

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

Administrative Proceedings Rulings
Release No. 5347 / December 11, 2017

Administrative Proceeding
File No. 3-18070

In the Matter of

David Lubin

**Notice Regarding the
Securities and Exchange
Commission's Order on Pending
Administrative Proceedings**

On July 19, 2017, the Securities and Exchange Commission issued an order instituting proceedings (OIP) pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice. In the OIP, the Commission imposed agreed-to remedial sanctions and ordered a hearing to determine what, if any, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act against Respondent are in the public interest. The hearing is to be scheduled "following the entry of a final judgment against the last remaining defendant(s) in any action(s) arising out of or related to the facts in [the OIP]." OIP at 6-7. At a prehearing conference on August 24, 2017, the parties agreed that the only related criminal action was the criminal action against David Lubin, that Lubin would plead guilty in *United States v. Lubin*, No. 1:17-cr-20508 (S.D. Fla.) (criminal case), filed July 19, 2017, and that the parties would notify me when sentencing occurred. Prehr's Tr. 4-5.

The Division of Enforcement, in a letter dated December 7, 2017, on behalf of the parties, attached a copy of the initial judgment entered in the criminal case, which was based on a guilty plea to one count of conspiracy to sell unregistered securities. Judgment in a Criminal Case at 1, *Lubin*, No. 1:17-cr-20508 (S.D. Fla. Dec. 1, 2017), ECF No. 37. The district court sentenced Lubin to thirty-six months of imprisonment, followed by two years of supervised release, and a \$100 assessment. *Id.* at 2-3, 5. The Division points out that the judgment is not a final judgment because it provides that restitution will not be determined until February 21, 2018, and that an amended judgment would be issued after that determination. *Id.* at 5.

I accept the parties' suggestion and will wait until issuance of the amended judgment before scheduling a prehearing conference.

On November 30, 2017, the Commission issued an order directing administrative law judges with pending proceedings to: (1) reconsider the record in the proceeding, including all substantive and procedural rulings; (2) allow the parties to file any new evidence that the parties deem relevant to the reexamination of the record by January 5, 2018; (3) determine whether to revise or ratify prior rulings; and (4) issue by February 16, 2018, an order on ratification. *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10440, 2017 SEC LEXIS 3724, at *2-3. I have not made any substantive rulings in this proceeding but if the parties want to avail themselves of the Commission's order they are welcome to do so. I will wait until after January 5, 2018, to issue an order setting forth whether all prior actions taken by me are ratified or revised in any respect.

Brenda P. Murray
Chief Administrative Law Judge