UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 52207 / August 4, 2005

Admin. Proc. File No. 3-11893

In the Matter of

DAVID A. FINNERTY, et al.

JAMES V. PAROLISI
PATRICK E. MURPHY
ROBERT W. LUCKOW
Movants

ORDER DENYING MOTION TO SEVER

On April 12, 2005, we instituted broker-dealer and cease-and-desist proceedings against twenty former New York Stock Exchange ("Exchange") specialists, charging them with violating antifraud and other provisions by executing orders for their firms' proprietary accounts ahead of executable orders from public customers.

On June 7, the administrative law judge granted the United States Attorney for the Southern District of New York ("U.S. Attorney") leave to participate for the purpose of requesting a stay of these proceedings pending the resolution of parallel criminal actions against fifteen of the respondents in this matter. The law judge granted the stay, ordering the Division of Enforcement to report by September 6, and every 90 days thereafter, on the status of the criminal proceedings and the stay's continued appropriateness. 1/

Three of the five unindicted respondents in this matter, James V. Parolisi, Patrick E. Murphy, and Robert W. Luckow ("Movants"), who were specialists at Spear, Leeds & Kellogg Specialists LLC ("SLK"), seek to sever the proceedings against them. 2/ The U.S. Attorney and the Division oppose Movants' request.

Our Rule of Practice 201(b) provides that a proceeding may be severed with respect to some or all parties upon a showing of good cause. 3/ Movants complain of the allegedly prejudicial delay that will

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1/ The law judge also ordered the Division to make certain documents available to the respondents for inspection.

2/ Movants' request for oral argument on their motion is denied. Their additional request to file a surreply to the Government's reply memorandum is granted.

3/ 17 C.F.R § 201.201(b)

result if they are forced to wait until the completion of the criminal proceedings. They assert that there is no need for their cases to be tried together with those of the indicted respondents since there is little overlap in the evidence pertinent to each group. They point out that the order for proceedings in this matter does not charge that any of the respondents or their firms acted in concert. Rather, the particularized charges against each respondent allege improper trading in different stocks at different times.

The U.S. Attorney and the Division assert that there will be a significant evidentiary overlap since a critical element in establishing the alleged violative trading by each respondent will be computer and technological evidence obtained from the Exchange. Witnesses will be needed to testify as to the methodology and integrity of that data. Indeed, movants acknowledge that the Division will have to establish the authenticity and reliability of the Exchange's data. The U.S. Attorney and the Division also cite an additional evidentiary overlap in that one of the indicted respondents, like movants, worked at SLK. Evidence common to that respondent and movants includes such matters as SLK's internal policies and procedures governing trading during the relevant period. The Division also notes that there will be legal issues common to all respondents such as the legal obligations of specialists, and common factual issues including the details of how transactions are executed on the Exchange and the functioning of the specialists' display books.

Movants further contend that the risk that severance will result in some duplication of effort is outweighed by the potential for harm if severance is denied. They assert that the projected delay in their cases will result in the dimming of witnesses' memories and the possible loss of evidence, and that they will be forced to live "under a cloud" indefinitely which will be an obstacle to their securing employment. Movants also argue that the presence of the indicted respondents in a joint proceeding will color the law judge's views and attitude towards them.

We have previously indicated that respondents who are aware that evidence will be needed at some future time can and should take steps to obtain documents and memorialize testimony that will be necessary for their defense. 4/ Movants' complaint with respect to the detriment they will suffer from the prolonged pendency of the charges against them is purely speculative. Movants have not shown that they will suffer any prejudice that would warrant the relief they seek. 5/ Finally, the law judge, who is legally trained and judicially oriented, should have little difficulty in judging movants' cases solely on the basis of the evidence adduced with respect to them, without regard to the conduct of other respondents 6/, and, if necessary, we will do the same.

Movants argue that severance will further judicial economy since the inconvenience of

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4/ Sharon M. Graham, 53 S.E.C. 1072, 1089 (1998), aff'd 222 F.3d 994 (D.C. Cir 2000); Paul C. Kettler, 52 S.E.C. 167, 169 (1995).

5/ See Robert W. Armstrong, III, Securities Exchange Act Rel. No. 51920, p.27 (June 24, 2005), ___ SEC Docket ___; Feeley & Wilcox Asset Management Corp., Securities Act Rel. No. 8303 (October 9, 2003), 81 SEC Docket 919, 923 n.15; Paul C. Kettler, supra.

6/ See John A. Carley, Exchange Act Rel. No. 50695 (November 18, 2004), 84 SEC Docket 434, 435-436.

one massive trial outweighs the necessity of having some witnesses testify twice. They further contend that their financial exposure will be greatly increased if prejudgment interest for the period during which these proceedings are delayed is added to the disgorgement they may have to pay.

For the reasons discussed above, we believe there are common legal, factual, and evidentiary issues in these proceedings. Among other things, this indicates that a single proceeding will be more efficient than separate trials from the standpoint of judicial economy and financial resources. Movants do raise a legitimate concern with respect to the assessment of prejudgment interest, and we have granted relief in that respect in similar circumstances. 7/ However, their concern is premature and should be addressed to the law judge at an appropriate time.

We conclude that movants have not shown good cause for a severance.

Accordingly, IT IS ORDERED that the motion of James V. Parolisi, Patrick E. Murphy, and Robert W. Luckow requesting a severance be, and it hereby is, denied.

By the Commission.

Jonathan G. Katz
Secretary

7/ See RichMark Capital Corporation, Securities Act Rel. No. 8333 (November 7, 2003), 81 SEC Docket 2205, 2220, aff'd, No. 03-60984 (5th Cir. 2004).