff repeatedly attempted to contact A. Hovis as the deadline for the documents arrived and passed. OCIE warned A. Hovis on November 24, 2003 that any further dilatoriness in responding could lead to the commencement of a proceeding that could result in a revocation of Phlo's transfer agent status. Thus, the record fully establishes that A. Hovis acted with knowledge or reckless disregard of Phlo's wrongdoing and her role in furthering it.

By delaying Phlo's response to the document request letter and by ultimately submitting incomplete responses, A. Hovis also was a cause of Phlo's primary violations of Section 17(b)(1). Because A. Hovis had been warned that the delays in responding could result in sanctions against Phlo, she knew that her actions (or failure to act) would contribute to the

54/ See Robert A. Quiel, 53 S.E.C. 165, 168 (1997) (finding NASD rule violation based on failure to cooperate fully with NASD information request where "even if Quiel could not access readily the information that the NASD requested, . . . he failed to explain the deficiencies in his responses or answer as completely as he was able").

55/ See notes 48-49, supra, and accompanying text.

violations. Thus, we find that A. Hovis was a cause of Phlo's primary violation of Section 17(b)(1). 56/

IV.

A. Phlo's Untimely Periodic Filings

Phlo's common stock is registered with the Commission pursuant to Exchange Act Section 12(g). 57/ At the time of the hearing, quotes for Phlo's common stock were available in The Pink Sheets, LLC. J. Hovis is Phlo's president, chief executive officer ("CEO"), and a director.

Between March 2003 and November 2005, Phlo failed to file timely three annual and eight quarterly reports with the Commission. When Phlo filed these reports, they were between two weeks and approximately twenty months late. Of the eleven filings at issue, six were filed more than one year late. 58/ Phlo was a very small company and J. Hovis was the sole signatory of these periodic reports. 59/

During the period between March 2003 and November 2005, Phlo successively retained four auditors. Phlo discharged the first of these auditors (who had been retained initially in January 1999) on July 2, 2003, in connection with a billing dispute. In July 2003, Phlo retained a second auditor, which it discharged in April 2004. During its nine-month engagement, this auditor did not issue any reports on Phlo's financial statements. 60/

Phlo retained its third auditor in April 2004. This auditor issued a report on December 30, 2004 as to financial statements filed with Phlo's Form 10-KSB for the fiscal year ended

56/ See note 50, *supra*, and accompanying text.

57/ 15 U.S.C. § 78l(g).

58/ The opinion has an Appendix showing these filings, including date due and date filed.

59/ Phlo's Forms 10-K for the fiscal years ended March 31, 2003, March 31, 2004, and March 31, 2005 represent that Phlo had no employees as of March 31, 2003 (it "utilize[d] the staff of its corporate affiliates to assist in the execution of [its] business plan") and only two employees as of both March 31, 2004 and March 31, 2005. Although it appears that more than two people worked for Phlo during this period – A. Hovis and J. Hovis plus the employee present when OCIE staff went to the K Street address, *see supra* -- the company appears to have been quite small during the entire period in question.

60/ J. Hovis testified that the previous auditor refused to transmit data and records for the audit period it was last involved in, so that the auditor hired in July 2003 "had to audit two years."

March 31, 2003, which was filed with the Commission on January 4, 2005, more than eighteen months after its due date of June 30, 2003. The parties stipulated that, during its engagement, the third auditor "always lacked a sense of urgency"; there were "months of inactivity," and the auditor "continually missed deadlines." Phlo's relationship with this auditor ended in March 2005. In April 2005, Phlo engaged a fourth auditor; this relationship continued through the ensuing months as Phlo became current with respect to its periodic filing obligations. Phlo also retained an independent consultant recommended by the fourth auditor to assist in preparing its accounting books and records.

During the first eleven months of 2005, Phlo filed three annual reports on Form 10-KSB and eight quarterly reports on Form 10-QSB. None of these reports was timely. Phlo's Form 10-QSB for the quarter ended December 31, 2005 was, however, timely filed, as were its subsequent filings through its Form 10-QSB for the quarter ended September 30, 2006. 61/ Phlo is now current in its Exchange Act reporting.

B. Filing Untimely Periodic Reports

Exchange Act Section 13(a) requires, in relevant part, that issuers of securities registered with the Commission pursuant to Section 12 file with the Commission annual and quarterly reports in accordance with Commission rules. 62/ Exchange Act Rules 13a-1 and 13a-13 require that these issuers file annual and quarterly reports respectively. 63/

Respondents stipulated that the filings at issue were not timely. Liability under Section 13(a) and Rules 13a-1 and 13a-13 does not require a finding of scienter. 64/ The finding that Phlo failed to make the required filings in a timely fashion establishes the violations charged, and Phlo does not challenge the law judge's finding that it violated the reporting provisions. We therefore find that Phlo violated Section 13(a) and Rules 13a-1 and 13a-13.

We next consider whether J. Hovis was a cause of Phlo's violations of Section 13(a) and Rules 13a-1 and 13a-13. 65/ J. Hovis admitted that he was responsible for the overall management of Phlo as an issuer. Respondents do not argue that any Phlo official other than J.

61/ We take official notice of Phlo's recent filings. See supra n.19. Although Phlo's Form 10-QSB for the quarter ended December 31, 2006 was not timely filed, it was filed only a few days late.

62/ 15 U.S.C. § 78m(a).

63/ 17 C.F.R. §§ 240.13a-1 and 240.13a-13.

64/ See Ponce v. SEC, 345 F.3d 722, 737 n.10 (9th Cir. 2003); SEC v. McNulty, 137 F.3d 732, 740-41 (2d Cir. 1998); SEC v. Wills, 472 F. Supp. 1250, 1268 (D.D.C. 1978).

65/ See note 50 supra and accompanying text.

Hovis was responsible for Phlo's periodic reporting obligations. As CEO, J. Hovis signed Phlo's quarterly and annual reports. J. Hovis admitted that he had known since Phlo became a registered issuer that Phlo had an obligation to make periodic filings with the Commission. J. Hovis failed to retain and monitor the services of effective auditors who would prepare the required reports for submission in a timely fashion and otherwise failed to ensure that Phlo's periodic reports were timely filed. Those failures caused Phlo's primary violations of Section 13(a) and Rules 13a-1 and 13a-13. J. Hovis knew of the obligation to file timely reports. He knew or should have known that his failure to arrange for Phlo's auditors to complete their work in a timely fashion and for the periodic reports to be otherwise finished would contribute to the violation.

J. Hovis contends that he "made every effort" to prevent Phlo from failing to make timely filings and to cause Phlo to become current in its filings. The record does not support this characterization of J. Hovis's conduct. Although J. Hovis and A. Hovis testified about their dissatisfaction with the various auditors retained during the period in question, their testimony does not show that J. Hovis actively attempted to get the auditors to conclude their work or to retain auditors who would perform on a timely basis. To the extent the auditors were lackadaisical in the performance of their duties, J. Hovis appears to have tolerated their lack of zeal for lengthy periods. For example, Respondents and Enforcement stipulated that "there were months of inactivity" by one auditor. Because J. Hovis was responsible for seeing that Phlo's filings were timely, his toleration of "months of inactivity" by the auditor contradicts the assertion that he "made every effort" to see that the filings were timely. Moreover, the fact that Phlo eventually cleared up its backlog of overdue filings does not cure its earlier violations, nor does it absolve J. Hovis of liability for causing those violations. Thus, we find that J. Hovis was a cause of Phlo's violations of Section 13(a) and Rules 13a-1 and 13a-13. 66/

V.

66/ See Gateway Int'l Holdings, Inc., 88 SEC Docket at 445 (finding "causing" liability for Section 13(a) and Rules 13a-1 and 13a-13 violations by president and CEO). At oral argument, counsel for J. Hovis argued that J. Hovis could not be held liable for being a cause of Phlo's violations of Section 13(a) and Rules 13a-1 and 13a-13 because J. Hovis did not, as the respondent in Gateway did, make a "conscious decision to disregard the issuer's reporting obligations" and did not, as the respondent in Gateway did, have the ability to obtain certain information necessary to perform audits required for annual reports. The fact that the specifics of J. Hovis's conduct are not identical to those present in Gateway is irrelevant. Applying the same standard we used in Gateway to J. Hovis's conduct, we find, as discussed above, that J. Hovis engaged in acts and omissions that he knew or should have known would result in Phlo's reporting violations and therefore was a cause of those violations. Because we find that J. Hovis was a cause of those violations, however, we do not reach the allegation that he willfully aided and abetted the violations.

During the proceeding, Respondents asked the law judge to withdraw due to alleged personal bias. In their motion, Respondents complained of various findings and rulings by the law judge, most notably with respect to their request to postpone a scheduled hearing date. The law judge denied the motion to withdraw. On appeal, Respondents argue that the law judge should have withdrawn. Respondents additionally argue that the law judge's conduct subsequent to the denial of the motion to withdraw further supports a finding of bias.

We find no bias in the law judge's rulings in this proceeding. Even if there were such bias, bias by a hearing officer is disqualifying only when it stems from an extrajudicial source and results in a decision on the merits based on matters other than those gleaned from participation in a case. 67/ Neither of these factors is present here. We therefore find that recusal is unwarranted.

VI.

A. Revocation and Bar

Exchange Act Sections 17A(c)(3)(A) and 17A(c)(4)(C) respectively allow us, among other things, to revoke the registration of a transfer agent and to bar any person from becoming associated with a transfer agent. 68/ We may take such action if we determine that the transfer agent or associated person has willfully violated the Exchange Act or the rules and regulations thereunder or aided and abetted such violation, and that such action is in the public interest. 69/

We have already found willful violations of the Exchange Act and transfer agent rules by Phlo, violations that A. Hovis willfully aided and abetted. In determining whether a sanction is in the public interest, we consider the factors articulated in Steadman v. SEC. 70/ These factors include the egregiousness of the actions at issue, the isolated or recurrent nature of the infraction at issue, the degree of scienter involved, the recognition of the wrongful nature of the conduct and the sincerity of any assurances against future violations, and the likelihood that a respondent's occupation will present opportunities for future violations. 71/

67/ United States v. Grinnell Corp., 384 U.S. 563, 583 (1966).

68/ 15 U.S.C. §§ 78q-1(c)(3)(A), 78q-1(c)(4)(C).

69/ Exchange Act Sections 15(b)(4)(D), 15 U.S.C. § 78o(b)(4)(D), 15(b)(4)(E), 15 U.S.C. § 78o(b)(4)(E), 15(c)(3)(A), 15 U.S.C. § 78q-1(c)(3)(A).

70/ 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

71/ Id.

The infractions of the turnaround rule and of the requirement to make records available for examination were egregious, recurrent, and prolonged. Phlo did not comply with the turnaround rule during the three months at issue and affirmatively opposed repeated requests from DTC for compliance. At the time of the oral argument in this proceeding, Phlo had still not completed all the transfers. Phlo did not make any records available for examination for more than two months after a response to the October 31 document request letter was due, and even then, not all of the requested documents were made available. The degree of scienter was knowing and intentional, or, at least, highly reckless.

With respect to the turnaround rule, A. Hovis, who acted for Phlo in this regard, refused to complete transfers despite repeated warnings that her basis for doing so was untenable. A. Hovis knew that the records requested were long overdue but failed to make responding to the examination request a priority. There is little, if any, recognition of the wrongfulness of the conduct or assurance against future violations. A. Hovis continues to contend that Phlo's response to the document request letter was reasonable and to blame DTC for Phlo's failure to make timely transfers. This attitude demonstrates a lack of understanding of the duty of a transfer agent to comply with regulatory directives and inquiries. Phlo continued to serve as a transfer agent for its own shares until January 2007. Although A. Hovis represented at oral argument that Phlo had retained a new transfer agent, the possibility exists that Phlo or A. Hovis may decide in future to resume its functions as or with a transfer agent. Thus, there is an opportunity for future violations.

Based on the Steadman factors, we find it in the public interest to revoke Phlo's registration as a transfer agent and to bar A. Hovis from association with a transfer agent.

B. Cease-and-Desist Orders

Exchange Act Section 21C(a) authorizes the Commission to impose a cease-and-desist order upon any person who "is violating, has violated, or is about to violate" any provision of the Exchange Act or any rule or regulation thereunder, or against any person who "is, was, or would be a cause of [a] violation, due to an act or omission the person knew or should have known would contribute to such violation." ^{72/} In determining whether a cease-and-desist order is an appropriate sanction, we analyze the risk of future violations. ^{73/} The existence of a violation raises an inference that the violation will be repeated, and where the misconduct that results in the violation is egregious, the inference is justified. ^{74/} We also consider whether other factors demonstrate a risk of future violations. Beyond the seriousness of the violation, these may include the isolated or recurrent nature of the violation, whether the violation is recent, the

^{72/} 15 U.S.C. § 78u-3(a).

^{73/} KPMG Peat Marwick, 54 S.E.C. 1135, 1185 (2001), reconsideration denied, 55 S.E.C. 1 (2001), petition for review denied, 289 F.3d 109 (D.C. Cir. 2002).

^{74/} See Geiger v. SEC, 363 F.3d 481, 489 (D.C. Cir. 2004) and cases cited therein.

degree of harm to investors or the marketplace resulting from the violation, the respondent's state of mind, the sincerity of assurances against future violations, the opportunity to commit future violations, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions sought in the proceeding. 75/ Not all of these factors need to be considered, and none of them, by itself, is dispositive.

All of the violations we have found in this proceeding -- the violation of the turnaround rule, the failure to make records available for examination, and the periodic reporting violations -- are serious. The violation of the turnaround rule delayed the receipt by DTC's nominee and investors of shares they owned for a period of time; it also interfered with the efficacy of the national clearance and settlement system. The failure to make records available impeded the staff's examination. 76/ The failure to timely file periodic reports deprived the investing public of information necessary for a full understanding of Phlo's financial situation for more than two years. As discussed above, all of the violations lasted for extended periods, ranging from months in the case of the failure to provide documents to years in the case of failure to make timely periodic filings. These violations were recent. With respect to the transfer agent violations, the degree of scienter was extremely high. The opportunity to commit future violations of the reporting requirements continues. Although we are ordering revocation of transfer agent status, an associational bar, and the payment of civil penalties, Phlo continues to function as an issuer, and the issuance of cease-and-desist orders should serve the remedial purpose of encouraging Phlo and A. Hovis to take their responsibilities more seriously in their future dealings with the clearance and transfer systems and the Commission. 77/

We find that the record as a whole, especially the evidence with regard to the seriousness, recentness, and recurrent nature of the violations, the harm to the marketplace and the regulatory scheme, and the very high degree of scienter, establishes a sufficient risk that Respondents

75/ KPMG Peat Marwick, 54 S.E.C. at 1192.

76/ See Recordkeeping Requirements for Transfer Agents, Exchange Act Rel. No. 44227 (Apr. 27, 2001), 74 SEC Docket 2281, 2282 (Commission oversight of transfer agents is substantially dependent on transfer agent examination process, which, in turn, relies on records that transfer agents make and retain); Schild Mgmt. Co., Exchange Act Rel. No. 53201 (Jan. 31, 2006), 87 SEC Docket at 848, 865 (recognizing that deliberately thwarting a Commission examination may undermine the regulatory system). See also Michael Markowski, 51 S.E.C. 553, 559-60 (1993) (stating that NASD member firm's or associated person's refusal to supply requested information seriously undermines NASD's ability to carry out self-regulatory functions; "Meaningful sanctions are warranted for a violation of this nature."), aff'd, 34 F.3d 99 (2d Cir. 1994).

77/ See McCurdy v. SEC, 396 F.3d 1258, 1265 (D.C. Cir. 2005) (recognizing that order suspending auditor from practice before the Commission for one year had remedial purpose of encouraging more rigorous compliance with generally accepted auditing standards in future).

would commit future violations to warrant imposition of cease-and-desist orders. Based on all of these factors, we find cease-and-desist orders against Respondents to be in the public interest.

C. Civil Penalties

Under Exchange Act Section 21B, we may impose civil money penalties in a proceeding instituted under Exchange Act Section 17A when a respondent has willfully violated, or willfully aided and abetted the violation of, any provision of the Exchange Act or the rules and regulations thereunder, and such penalties are in the public interest. ^{78/} In determining whether a penalty is in the public interest, the statute provides that we may consider (1) whether the violation involved deliberate or reckless disregard of a regulatory requirement, (2) the resulting harm to other persons, (3) any unjust enrichment, (4) the respondent's or respondents' prior regulatory record, (5) the need to deter the respondent or respondents and other persons, and (6) such other matters as justice may require. ^{79/}

If we determine that the imposition of a civil penalty is in the public interest, a three-tier system establishes the maximum civil money penalty that may be imposed for each violation found. ^{80/} For each act or omission involving deliberate or reckless disregard of a regulatory requirement, a second-tier civil penalty may be warranted. ^{81/} The statutory maximum amount that may be imposed as a second-tier penalty against a corporation is \$300,000 for each act or omission occurring after February 2, 2001 but before February 15, 2005; against an individual, the maximum second-tier penalty that may be imposed for each such act or omission is \$60,000. ^{82/} Within this statutory framework, we have discretion in setting the amount of penalty.

We consider first whether civil penalties should be imposed against A. Hovis. A. Hovis aided, abetted, and was a cause of Phlo's violation of the turnaround rule and failure to make records available for examination. Her conduct constituted deliberate disregard of regulatory requirements. A. Hovis refused to complete transfers, delayed making records available for examination, and belatedly submitted less than wholly responsive records. The administrative record does not quantify any harm done by the violations, although it is likely that the failure to complete transfers, in some cases for months, may have harmed investors by impeding their intended transactions, as well as disruption of the clearance and settlement process. We have

^{78/} 15 U.S.C. § 78u-2.

^{79/} Exchange Act Section 21B(c), 15 U.S.C. § 78u-2(c).

^{80/} Exchange Act Section 21B(b), 15 U.S.C. § 78u-2(b).

^{81/} Exchange Act Section 21B(b)(2), 15 U.S.C. § 78u-2(b)(2).

^{82/} See Debt Collection Improvement Act of 1996, Pub. L. 104-134, title III, §31001; 17 C.F.R. § 201.1001.

held previously that the failure to cooperate with an examination is serious misconduct that justifies strong sanctions because of its potential to thwart the protection of shareholders and market participants. 83/

There is also a strong need for deterrence. Persons associated with issuers who decide to serve as transfer agents for their own securities must understand that they and the issuers are required to conform to statutory and regulatory requirements associated with that status, and persons subject to our oversight must understand that they have a duty to make records available for examination.

For the reasons set forth above, we find that civil penalties in the total amount of \$100,000 against A. Hovis are appropriate. 84/ This represents second-tier penalties of \$25,000 for each month in which she aided and abetted Phlo's violation of the turnaround rule and \$25,000 for her aiding and abetting Phlo's failure to respond in a timely fashion to the Commission's examination. 85/

Phlo argues that, as "a company that is developing technology prior to the maturing of revenue associated therewith," it is unable to pay a civil penalty. Phlo notes that its annual report on Form 10-K for the fiscal year ended March 31, 2005 showed net losses of nearly three million dollars and no revenues. We take official notice that Phlo's Form 10-K for the fiscal year

83/ Schild Mgmt. Co., 87 SEC Docket at 862 & n.48 (citing Barr Fin. Group, Inc., Investment Advisers Act Rel. No. 2179 (Oct. 2, 2003), 81 SEC Docket 828, 843)).

84/ We reach this conclusion even though there is no evidence that unjust enrichment resulted from the violations and even though A. Hovis does not have a history of regulatory violations.

Respondents contend that lesser penalties have been imposed in settled cases, and that these cases should be considered here because Respondents would willingly have settled the proceeding. Because the rationale for the imposition of lower sanctions in settled proceedings is, at least in part, that settlement lets the Commission avoid time-consuming adversary proceedings and the concomitant expenditure of staff resources, Respondents argue that their willingness to settle should entitle them to similar consideration. We reject Respondents' argument. The proffered settlement offers were not accepted, and settlement negotiations are not part of the administrative record. Rule of Practice 240(6), 17 C.F.R. § 201.240(6). The penalties we impose are based on Respondents' conduct as established by the record.

85/ We note that the statutory scheme would have allowed the imposition of much higher penalties for second-tier violations such as these. See 17 C.F.R. §201.1002. A. Hovis states that she did not receive a salary from Phlo in the fiscal years ending March 31, 2004 and March 31, 2005, but she has not submitted evidence of her overall inability to pay a civil penalty.

ended March 31, 2006 shows a similar situation, with revenues of only \$1,544 and net losses slightly higher than in the previous year. With respect to the financial statements for both of these years, auditors opined that Phlo's "recurring losses from operations and . . . difficulty in generating sufficient cash flow to meet [its] obligations and sustain its operations" raised substantial doubt about Phlo's ability to continue as a going concern. Under Exchange Act Section 21B(d), 86/ the Commission may in its discretion consider such evidence in determining whether a civil penalty is in the public interest. Thus, although Phlo's conduct warrants a second-tier penalty, under the circumstances of this case, we find that the imposition of a penalty is not in the public interest.

Section 21B gives us the authority to impose civil penalties in administrative proceedings instituted pursuant to Exchange Act 17A but not those instituted pursuant to Sections 12(j) or 21C. This proceeding was brought pursuant to Sections 12(j), 17A, and Section 21C. The law judge found that J. Hovis was an associated person of the transfer agent and imposed a civil money penalty. However, because the violations that J. Hovis was found to have aided and abetted were charged in the OIP only under Sections 12(j) and 21C, under the circumstances presented, we do not impose a civil penalty upon J. Hovis. For the same reason, we do not impose a civil penalty against Phlo for its reporting violations.

86/ 15 U.S.C. § 78u-2(d).

D. Revocation of Registration of Phlo's Common Stock

Enforcement asks us to revoke the registration of Phlo's common stock. 87/ Under Exchange Act Section 12(j), the Commission is authorized, "as it deems necessary or appropriate for the protection of investors," to revoke the registration of a security or suspend the registration of a security for a period not exceeding twelve months if it finds, after notice and an opportunity for hearing, that the issuer of the security has failed to comply with any provision of the Exchange Act or the rules thereunder. 88/ In determining what sanctions will ensure that investors will be adequately protected, we consider the effect on the investing public of both the issuer's violations and the Section 12(j) sanctions. 89/ In making this determination, we consider, among other things, the seriousness of the issuer's violations, the isolated or recurrent nature of the violations, the degree of culpability involved, and the extent of the issuer's efforts to remedy its past violations and ensure future compliance. 90/

Phlo's violation of its reporting obligations was serious, egregious, and recurrent. Phlo, through its CEO J. Hovis, knew of its reporting obligations, yet failed to file a total of eleven annual and quarterly reports between March 2003 and November 2005. However, Phlo has now devoted significant resources to satisfying its reporting obligations and has become current with

87/ We deny Phlo's motion to strike the portion of Enforcement's brief urging revocation. In a previous order, we determined to review sanctions in this proceeding on our own initiative pursuant to Rule of Practice 411(c), 17 C.F.R. § 201.411(c). Order Granting Petition for Review (Mar. 17, 2006). Thus, Enforcement's briefing of this issue was not improper.

88/ 15 U.S.C. § 78l(j).

89/ Gateway Int'l Holdings, Inc., 88 SEC Docket at 438-39.

90/ Id. at 439.

respect to its periodic filing obligations. Moreover, Phlo has retained a consultant recommended by its current auditor to improve its internal accounting function. We have imposed a cease-and-desist order against future violations. Thus, we decline to revoke the registration of Phlo's common stock. 91/

An appropriate order will issue. 92/

By the Commission (Chairman COX and Commissioners ATKINS, CAMPOS, NAZARETH and CASEY).

Nancy M. Morris
Secretary

91/ Compare id. at 439-40 (revoking registration of common stock where, in addition to failure to file a total of seven periodic reports, record showed that issuer was not current with respect to filing obligations, issuer had not addressed an outstanding deficiency in one overdue report that it had filed, and issuer had made insufficient efforts to ensure future compliance with periodic reporting requirements).

92/ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

APPENDIX

The following chart summarizes Phlo's history of untimely filings between March 2003 and November 2005:

Period ended	Form	Due Date	Date Filed	How Late
3/31/03	10-KSB	6/30/03	1/04/05	18 months +
6/30/03	10-QSB	8/14/03	4/18/05	20 months +
9/30/03	10-QSB	11/14/03	4/25/05	17 months +
12/31/03	10-QSB	2/16/04	5/02/05	15 months +
3/31/04	10-KSB	6/29/04	7/08/05	12 months +
6/30/04	10-QSB	8/16/04	9/23/05	13 months +
9/30/04	10-QSB	11/15/04	10/05/05	10 months +
12/31/04	10-QSB	2/14/05	10/12/05	8 months
3/31/05	10-KSB	6/29/05	11/15/05	4 months +
6/30/05	10-QSB	8/15/05	11/28/05	3 months +
9/30/05	10-QSB	11/14/05	11/29/05	2 weeks

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Rel. No. 55562 / March 30, 2007

Admin. Proc. File No. 3-11909

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

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day it is

ORDERED that the registration of Phlo Corporation as a transfer agent be, and it hereby is, revoked; and it is further

ORDERED that Anne P. Hovis be, and she hereby is, barred from associating with any registered transfer agent; and it is further

ORDERED that Phlo Corporation cease and desist from committing or being a cause of any violations or future violations of Sections 13(a), 17A(d)(1), and 17(b)(1) of the Securities Exchange Act of 1934 and Rules 13a-1, 13a-13, and 17Ad-2 thereunder; and it is further

ORDERED that James B. Hovis cease and desist from being a cause of any violations or future violations of Section 13(a) of the Securities Exchange Act of 1934 and Rules 13a-1, 13a-13 thereunder; and it is further

ORDERED that Anne P. Hovis cease and desist from committing or being a cause of any violations or future violations of Sections 17A(d)(1) and 17(b)(1) of the Securities Exchange Act of 1934 and Rule 17Ad-2 thereunder; and it is further

ORDERED that Anne P. Hovis pay civil money penalties of \$100,000.

Payment of the civil money penalties shall be: (i) made by United States postal money order, certified check, bank cashier's check, or bank money order; (ii) made payable to the Securities and Exchange Commission; (iii) mailed or delivered by hand to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312; and (iv) submitted under cover letter that identifies the respondent and the file number of this proceeding.

A copy of the cover letter and check shall be sent to Scott A. Masel, Division of Enforcement, Southeast Regional Office, Securities and Exchange Commission, 801 Brickell Ave., Suite 1800, Miami, FL 33131.

By the Commission.

Nancy M. Morris
Secretary