

ADMINISTRATIVE PROCEEDING
FILE NO. 3-10765

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
October 22, 2002

SECURITIES & EXCHANGE COMMISSION
MAILED FOR SERVICE

OCT 22 2002

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

CTFD. NO. 18T class only

The Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) on April 24, 2002. Respondents filed their answers on June 4, 2002.

I held a telephonic prehearing conference yesterday. The Division of Enforcement (Division) and all Respondents participated. The Division advised that one Respondent has submitted a settlement offer. The Division estimated that its case requires about forty witnesses and two weeks of hearings. An early hearing date proved impossible because of conflicts involving various attorneys. After discussion, I established the following schedule.

By November 12, 2002, the Division must file and serve a list of its prospective fact, summary, and expert witnesses, providing the information specified by Rule 222(a)(4) and (b) of the Commission's Rules of Practice. The Division has indicated that certain witnesses may offer testimony about events occurring more than five years before the Commission issued the OIP. See Division's Motion to Strike Defenses of Respondents Scarso and Cube, dated June 12, 2002, at 9 n.5. The Division's summary of expected witness testimony should identify which witnesses will offer such testimony. Pursuant to Rule 111(g) of the Commission's Rules of Practice, the Division should also identify each Respondent against whom each prospective witness will testify.

The Division has suggested that some of its prospective witnesses may be unable to attend a hearing in New York City because of age, sickness, infirmity, or other disabilities. If the Division believes that part of the hearing should be held elsewhere, or if it seeks an order granting an alternative to in-person testimony (such as videoconferencing), it must file and serve a separate motion by November 12, 2002. Such a motion must specify the reason(s) for each witness's inability to appear. The motion should also explain why the presumption that witnesses will testify

in person should be set aside here. If the Division proposes an alternative to live testimony, it should provide reasonable details.

By November 26, 2002, Respondents must file and serve lists of their prospective fact, summary, and expert witnesses, providing the information specified by Rule 222(a)(4) and (b) of the Commission's Rules of Practice. Respondents must also file and serve their oppositions to the Division's motion to excuse named witnesses from testifying in person.¹ By December 5, 2002, the Division may submit its optional reply in support of the November 12 motion.

The Division expects to sponsor one or two expert witnesses. By January 17, 2003, the Division must file and serve the statements of any such experts. Those statements will serve as the direct testimony of such experts. The hearing will focus on cross-examination of the Division's experts by Respondents, and redirect examination by the Division. By this same date, the Division must file and serve a list of its proposed hearing exhibits.

By February 14, 2003, Respondents must file and serve the statements of their expert witnesses. Those statements will serve as the direct testimony of the experts. The hearing will focus on cross-examination of Respondents' experts by the Division, and redirect examination by Respondents. By this same date, Respondents must file and serve lists of their proposed hearing exhibits. Respondents are requested to confer with each other, and to use exhibit numbers that do not overlap.

On February 18, 2003, there will be a telephonic prehearing conference at 11 a.m. Eastern time. The Division should initiate the call and obtain a court reporter. At that conference, we will set due dates for prehearing briefs. If any Respondent is claiming inability to pay disgorgement and/or civil monetary penalties, we will also set a due date for such Respondents to provide the Division with documentary evidence in support of that claim. See Rule 630 of the Commission's Rules of Practice. Respondents should begin to gather the necessary documentation now.

On February 28, 2003, the parties shall exchange proposed hearing exhibits. If the Division is seeking disgorgement as a sanction, it must also file and serve a statement demonstrating the methodology it has used to calculate the disgorgement amount as to each Respondent.

¹ Over a month ago, I signed subpoenas authorizing Respondents to seek prior trading records and related documents from several of the Division's prospective customer witnesses. The recipients of these subpoenas have not moved to quash and the time for doing so appears to have expired. See Rule 232(e) of the Commission's Rules of Practice. Nonetheless, Respondents advised me that document production in response to these subpoenas is going slowly. I am confident that the Division will be able to report to me in its November 12, 2002, motion that it has used its best efforts to ensure that any customers it seeks to excuse from the hearing are not being tardy in responding to these subpoenas. If the Division cannot offer such a report, then I am confident that Respondents will advise me of the status of document production in their November 26, 2002, opposition to the Division's motion.

The hearing will be held from March 24 through March 28 and March 31 through April 4, 2003. As stated, the tentative location of the hearing is New York City. I will make a final determination on the location once I have reviewed the motion the Division is expected to file on November 12, 2002.

SO ORDERED.



James T. Kelly
Administrative Law Judge