

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 3654/February 29, 2016

ADMINISTRATIVE PROCEEDING

File No. 3-15764

In the Matter of

GARY L. MCDUFF

ORDER REGARDING
CLARIFICATION REQUEST

On April 23, 2015, the Commission remanded this proceeding. *See Gary L. McDuff*, Securities Exchange Act of 1934 Release No. 74803, 2015 WL 1873119 (Apr. 23, 2015). On February 18, 2016, after extensive summary disposition briefing, I held a telephonic prehearing conference regarding the logistics of holding a hearing. During that conference the Division of Enforcement stated it could likely present its case in chief in about one day, and Respondent McDuff stated that his case would last multiple weeks. Although I ordered nothing beyond the filing of status reports, I opined that the hearing should be limited temporally by limiting its scope to “whether McDuff was acting as a broker or dealer at the time of his misconduct.” *Id.* at *3; *see Gary L. McDuff*, Admin. Proc. Rulings Release No. 3632, 2016 SEC LEXIS 649 (Feb. 22, 2016).

On February 26, 2016, McDuff filed a document styled “Re: Ruling Clarification” (Motion). McDuff argues, among other things, that my remarks at the prehearing conference should be clarified, “so that if necessary [he] may seek Rule 400(a) review.” Motion at 1.

Construing the Motion as one for clarification, it is granted. To clarify, the Commission directed me to consider only two issues on remand: whether McDuff was acting as a broker or dealer at the time of his misconduct, and what sanctions, if any, should be imposed against him in the public interest. *See Gary L. McDuff*, 2015 WL 1873119, at *3. The question of sanctions was thoroughly addressed in the parties’ summary disposition briefing, and may not require additional evidence. Nonetheless, I have issued no orders and made no final rulings on the scope of the issues to be litigated at the hearing, and I intend to give both parties an opportunity to be heard on that subject before the hearing commences. The Motion is denied in all other respects. In particular, construing it as a request for certification pursuant to Rule 400(c), it is denied because there is no ruling to certify. *See* 17 C.F.R. § 201.400.

SO ORDERED.

Cameron Elliot
Administrative Law Judge