

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 2590/April 27, 2015

ADMINISTRATIVE PROCEEDING

File No. 3-16374

In the Matter of

DAVID R. WULF

ORDER DENYING WITHOUT PREJUDICE  
THE DIVISION'S MOTION FOR SUMMARY  
DISPOSITION

The Securities and Exchange Commission instituted this proceeding in February 2015, when it issued an Order Instituting Administrative Proceedings (OIP) against David R. Wulf, under Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940. Among other things, the OIP alleged that in 2013, a jury found Mr. Wulf “guilty of eighteen counts of mail fraud, wire fraud, conspiracy to commit mail fraud affecting a financial institution, and conspiracy to commit wire fraud affecting a financial institution in violation of 18 U.S.C. §§ 1343, 1344, and 1349.” OIP at 2.

I held a telephonic prehearing conference on March 10, 2015, during which I set a schedule for filing motions for summary disposition. *David R. Wulf*, Admin. Proc. Rulings Release No. 2396, 2015 SEC LEXIS 893. The Division of Enforcement moved for summary disposition on April 7, 2015.<sup>1</sup> In its memorandum of law in support of the motion, the Division relies extensively on the allegations listed in Mr. Wulf’s second superseding indictment. *See* Memorandum at 2 & n.1, 5, 7.

Although a guilty plea constitutes an admission of the facts alleged in an indictment, *see United States v. Broce*, 488 U.S. 563, 569-70 (1989), *United States v. Vong*, 171 F.3d 648, 654 (8th Cir. 1999), a general jury verdict of guilt establishes only those “issues which were essential to the verdict,” *Emich Motors Corp. v. Gen. Motors Corp.*, 340 U.S. 558, 569 (1951). Consistent with the foregoing, the Commission has held that a jury verdict does not establish the facts alleged in an indictment. *Gary L. McDuff*, Exchange Act Release No. 74803, 2015 WL 1873119, at \*3 (Apr. 23, 2015).

Given the degree to which the Division relies on Mr. Wulf’s second superseding indictment, the Division’s motion for summary disposition is DENIED without prejudice to renewal by May 11, 2015. If the Division renews its motion, it may supplement its motion with

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<sup>1</sup> Under the March 10, 2015 schedule, Mr. Wulf’s opposition to the Division’s motion is currently due May 5, 2015. *David R. Wulf*, 2015 SEC LEXIS 893.

additional evidence, including the transcript of Mr. Wulf's sentencing hearing and the district court's explanation for the sentence it imposed. The deadline for Mr. Wulf to file an opposition to the Division's motion is extended to May 26, 2015. If Mr. Wulf files an opposition, the Division may file a reply by June 8, 2015.

In the event the Division foregoes the opportunity to renew its motion, a hearing will be held in this matter on June 8, 2015, in Washington, D.C.

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James E. Grimes  
Administrative Law Judge