

ADMINISTRATIVE PROCEEDING
FILE NO. 3-13553

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 3, 2009

In the Matter of :
: ORDER FOLLOWING
MARY BETH STEVENS : PREHEARING CONFERENCE
:
:

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on July 17, 2009. Respondent accepted delivery of the OIP on July 27, 2009, and filed her Answer on August 31, 2009.

I held a telephonic prehearing conference with the parties on September 2, 2009. Both sides urged me to hold the hearing in Chicago, Illinois, and I granted that request. The parties will jointly attempt to secure a suitable site, in consultation with this Office. The parties do not intend to engage expert witnesses, and only the Division of Enforcement (Division) intends to present a summary witness. No later than one week before the start of the hearing, the Division shall make its proposed summary witness, along with his/her proposed summary exhibits and all relevant source documents, available for an interview by Respondent's attorney. Hearing exhibits must be pre-marked. All exhibits will be accepted only in hard copy format.

It became clear at the prehearing conference that Respondent is unlikely to mount a strenuous challenge to the diversion of funds alleged in Paragraph 20 of the OIP. Rather, she will defend principally on the grounds that she lacked the requisite scienter. She will also contest the financial sanctions sought by the Division on the grounds of inability to pay. Accordingly, the Division's prehearing brief must address with particularity: (1) the evidence it intends to present to demonstrate Respondent's alleged scienter; (2) the evidence it intends to present to demonstrate that, but for Respondent's salary and bonus, the underlying violations would not have occurred; and (3) the specific dollar amount of the financial sanctions sought and the proposed starting date for any prejudgment interest on the sums to be disgorged.¹ When

¹ With respect to the proposed third-tier civil penalty, a prehearing brief that attempts to preserve wiggle room through such statements as "we seek a penalty of at least \$x per violation" will not be helpful. The Division shall present a figure that represents a ceiling, not a floor, on the total civil penalty sought. If the Division contends that multiple violations occurred, it shall

Respondent files her prehearing brief, she must provide the Division with a current sworn financial disclosure statement (Form D-A or the equivalent), as well as the full range of supporting documents contemplated by the Instructions to Form D-A. See Rule 630 of the Commission's Rules of Practice. This will include her income tax returns from 2004 to the present. A request for confidential treatment of such documents may be made and will be considered favorably.

After discussion, the parties agreed on the following schedule:

- Sept. 25, 2009: Division to file and serve its witness list, providing the information specified in Rule 222(a)(4) of the Commission's Rules of Practice;
- Oct. 5, 2009: Respondent to file and serve her witness list, providing the information specified in Rule of Practice 222(a)(4);
- Oct. 16, 2009: Division to file and serve a list of its proposed hearing exhibits;
- Oct. 26, 2009: Respondent to file and serve a list of her proposed hearing exhibits;
- Oct. 28, 2009: Telephonic prehearing conference at 3:00 p.m., E.D.T.;
- Nov. 3, 2009: Division to file and serve its prehearing brief; see Rule of Practice 222(a)(1)-(2); parties to exchange proposed hearing exhibits;
- Nov. 12, 2009: Respondent to file and serve her prehearing brief; see Rule of Practice 222(a)(1)-(2); and
- Nov. 16, 2009: Hearing in Chicago at a site to be determined; estimated duration, five days.

SO ORDERED.

James T. Kelly
Administrative Law Judge

itemize and briefly describe the specific number of violations. In the alternative, if the Division contends that the entire course of conduct specified in the OIP constitutes a single violation for purposes of the proposed civil penalty, it shall so state. With respect to the proposed disgorgement of Respondent's salary and bonus, the Division should focus its prehearing brief on the relevant case law supporting its request. For these purposes, contested cases are most helpful. Settlements or press releases summarizing unpublished consent judgments have little probative value.