

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-10765

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
November 13, 2002

SECURITIES & EXCHANGE COMMISSION  
MAILED FOR SERVICE

NOV 13 2002

In the Matter of :  
:  
J.W. BARCLAY & CO., INC. :  
JOHN A. BRUNO :  
MICHAEL J. WILLS :  
EDGAR B. ALACAN :  
EMMANUEL P. CUBE :  
MAYER DALLAL :  
DANOO NOOR, SR. :  
EMANUELE A. SCARSO :  
MICHAEL B. SCOTT :

ORDER

~~OTFD NO.~~ 1st class only

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on April 24, 2002. Respondents filed their answers in June 2002.

The Division of Enforcement (Division) has now filed a list of fifty-six witnesses it proposes to call at the upcoming hearing. The relevance of certain proposed testimony is not immediately apparent. Accordingly, pursuant to Rules 111(c), 232(b), and 320 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.111(c), .232(b), .320, the Division should file and serve a supplement to its list of proposed witnesses, addressing the matters set forth below. The supplement should be filed and served within seven days after the date of this Order.

First, by Order dated June 13, 2002, I directed the Division to provide a complete list of the customers who were allegedly defrauded by Respondents. The Division's More Definite Statement did not identify proposed witnesses ## 11, and 44 through 51, inclusive. The Division should provide a separate explanation of the relevance of each such witness's proposed testimony. A particularized explanation must be provided as to each witness. Explanations that simply use word processing technology to repeat identical phraseology for each witness will not be deemed to comply with this Order.


Second, the Division's list identifies at least a dozen witnesses who are expected to testify about events occurring more than five years before the Commission issued the OIP (Division's Summary of Testimony of Proposed Witnesses ## 2, 9, 10, 11, 12, 14, 15, 27, 40, 41, 43, 46). The Division should explain the relevance of this proposed testimony to the misconduct alleged in the OIP. In addition, the Division's witness list fails to specify the period of time to be covered by the testimony of proposed witnesses ## 48 through 50, inclusive. The Division must cure these

omissions. If the period of time to be covered by witnesses ## 48 through 50 is more than five years before the OIP was issued, the Division must explain the relevance of this proposed testimony to the misconduct alleged in the OIP. Since there are specific limits to the proper use of "prior bad acts" evidence, the Division should explain the purpose for which it seeks to introduce such evidence. Cf. Fed. R. Evid. 404(b), 406.

Third, the Division has represented that its proposed expert witness will discuss several issues, including excessive trading, churning, unauthorized trading, unsuitable trades, customer losses, and disgorgement. The Division should clarify whether its expert will confine his testimony to activity occurring in customer accounts on and after April 24, 1997. The Division should also clarify whether its expert will confine his testimony to the specific customers and the specific securities the Division identified in its More Definite Statement. If the Division's expert intends to discuss events before April 24, 1997, or to discuss customers and securities not identified in its More Definite Statement, it shall offer a showing of relevance.

Fourth, the Scheduling Order of October 22, 2002, set two due dates: the Division's expert witness statement is due January 17, 2003, and the Division's computation of disgorgement is due February 28, 2002. When we adopted the prehearing schedule, I was operating under the assumption that two separate witnesses would be involved. However, it is now clear that the Division's expert witness will discuss disgorgement. Accordingly, the Division shall show cause why the proposed expert's statement on the disgorgement issue should not be due on January 17, 2003, when he will offer his statement on all other issues.

SO ORDERED.

  
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James T. Kelly  
Administrative Law Judge