

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1425/May 8, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-15830

In the Matter of

HERBERT STEVEN FOUKE

ORDER FOLLOWING PREHEARING
CONFERENCE, FINDING RESPONDENT IN
DEFAULT, AND DIRECTING A MOTION
FOR SANCTIONS

On April 8, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative Proceedings (OIP) against Herbert Steven Fouke (Fouke), pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940.

A telephonic prehearing conference was held today, attended by Robert K. Levenson for the Division of Enforcement (Division). Fouke failed to appear at the prehearing conference. At the conference, I deemed service of the OIP to have occurred on April 12, 2014, based on evidence confirming receipt by U.S. Postal Service certified mail, in accordance with Commission Rule of Practice (Rule) 141(a)(2)(i), 17 C.F.R. § 201.141(a)(2)(i). I also found that Fouke's answer to the OIP was due by May 5, 2014, as service was effected by mail. See OIP at 3; 17 C.F.R. §§ 201.160(b), .220(b). To date, he has not filed an answer.¹ Accordingly, Fouke is deemed in default for failing to file an answer, participate in the prehearing conference, or otherwise defend this proceeding.² See 17 C.F.R. §§ 201.155(a), .220(f), .221(f).

¹ Fouke was previously warned that if he failed to participate in the prehearing conference or failed to timely file an answer, he may be deemed in default and the proceeding may be determined against him. See Herbert Steven Fouke, Admin. Proc. Rulings Release No. 1393, 2014 SEC LEXIS 1379 (Apr. 21, 2014).

² Fouke is notified that he may move to set aside the default pursuant to Rule 155(b):

A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the hearing officer, at any time prior to the filing of the initial decision, or the Commission, at any time, may for good cause shown set aside a default.

Pursuant to my directive at the prehearing conference, it is ORDERED that the Division shall file a motion for sanctions by Friday, May 23, 2014. The motion shall provide legal authority and evidentiary support relating to the allegations set forth in the OIP and sanctions sought by the Division in accordance with Rapoport v. SEC, 682 F.3d 98 (D.C. Cir. 2012).

Cameron Elliot
Administrative Law Judge