

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 3603/February 11, 2016

ADMINISTRATIVE PROCEEDING  
File No. 3-17035

In the Matter of  
  
SHREYANS DESAI

ORDER SETTING  
PREHEARING  
CONFERENCE DATE

On January 5, 2016, the Securities and Exchange Commission issued an order instituting proceedings (OIP) pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940. The OIP requires Respondent Shreyans Desai, who is presently incarcerated at FMC Devens in Ayer, Massachusetts, to answer the allegations within twenty days of service of the OIP. OIP at 3, 17 C.F.R. § 201.220(b). On January 27, 2016, I postponed the hearing scheduled for January 29, 2016, and ordered the Division of Enforcement to confer with Respondent and to propose a date and time for a prehearing conference. *Shreyans Desai*, Admin. Proc. Rulings Release No. 3534, 2016 SEC LEXIS 278.

On February 3, 2016, Respondent filed a petition to request stay, abeyance or other appropriate findings in regard to this matter in which he seeks to stay this proceeding until a parallel criminal action is completed or he has been released from custody, which he estimates requires a stay of ninety to one hundred eighty days.

On February 10, 2016, the Division filed the declaration of Christina M. McGill, with exhibits, showing that: Respondent was served with the OIP on January 11, 2016; the Division has notified Respondent of the availability of the investigative file; Respondent's prison counselor has told the Division that Desai refuses to speak with the Division, including to discuss his availability for a telephonic prehearing conference; the Division has sent Respondent three letters by certified mail; and the Bureau of Prisons web site shows April 30, 2016, as Respondent's release date. The Division opposes Desai's request for a stay, requests he be ordered to file an answer, and requests leave to file a motion for summary disposition if he does not do so. *See* 17 C.F.R. § 201.250. I find that Respondent was served in accordance with Rule 141(a)(2), 17 C.F.R. § 201.141(a)(2), on January 11, 2016. Because service was made by mail, Respondent's answer was due February 3, 2016. *See* OIP at 3; 17 C.F.R. § 201.160(b), .220(b). To date, Respondent has not filed an answer to the OIP.

## **Ruling**

Respondent's petition is a request for a postponement of the proceedings pursuant to Rule 161, 17 C.F.R. § 201.161. Under this rule, the Commission or hearing officer "should adhere to a policy of strongly disfavoring such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case." 17 C.F.R. § 201.161(b)(1). Respondent has not made such a showing here. Additionally, the case law does not support postponing an administrative proceeding pending appeal of a parallel criminal proceeding. *Hunt v. Liberty Lobby, Inc.*, 707 F.2d 1493, 1497 (D.C. Cir. 1983) ("Under well-settled federal law, the pendency of an appeal does not diminish the *res judicata* effect of a judgment rendered by a federal court."); *Paul Free, CPA*, Exchange Act Release No. 66260, 2012 SEC LEXIS 322, at \*6 (Jan. 5, 2012). ("As we have previously stated, the pendency of an appeal generally is an insufficient basis upon which to prolong a Commission proceeding."). See also *Jon Edelman*, 52 S.E.C. 789, 790 (1996) ("The pendency of an appeal of a criminal conviction generally is an insufficient basis upon which to grant a motion to stay proceedings.").

I ORDER a telephonic conference on February 18, 2016, at 11:00 a.m. EDT, a date and time at which correctional authorities have told me that Respondent could arrange to be available for a phone call at a number correctional authorities provided to my office. If Respondent does not participate in the telephonic prehearing conference, file an answer, or otherwise defend the proceeding, I will find him in default, deem the allegations in the OIP to be true, and grant the Division leave to file a motion for sanctions. See OIP at 4; 17 C.F.R. §§ 201.155(a), .220(f), .221(f).

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Brenda P. Murray  
Chief Administrative Law Judge