UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 670/April 8, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14207

In the Matter of	:	
	:	
	:	AMENDMENT TO ORDER
DAVID M. TAMMAN, ESQ.	:	INSTITUTING PROCEEDINGS
	:	AND OTHER ISSUES

The Securities and Exchange Commission (Commission) initiated this Administrative Proceeding pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice on January 27, 2011. The Order Instituting Proceedings (OIP) alleges improper professional conduct by David M. Tamman, Esq. (Tamman), a member of the California Bar, from approximately May 2003 through October 2009, in connection with the preparation of private placement memoranda (PPMs) for NewPoint Financial Services, Inc. I issued a Protective Order on February 9, 2011. Tamman's Answer was filed on February 22, 2011. A prehearing conference was held on March 15, 2011, and the hearing is scheduled to begin on June 13, 2011.

On March 21, 2011, the U.S. Attorney for the Central District of California (U.S. Attorney) filed, under seal, a Motion to Intervene in Administrative Proceeding and to Stay Discovery and Evidentiary Hearing During Pendency of Criminal Proceedings; Separate Memorandum of Points and Authorities and Declarations of David J. Lazarus and Paul G. Stern and Attached Exhibits in Support Thereof (Motion to Intervene and to Stay); and an Application for Confidential Treatment Pursuant to Rule 190 of the Commission's Rules of Practice (Application for Confidential Treatment).[1] The U.S. Attorney represents that discovery and taking evidence in this Administrative Proceeding will harm an ongoing criminal investigation.

On March 23, 2011, the Office of General Counsel (OGC) filed a Brief in Response to U.S. Attorney's Office Motion to Stay and an Application for Confidential Treatment Pursuant

[1] Commission Rules of Practice 190 and 322 provide privacy protection for materials filed with the Commission. Requests filed pursuant to Rule of Practice 190 are to the Commission's Secretary and requests made pursuant to Rule 322 are to the presiding administrative law judge.

to Rule 190 (Brief in Response). According to OGC, Respondent has had full access to the investigative file that led to the OIP. However, on March 16, 2011, OGC became aware that material in a second investigative file, with which they were not familiar, contained a small amount of potential Brady v. Maryland, 373 U.S. 83, 87 (1963), material. When OGC informed the U.S. Attorney of its decision to make the Brady material and other material in the second investigative file available to Respondent, the U.S. Attorney filed the Motion to Intervene and to Stay. The OGC does not take a position on the Motion to Intervene and to Stay.

Also, on March 23, 2011, OGC filed a Motion to Amend the OIP Pursuant to Rule 200(d)(2), with a Brief In Support of Motion, and proposed Amended OIP (Motion to Amend OIP). In its Motion to Amend OIP, OGC would strike "such" from the last line of paragraph II.B.2, and add at the end of paragraph II.B.3:

> Around the time Tamman created the altered version of the October 2008 PPM, he also created an altered version of a promissory note related to the PPM, and gave that altered document to Attorney D in response to a document request from the Commission staff. A few weeks after altering the May 2003 PPM, Tamman created another altered version of that PPM, and misleadingly titled the file "pre-finra" suggesting that it was a version of the document that had existed prior to FINRA's examination of Newpoint in November/December 2004.

OGC argues that the additional factual allegations are sufficiently within the scope of the OIP, and its Motion to Amend OIP is presented to ensure full and fair notice to Respondent. The Motion to Amend OIP recommends that Respondent be required to file an Answer to the Amended OIP within twenty days of when the amendment is allowed.

On March 24, 2011, Respondent filed an Opposition to the U.S. Attorney's Motion to Intervene and to Stay claiming that he has already received materials from OGC so the issue is moot. At the prehearing conference, Respondent spoke in opposition to OGC's request to amend the OIP, but he did not file an opposition to OGC's Motion to Amend OIP, filed after the prehearing conference. Tr. 19-20.

On March 25, 2011, the U.S. Attorney filed a Reply to Respondent's Opposition to Government's Motion to Intervene and to Stay pointing out that the issue is not moot because Respondent has not received material in a second investigative file that OGC intended to provide to him.

Ruling

Commission Rule of Practice 210(c)(3) provides that an authorized representative of a United States Attorney's Office may be allowed to participate in a Commission proceeding for the purpose of requesting a stay during the pendency of a criminal investigation or prosecution arising out of the same or similar facts that are at issue in the Commission proceeding. The Motion to Intervene and to Stay satisfies that criterion. Accordingly, I GRANT the U.S. Attorney leave to participate in the proceeding for the purpose of submitting the filing and I ORDER that the U.S. Attorney's Motion to Intervene and to Stay and its Application for Confidential Treatment receive Confidential status. See 17 C.F.R. §§ 201.210(c)(3), .322.

I do not see any revelations in OGC's Brief in Response, but out of an abundance of caution, I GRANT Confidential status to OGC's Brief in Response. See 17 C.F.R. § 201.322.

The Commission's Rules of Practice authorize an Administrative Law Judge to amend an OIP "to include new matters of fact or law that are within the scope of the original" OIP. 17 C.F.R. § 201.200(d)(2). The original OIP describes falsification to PPMs dated October 2008 and May 2003. The two sentences that OGC wants to add to the OIP allege: (1) an altered promissory note created at the same time as the October 2008 PPM; (2) a second altered version of the May 2003 PPM; and (3) misleading labeling of a file containing the May 2003 PPM.[2] I GRANT the Motion to Amend OIP because these additions are within the scope of the original OIP, and Respondent is aware that these matters were of concern to Commission staff during the investigation. See Byron G. Borgardt, 56 S.E.C. 999 (2003); J. Stephen Stout, 52 S.E.C. 1162 (1996). The OIP, Paragraph II.B.3, now reads as follows:

> On April 13, 2009, the Commission's Los Angeles Regional Office examination staff initiated an unannounced examination of NewPoint Securities, LLC (a broker-dealer affiliated with NewPoint). That same day, Tamman met with John Farahi in person to discuss the Commission's examination. Later that day, Tamman, for the first time, added purported disclosures regarding loans to John Farahi to a PPM dated October 2008. On May 14, 2009, Tamman added, for the first time, similar purported disclosures to a PPM dated May 2003. Tamman knew that the language regarding loans to John Farahi that he added to the PPMs were not contained in PPMs provided to investors in May 2003 or October 2008. Around the time Tamman created the altered version of the October 2008 PPM, he also created an altered version of a promissory note related to that PPM, and gave that altered document to Attorney D in response to a document request from the Commission staff. A few weeks after altering the May 2003 PPM, Tamman created another altered version of that PPM, and misleadingly titled the file "pre-finra" suggesting that it was a version of the document that had existed prior to FINRA's examination of NewPoint in November/December 2004.

I accept the U.S. Attorney's representation that staying the Administrative Proceeding during pendency of criminal proceedings is in the public interest and STAY the proceeding, with the exception that Respondent has twenty days from the date of this Order to file an Answer to the two sentences added to Paragraph II.B.3. See 17 C.F.R. § 201.220.

_____

Brenda P. Murray
Chief Administrative Law Judge

[2] These matters are sufficiently related to the OIP that testimony about them would be admissible at the hearing.