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UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
May 18, 2007

SECURITIES & EXCHANGE COMMISSION  
MAILED FOR SERVICE

MAY 21 2007

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

The hearing in this matter is scheduled for the weeks of July 9-13 and July 16-20, 2007. On May 14, 2007, the Division of Enforcement (Division) filed its lists of prospective witnesses and exhibits, and designated a proposed expert witness. On May 17, 2007, I held a telephonic prehearing conference with the parties to discuss the Division's submissions. I now issue the following rulings to expedite preparation for the hearing.

The Division's proposed exhibit list contains three demonstrative exhibits (exhibits 71-73) that do not yet exist. The Division shall provide copies of these three demonstrative exhibits to Respondents no later than June 18, 2007. At the same time, the Division shall make available all the underlying source documents. The parties shall use their best efforts to resolve any discrepancies in these exhibits before the start of the hearing.

The Division's proposed expert witness shall retain everything he uses to prepare his direct written testimony, so that such materials will be available to Respondents if they wish to challenge his assumptions or methodology. This requirement extends to successive drafts of the written testimony. It also includes all underlying software programs and computer codes.

The Order Instituting Proceedings (OIP) charges Respondents Robert Okin (Okin) and R. Scott Abry (Abry) with aiding and abetting certain violations of the federal securities laws (OIP ¶ II.D.52) and with failure to supervise Respondents Michael Sassano (Sassano) and Dogan Baruh (Baruh) (OIP ¶ II.D.53). Prior opinions by the Securities and Exchange Commission (Commission) have found these two theories inconsistent, at least where they are based on the same facts. See Charles E. Marland & Co., Inc., 45 S.E.C. 632, 636 (1974); Anthony J. Amato, 45 S.E.C. 282, 286-87 (1973); Stephen J. Horning, 88 SEC Docket 3126, 3145 (ALJ) (Sept. 19, 2006), review granted. The Division stated that it intends to pursue both theories (not alternative theories) against Okin and Abry. It must explain whether different facts are involved. If not, it must show how it can do so under the existing case law. I originally intended for the Division to address this issue in its prehearing brief. However, I will now require the Division to address this issue by May 25, 2007, before Respondents submit their witness and exhibit lists.

The Division intends to play 121 recorded telephone calls in support of its claim that Baruh engaged in late trading (Appendix L to the Division's proposed exhibit list). For each

such telephone call, the Division must prepare a verbatim transcript that identifies the speakers and the date and time of the conversation. The Division must provide copies of these transcripts to Respondents no later than June 18, 2007. I expect that any disputes about the accuracy and completeness of the transcripts will be resolved before the hearing commences.

On March 6, 2007, the Division filed a privilege log, identifying all materials that it withheld from inspection and copying. Rule 230(b)(2) of the Commission's Rules of Practice provides that the Division is not authorized to withhold documents that contain material exculpatory evidence contrary to the doctrine of Brady v. Maryland, 373 U.S. 83, 87 (1963). The principal tool for ensuring that the Division has complied with its Brady obligations is an affidavit by a responsible Division official. Cf. City of Anaheim, 70 SEC Docket 881 (ALJ) (July 30, 1999); Orlando Joseph Jett, 52 S.E.C. 830, 831 (1996). Before the start of the hearing, a responsible Division official must submit a sworn declaration stating: (1) that the declarant has personally reviewed all the withheld materials; and (2) whether the withheld materials do or do not contain Brady materials. The responsible official may be the lead trial counsel or any of his supervisors. If there are Brady materials, then the Division must provide them (either in full or in redacted form) to Respondents before the hearing.

Paragraphs II.C.45-.47 of the OIP allege that Respondents used variable annuities to time mutual funds. Appendix F of the Division's proposed exhibit list identifies eighty-one letters that annuity fund families sent to complain about the practice, and Appendix H of the Division's proposed exhibit list identifies eighteen different annuity fund families. The Division's witness list identifies two persons who will address this aspect of the OIP: Joann Dobson and Glenn Jerro. However, it is unclear how the Division intends to prove the OIP's allegations that variable annuity companies had in place certain restrictions on market timing and that variable annuity companies prohibited market timing (OIP ¶¶ II.C.45-.46). It is also unclear that each of the relevant companies defined "market timing" in the same way as the OIP defines "market timing." Finally, it is unclear if such companies had consistent and unchanging policies toward market timing, or if their policies evolved over time. If the Division intends to submit the relevant prospectuses as exhibits (along with certifications as to the time period during which the prospectuses were in effect), I do not see those entries on the Division's proposed exhibit list. If the Division intends to prove the allegations in some other way, or if it believes that no such proof should be required, it must explain its position. The Division must do so by May 25, 2007.

Appendix I to the Division's proposed exhibit list contains ninety-three documents exchanged between brokers and their hedge fund clients. The Division describes many of these documents as containing handwritten notes. The Division must provide live testimony to authenticate each of these handwritten notes as a condition precedent to admissibility.

The Division has subpoenaed certain documents from Sassano. The Division may supplement its exhibit list with new items as it receives them from Sassano.

SO ORDERED.

  
James T. Kelly  
Administrative Law Judge