

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULING
Release No. 680/August 11, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14340

In the Matter of	:	
	:	
GUALARIO & CO., LLC and	:	ORDER DENYING MOTION
RONALD GUALARIO	:	FOR SUMMARY DISPOSITION

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings (OIP) on April 8, 2011, and the hearing is scheduled to commence on September 12, 2011. The OIP alleges that Respondents violated the antifraud and other provisions of the federal securities laws in connection with transactions with advisory clients. Under consideration is Respondents' May 20, 2011, Motion for Summary Disposition, the Division of Enforcement's (Division) June 10 Opposition, and Respondents' June 29 Reply.

Respondents urge that the proceeding be dismissed, based on the what they allege is the Division's failure to comply with Section 929U of the Dodd-Frank Wall Street Reform and Consumer Protection Act, codified as Section 4E of the Securities Exchange Act of 1934 (Exchange Act). As relevant here, Exchange Act Section 4E(a)(1) provides, "Not later than 180 days after the date on which Commission staff provide a written Wells notification to any person, the Commission staff shall either file an action against such person or provide notice to the Director of the Division of Enforcement of its intent to not file an action." Section 4E(a)(2) provides for "Exceptions For Certain Complex Actions," whereby the Director of the Division of Enforcement (Division Director) or his designee can authorize successive 180-day extensions of the deadline.

Exchange Act Section 4E became effective on July 22, 2010, and the parties generally agree that it is reasonable that the 180-day period in this case commence on that date.¹ The Division Director extended the initial 180-day period by ninety days, that is, to April 14, 2011, and this proceeding was instituted within that deadline.²

¹ The date of Respondents' Wells notification was June 12, 2009. The Division's Section 4E procedure for such pending investigations commenced the initial 180-day period on July 22, 2010.

² On-again off-again settlement negotiations continued for about a year before the OIP. The parties differ as to the role each played in the delay and their failure to reach settlement.

Respondents argue that the ninety-day extension did not comply with Section 4E. Specifically, they argue that protracted settlement negotiations do not satisfy the “sufficiently complex” standard required to qualify for an extension. However, they do not explain how the settlement negotiations in themselves or the entire investigation are not “sufficiently complex,” particularly in light of 17 C.F.R. § 201.250(a).³ Respondents also argue that the Division Director failed to provide notice of the extension to the Chairman of the Commission, as required by Section 4E(a)(2). However, Respondents present no evidence that the required notification did not occur.⁴

Respondents also argue that Section 4E is a statute of limitations. The Division argues that it is not a statute of limitations, but rather provides deadlines for Commission staff without providing any enforceable rights to outside parties. While the Division’s argument is more compelling, it is not necessary to reach this issue since, in this instance, the Division complied with the requirements of Section 4E.

In sum, the Division Director authorized the extension in compliance with Section 4E, and the proceeding was instituted within the authorized period. Accordingly, Respondents’ motion for summary disposition must be denied.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge

³ “The facts of the pleadings of the party against whom the motion is made shall be taken as true.”

⁴ Section 4E(a)(2) does not specify how such notice is to be provided, nor does it require approval for an initial 180-day extension request.