

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4339/ November 10, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17184

In the Matter of

CHRISTOPHER M. GIBSON

ORDER ON PROPOSED CORRECTIONS
TO HEARING TRANSCRIPT AND EXHIBITS

The Commission initiated this proceeding on March 29, 2016. The hearing concluded on September 16, 2016. The Division of Enforcement filed its opening brief and proposed findings of fact and conclusions of law on October 24. Respondent's opposing brief and proposed findings of fact and conclusions of law are due November 28, and the Division's reply brief is due December 19, 2016.

On October 17, 2016, Respondent filed a motion to correct the hearing transcript and to correct two exhibits that are portions of Respondent's investigative testimony allowed into evidence. The proposed transcript changes consist of thirty pages (Motion Attachment A). The proposed changes to investigative testimony consist of twelve pages (Motion Attachment B).

On October 28, 2016, the Division filed a response. First, the Division would deny the motion to correct investigative testimony because Respondent has offered no explanation or argument in support of the revisions and, although Commission Rule of Practice 302(c) provides that a party may move for correction of the hearing transcript, there is no similar rule regarding investigative transcripts. Second, the Division has numbered the proposed changes to the hearing transcript (Exhibit 2) and listed numerically the proposed changes to which it does not object (Exhibit 1). The Division put the number of proposed transcript corrections at 141 and does not oppose sixty-six of them. The Division argued that in some cases the reason for the change is clear, but in some cases there is no assurance that the proposed change is a more accurate reflection of what was actually said; rather it appears to be what counsel thought the witness intended to say.

In a November 1, 2016, letter sent to Respondent's counsel with a copy to my office, the Division indicated that the parties were in discussion to narrow disagreement over proposed changes to the hearing transcript, had agreed to an additional ten proposed corrections, and had suggested that Respondent withdraw certain proposed changes.

On November 4, 2016, Respondents submitted a reply following discussions with the Division. Attached to the reply is a twenty-one page chart that shows in five columns: (1) the number of each proposed change corresponding to the Division's numbering; (2) whether the Division agrees (A) or disputes (D) the proposed change; (3) the transcript cite; (4) the incorrect

text; and (5) the proposed correction. Respondent has withdrawn the proposed corrections that are not on the chart. Reply at 1 n.1. Respondent contends that the Division's remaining objections border on the frivolous.

In addition, Respondent considers the Division's argument opposing proposed changes to the investigative testimony "specious," and argues that testimony taken for the purpose of investigating the events that formed the basis for this proceeding (and which the Division purports to use in place of hearing testimony) should be amended if inaccurate.

Ruling

Rule 302(c) allows a party or witness to move to correct the hearing transcript "[p]rior to the filing of post-hearing briefs or proposed findings and conclusions, or within such earlier time as directed by the Commission or the hearing officer." 17 C.F.R. § 201.302(c).

The parties still cannot agree upon forty-three proposed transcriptions, i.e., where a D appears in the second column of the chart attached to Respondent's reply. Based on my knowledge of the proceeding, recollection, and common sense, I GRANT the motion as modified by Respondent's reply and accept all but two of Respondent's proposed transcript corrections. That leaves unresolved numbers 92 and 99.

My office will provide a Microsoft Word version of the chart with the transcript corrections, and I ask the court reporting company to:

- 1) Check the tape of the hearing transcript regarding proposed changes numbers 92 and 99, and determine if the proposed changes are appropriate;
- 2) Make all other proposed changes listed in the chart; and
- 3) Issue a complete, amended transcript. If the court reporting company cannot establish that proposed changes numbers 92 and 99 are accurate, then the transcript will remain unchanged as to those two instances.

I DENY Respondent's motion to correct Division Exhibits 190 and 191, which are designated portions of Respondent's investigative testimony given on March 19, 2015, and December 21, 2015, respectively. In the absence of any explanation from Respondent, I have no basis of knowing whether the proposed corrections are valid representations of the testimony given on those occasions.

Brenda P. Murray
Chief Administrative Law Judge