

ADMINISTRATIVE PROCEEDING
FILE NO. 3-11390

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
February 3, 2006

In the Matter of :
: ORDER AFTER PREHEARING
: CONFERENCE
PAUL A. FLYNN :
:
:
:

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings on February 3, 2004. On January 18 and 26, 2006, Respondent Paul A. Flynn (Flynn), by counsel, moved for an order: (1) requiring the Division of Enforcement (Division) to produce all materials consistent with the doctrine of Brady v. Maryland, 373 U.S. 83 (1963) and the Jencks Act, 18 U.S.C. § 3500; (2) striking various witnesses and exhibits from the Division's proposed list of witnesses and exhibits; (3) modifying the scheduling order to eliminate any requirement that Flynn provide financial information; (4) requiring the Division to produce physical copies of its exhibits; and (5) requiring the Division to produce certain data obtained by the Commission's Office of Compliance Inspections and Examinations (OCIE) in response to its survey of mutual funds' and broker-dealers' late-trading and market-timing practices.

From January 25-31, 2006, the Division submitted its responses. A telephonic pre-hearing conference was held on January 31, 2006, to address the issues raised in the parties' pleadings, along with other prehearing issues.

The Division represented that it has made its investigative file, as well as additional materials not contained in its file, available to Respondent including any transcripts taken during the investigation. It also represented that it will produce the "Queen for a Day" agreements, tape-recorded conversations, and the witness proffer notes. The Division further represented that it has obtained and provided notes of interviews that were in the possession of the New York Attorney General's office. The Division identified Carroll Theresa as its witness who will testify regarding Flynn's compensation. The Division represented that it will call a member(s) of the New York Attorney General's office to testify only in rebuttal, if at all.

The Division recognizes that it has a continuing obligation to turn over to Respondent any Brady and Jencks Act materials. In furtherance of this obligation, the Division shall contact OCIE in connection with its survey, referenced above, to determine which of the 88 mutual

funds and 34 broker-dealers responded and are not currently under review or investigation by any office or division of the Commission. This survey stemmed from, at least in part, the activities of one of the hedge funds that is a subject of this proceeding. The summary of the survey responses contained in the Congressional testimony of the former Director of the Division of Enforcement, given on November 3, 2003, suggests that the responses may contain information useful to Flynn's defense. However, it also states that some of the information had been referred to the enforcement staff for review.

To determine if any of the information is appropriate for disclosure to Respondent, it is expected that a procedure will be discussed at a prehearing conference to be held on February 13, 2006, which may include in camera review and appropriate redactions, if necessary. Disclosure will be considered only for the questions and responses from funds or broker-dealers that are not currently under review, if any. No staff analysis, recommendations, or other work product will be disclosed.

The parties will exchange exhibits on or by February 10, 2006, as set forth in the Scheduling Order of December 2, 2005. In addition to filing expert testimony, each party's expert witness will testify on direct examination.

The Scheduling Order is modified to the extent that Respondent may, but is not required to, provide a sworn financial disclosure form and the full range of supporting documentation envisioned by Rule 630(b) of the Commission's Rules of Practice (including income tax returns) prior to the hearing. A telephonic prehearing conference will be held on February 13, 2006, at 4:00 p.m. EST, to address any unresolved issues and to review witness and exhibit lists.

By agreement of the parties, the hearing in this matter will commence on Wednesday, March 8, 2006, at 9:30 a.m. EST, in Hearing Room 2, 100 F Street, NE, Washington, DC. See 17 C.F.R. §§ 201.161, .200(c), .221(e). The parties shall familiarize themselves with the security requirements for entry at the Commission's Headquarters prior to the date of the hearing.

IT IS SO ORDERED.


Robert G. Mahony
Administrative Law Judge