

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11390

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
July 18, 2006

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In the Matter of :  
: ORDER REVISING RECORD INDEX  
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PAUL A. FLYNN :  
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The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings on February 3, 2004. The Commission's Office of the Secretary issued its Record Index on July 3, 2006. On July 14, 2006, pursuant to Rule 351 of the Commission's Rules of Practice, the parties moved for corrections or additions to the Record Index. The Division of Enforcement (Division) filed fifteen proposed corrections. Respondent does not oppose the Division's proposed corrections. I note, however, that the Expert Report of Dr. Gerald Lumer and appendix thereto, dated January 27, 2006, and a Supplement dated February 17, 2006 were admitted in the hearing record as Division Exhibits 194-196 and that Respondent's Exhibit 39 was not admitted. The other requested additions by the Division, which are incorporated by reference in this Order, are directed to be placed in the Record Index.

The following Bates numbers will be used in the exhibits listed:

Div. Ex.

- 47 CIBCWMC-SEC will precede 249726-249798
- 57 First part of Bates range will read CIBCWMC-SEC 027967-027982
- 197 The last Bates range will read CIBCWMC-SEC 002893

Resp. Ex.

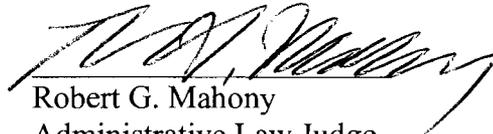
- 36 Bates range will be CIBCWMC-SEC 227074
- 38 Bates range will be CIBCWMC-SEC 227078, CIBCWMC-SEC 227076; CIBCWMC-SEC 227080
- 179 Bates range will be CIBCWMC-SEC 014551-014552

Respondent moves to enlarge the Record Index by forty-nine items that were not previously submitted to the Office of the Secretary. Respondent requests that they be placed in the Record Index in order to preserve "many contentious discovery controversies that occurred in this case." The Division objects to twenty-two of the proposed additions contending that the proposed items are intended to enlarge the record, not merely to correct matters already in the record. Respondent's proposed corrections and the Division's objections thereto are also incorporated by reference in this Order.

I have reviewed each of the proposed additions to which objection has been made. They are exchanges of correspondence or e-mails relating to prehearing discovery, forwarding of documents, or possible stipulations. They all relate to administrative and pretrial matters or communications with opposing counsel, rather than to the admission of evidence.

I sustain the Division's objection to these twenty-two items. Prior to the hearing, there was a full discussion of discovery issues and rulings that are memorialized in transcripts. While I agree that the Division was slow in providing some of the items, they were nonetheless turned over sufficiently in advance of the hearing. There is nothing in the exchanges to which objection is made that indicate the Division was impeding the ability of Respondent to prepare for the hearing. Rather, it appears that the items were turned over when they were obtained by the Division. I note that after the Division rested its case, Respondent did not call any fact witnesses in his case-in-chief. Both parties had a full and fair opportunity to present all relevant evidence in support of their respective positions. The remaining twenty-seven items will be added to the Record Index. Accordingly, a Revised Record Index will be issued consistent with this Order, pursuant to Rule 351(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.351(b).

IT IS SO ORDERED.

  
Robert G. Mahony  
Administrative Law Judge