

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 785 / August 8, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15382

In the Matter of	:	
	:	ORDER ON U.S. ATTORNEY'S
STEVEN A. COHEN	:	APPLICATION TO INTERVENE AND
	:	MOTION TO STAY PROCEEDING

On July 19, 2013, the Securities and Exchange Commission (Commission) initiated this proceeding by issuing a Corrected Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 (OIP). The OIP alleges that Steven A. Cohen (Cohen) failed reasonably to supervise Mathew Martoma and Michael Steinberg, who allegedly violated Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, while they were employed by wholly-owned subsidiaries of S.A.C. Capital Advisors, LLC, an unregistered investment adviser succeeded in 2008 by S.A.C. Capital Advisors, L.P., that Cohen founded, owns, and controls. A public hearing is scheduled to begin on August 26, 2013. The Commission directed that an Initial Decision in the proceeding be issued within 300 days from July 24, 2013, the date that Cohen was served with the OIP.

On July 26, 2013, the United States Attorney for the Southern District of New York (U.S. Attorney) filed an Application to Intervene and Motion to Stay Administrative Proceeding (Motion to Stay), pursuant to 17 C.F.R. § 201.210(c)(3). The Application to Intervene for the limited purpose of presenting the Motion to Stay pending the resolution of related criminal proceedings being pursued by the U.S. Attorney has three exhibits: Exhibit A, the three-count Indictment returned December 21, 2012, in United States v. Martoma, 12 Cr. 973 (S.D.N.Y.), Exhibit B, the five-count Indictment returned March 28, 2013, in United States v. Steinberg, 12 Cr. 121 (S.D.N.Y.), and Exhibit C, the five-count Indictment returned July 23, 2013, in United States v. S.A.C. Capital Advisors, L.P., 13 Cr. 541 (S.D.N.Y.). The filing included a Memorandum of Law in Support of Motion to Stay.

The Application to Intervene states that the OIP and the pending criminal cases, Martoma, Steinberg, and S.A.C. Capital Advisors, have overlapping factual allegations and will involve largely the same witnesses, documents, and other evidence. The U.S. Attorney represents that the Commission's Division of Enforcement (Division) does not object to the entry of a stay and that he has not sought or obtained consent from Cohen.

On August 2, 2013, Cohen filed a Response to the U.S. Attorney's Motion to Stay (Response). Cohen does not object to staying this administrative proceeding provided that the Commission's investigative record is promptly produced to him in accord with 17 C.F.R. § 201.230. Cohen states that: (1) this administrative proceeding will run on an expedited schedule following the stay and that he will have insufficient time to review the Division's investigative file, said to contain more than five terabytes of data estimated to be 375 million pages, if it is not produced until the stay is lifted; (2) the U.S. Attorney did not claim his position in the criminal proceedings would be prejudiced by turning over the investigative file to Cohen now; and (3) courts have regularly granted partial stays where there are parallel administrative/civil and criminal proceedings. Exhibit 1 to the Response is a July 23, 2013, letter from the Division to Cohen stating that it intends to produce its investigative file once I sign a stipulated protective order, which I have not seen.

On August 7, 2013, the U.S. Attorney filed a Reply Memorandum in Support of the Motion to Stay. The U.S. Attorney argues that: (1) it also has five terabytes of data, about half of which was produced from Cohen's firms, and Respondent's attorneys will receive "largely the same document discovery through the criminal case against the SAC Entity Defendants" as in the administrative proceeding; and (2) there is a clear public interest in limiting a criminal defendant from using a civil proceeding to circumvent limits on discovery in a criminal case.

Ruling

The Commission's Rules of Practice specifically provide that leave to participate on a limited basis may be granted to an authorized representative of a United States Attorney "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 pending Commission enforcement or disciplinary proceeding," and that a motion for stay shall be favored upon a showing that it is in the public interest or for the protection of investors. 17 C.F.R. § 201.210(c)(3).

There are no objections to the limited intervention by the U.S. Attorney and the parties agree that a stay is appropriate. The only issue is whether the stay should cover the Division's obligation under the Commission's Rules of Practice to:

make available for inspection and copying by any party documents obtained by the Division prior to the institution of proceedings, in connection with the investigation leading to the Division's recommendation to institute proceedings. Such documents shall include:

- (i) each subpoena issued;
- (ii) every other written request to persons not employed by the Commission to provide documents or to be interviewed;
- (iii) the documents turned over in response to any such subpoenas or other written requests;
- (iv) all transcripts and transcript exhibits;

(v) any other documents obtained from persons not employed by the Commission; and

(vi) any final examination or inspection reports prepared by the Office of Compliance Inspections and Examinations, the Division of Market Regulation, or the Division of Investment Management, if the Division of Enforcement intends either to introduce any such report into evidence or to use any such report to refresh the recollection of any witness.

17 C.F.R. § 201.230.

I do not attach much weight to the U.S. Attorney's failure to claim in the Motion to Stay that the criminal cases would be prejudiced by the Division's production of its investigation record because a stay would eliminate that possibility. There was no way the U.S. Attorney could have argued against a position, i.e., granting the stay but requiring production of the investigative record, that he was not aware of when he made his filing. I take as a given that when the U.S. Attorney requested a stay, he intended that nothing further occur.

Cohen's position that he will be severely prejudiced if he does not receive the Division's investigative file immediately if the proceeding is stayed is unpersuasive. The OIP directs that an Initial Decision be issued within 300 days from service of the OIP, excluding the duration of a stay pursuant to Commission Rules of Practice 210 and 360. That will be the goal. I am not aware of any plan to conduct this hearing on an expedited basis.

The Commission clarified this point when it postponed the administrative proceeding A.S. Goldman & Co., 54 S.E.C. 349, 352 (1999), holding:

[S]ubstantial prejudice could result to the District Attorney's prosecution of the pending criminal prosecution if the administrative proceeding were not postponed, such as from disclosure of the government's investigative files in this administrative action. Federal courts and the Commission have repeatedly recognized that civil or administrative proceedings may be stayed pending resolution of parallel criminal proceedings where justice requires.

For these reasons, I GRANT the Application to Intervene and Motion to Stay and ORDER the proceeding STAYED pending resolution of Martoma, Steinberg, and S.A.C. Capital Advisors, L.P. Cohen's request that the Division proceed with production of the investigative file despite the stay is DENIED.

The U.S. Attorney shall file a written notice on November 29, 2013, and every ninety days that follow, stating whether the stay should remain in effect, and will inform my Office if the situation changes before that date.

Brenda P. Murray
Chief Administrative Law Judge