

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 655/July 6, 2010

ADMINISTRATIVE PROCEEDING

File No. 3-13847

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In the Matter of	:	
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MORGAN ASSET MANAGEMENT, INC.,	:	ORDER DECLINING TO ISSUE
MORGAN KEEGAN & COMPANY, INC.,	:	FIVE SUBPOENAS
JAMES C. KELSOE, JR., and	:	
JOSEPH THOMPSON WELLER, CPA	:	

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On June 22, 2010, Respondents designated five individuals to serve as their expert witnesses during the upcoming hearing in this matter. Consistent with Rule 222(b) of the Rules of Practice of the Securities and Exchange Commission (Commission), Respondents also provided a list of other proceedings in which these five individuals have previously given expert testimony and a separate list of publications authored or co-authored by the five individuals.

The Division of Enforcement (Division) now requests that I issue five subpoenas duces tecum. The subpoenas would be addressed to Respondents' proposed experts. As drafted, the subpoenas would require these non-parties to produce copies of expert reports, transcripts of testimony, publications, and transcripts of presentations made by the proposed expert witnesses and "relating in any way" to the subject matter of their anticipated testimony. The return date on the subpoenas is July 14, 2010.

Pursuant to Rule 232(b) of the Commission's Rules of Practice, I decline to approve the five subpoenas at this time and in the form presented. Consistent with Rule 232(b), I will approve revised subpoena applications "only upon such conditions as fairness requires." The conditions are set forth below.

First, I find that the return date of July 14, 2010, is unduly burdensome to the non-parties. The present schedule requires Respondents to file the direct written testimony of their proposed expert witnesses by July 27, 2010. Presumably, the non-party experts are fully engaged in the task of preparing their testimony at this time. It would be unreasonable to divert them from that task by requiring them to respond to the Division's subpoenas. If the Division wishes to file new subpoena applications for this information in the future, it must choose a reasonable return date

that is no sooner than fifteen days after Respondents have filed and served the direct written testimony of their experts.<sup>1</sup>

Second, parties must take reasonable steps to avoid imposing undue burden or expense when they present subpoenas to non-parties. Cf. Fed. R. Civ. P. 45(c)(1). Accordingly, if the Division wishes to renew its subpoena applications for this information in the future, it must, as a condition precedent, explain what time, expense, and effort it has already expended to obtain this information through the use of its own resources. The Division must also demonstrate that the information it seeks from these non-parties is not obtainable from some other source that is more convenient, less burdensome, or less expensive.

Third, if the Division wishes to renew its subpoena applications for this information in the future, it must agree to make reasonable compensation to the five non-party witnesses to cover the cost of copying and shipping responsive documents to the place for return of the subpoenas. See Rule 232(e)(2) of the Commission's Rules of Practice. In addition, the Division shall state whether it is willing to pay reasonable fees to these five non-parties for the time they spend responding to its subpoenas. Cf. Fed. R. Civ. P. 26(b)(4)(C).

SO ORDERED.

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James T. Kelly  
Administrative Law Judge

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<sup>1</sup> I note that Respondents have moved to withdraw one of their expert witnesses and substitute another. To the extent that the Division seeks documents from the expert who is withdrawing, its application is now moot.