ACJ

ADMINISTRATIVE PROCEEDING
FILE NO. 3-10668

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE
MAR [illegible] 2002

CTFD. NO.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
March 1, 2002

In the Matter of

WSF CORPORATION

ORDER

The Securities and Exchange Commission (Commission) instituted this proceeding on January 3, 2002. The Order Instituting Proceedings (OIP) alleges that Respondent has not filed several annual and quarterly reports, as required by Section 13(a) of the Securities Exchange Act of 1934 (Exchange Act) and Rules 13a-1 and 13a-13 thereunder. It further alleges that WSF Corporation (WSF) continues to communicate with the investing public through posting on internet web sites.

By letter dated February 11, 2002, attorney David B. Bayless entered his appearance on behalf of WSF. Mr. Bayless acknowledged that WSF had received service of the OIP. He further stated that WSF did not intend to file an answer. On February 13, 2002, I issued an order deeming WSF in default for failing to answer the OIP. I also ordered WSF to show cause why I should not issue an order revoking the registration of its common stock pursuant to Section 12(j) of the Exchange Act. On February 25, 2002, WSF submitted its response to the order to show cause. Among other things, it stated that it "did not wish to contest liability," but "did not intend to give up its right to contest the remedy sought" in the OIP.

Yesterday, I held a telephonic prehearing conference, and counsel for the Division of Enforcement (Division) and for WSF participated. The parties agreed that the only matter to be decided is the appropriate sanction. Under Section 12(j) of the Exchange Act, the Commission is authorized "as it deems necessary or appropriate for the protection of investors" to revoke the registration of WSF's common stock or to suspend the registration of WSF's common stock for a period not exceeding twelve months. The Division urges that registration be revoked. WSF argues that a short suspension, or no sanction, is warranted. After discussion, the parties agreed that the Commission's determination of the appropriate sanction should be guided by the public interest factors

identified in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

Section 12(j) of the Exchange Act contemplates that WSF should have an "opportunity for hearing." I consider this case to be analogous to the situation described in Federal Rule of Civil Procedure 55(b)(2), concerning the entry of judgment by default:

> If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings . . . as it deems necessary and proper . . . .

On the same day the Commission issued the OIP, it also issued an order temporarily suspending trading in WSF's common stock for ten days. See Section 12(k)(1)(A) of the Exchange Act. It is therefore appropriate to hold a sanctions hearing at an early date. Selecting a site for a sanctions hearing is complicated by the fact that WSF and its prospective witnesses are located in Hawaii, WSF's counsel is located in California, and Division counsel and the undersigned are located in Washington, D.C.

The parties agreed to the following schedule and procedures:

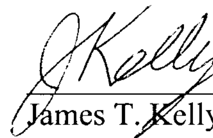
By March 7, 2002, each party intending to call witnesses and/or introduce exhibits at the sanctions hearing must file and serve a list of its prospective witnesses and exhibits, as well as copies of its prospective exhibits. The filings should provide the details described in Rule 222(a)(3) and (4) of the Commission's Rules of Practice. Briefs are not required or requested. However, if either party wishes to file a brief, or to seek reconsideration or clarification of any of the procedures described in this Order, it must do so by March 7, 2002. If such a brief is filed, then the opposing party may submit a reply brief by March 11, 2002.

The sanctions hearing will commence on Tuesday, March 12, 2002, at 2 p.m. Eastern time, in Hearing Room 1C50 of the Commission's Headquarters Offices, 450 Fifth Street, N.W., Washington, D.C. 20549. In order to minimize costs and expenses, Respondent's counsel and witnesses have elected to participate by telephone. The Division has also agreed to this procedure. The sanctions hearing will be open to the public, by speakerphone, should any member of the public wish to attend.

I anticipate that the sanctions hearing will conclude by the close of business on March 12. However, if it is not completed by then, we will resume on March 13, 2002, at 2 p.m. Eastern time and continue to completion. After the receipt of evidence, I will entertain such closing oral argument as counsel may wish to make.

The parties are requested to consider whether my final ruling in this matter should be captioned as a default judgment or an initial decision. The distinction has practical significance in the unique circumstances of this case. If I were to issue a default

judgment, the posthearing briefing procedures, the record index certification procedures, and the petition for review procedures of Rules 340, 351(b), and 410 of the Commission's Rules of Practice would not apply, and Commission review of my ruling could be sought only pursuant to Rule 155(b) of the Commission's Rules of Practice. Alternatively, if I were to issue an initial decision, the procedures of Rules 340 and 351(b) could not be omitted, and Commission review could be sought pursuant to Rule 410. Under Rule 360(d)(2) of the Commission's Rules of Practice, a timely petition for review would automatically stay the effective date of any sanction imposed in the initial decision.[1]



James T. Kelly
Administrative Law Judge

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[1] Under Rule 55(c) of the Federal Rules of Civil Procedure, a distinction is made between a motion to set aside a default and a motion to set aside a default judgment. A motion to set aside a default involves interlocutory action; the district court may grant the motion "for good cause" and the only time limitation is one of reasonable time. Rule 155(b) of the Commission's Rules of Practice is to the same effect. A motion to set aside a default judgment, however, involves relief from a final judgment, and both the time limitation and the test for granting relief are more stringent. See SEC v. Vogel, 49 F.R.D. 297, 299 n.2 (S.D.N.Y. 1969). In the federal courts, motions to set aside default judgments must be considered under the standards of Rule 60(b) of the Federal Rules of Civil Procedure. The Commission's Rules of Practice have not explicitly embraced the standards of Rule 60(b).