

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3763/April 5, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-15764

In the Matter of

GARY L. MCDUFF

ORDER REGARDING MOTION FOR A
DECISION ON THE SCOPE OF HEARING

On April 23, 2015, the Commission remanded this proceeding, directing me to consider whether Gary L. 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*, Securities Exchange Act of 1934 Release No. 74803, 2015 WL 1873119, at *3. On February 18, 2016, I held a telephonic prehearing conference to discuss the logistics of holding a hearing. I opined that the hearing should be limited temporally by confining its scope to “whether McDuff was acting as a broker or dealer at the time of his misconduct.” *Id.*; Prehearing Conf. Tr. 24-26.

On February 26, 2016, McDuff filed a document seeking clarification of my remarks at the prehearing conference. On February 29, I granted McDuff’s request and clarified that the question of sanctions was thoroughly addressed in the parties’ summary disposition briefing, and may not require additional evidence at the hearing. *Gary L. McDuff*, Admin. Proc. Rulings Release No. 3654, 2016 SEC LEXIS 754, at *2. I assured McDuff that I had made no final rulings on the scope of the issues to be litigated at the hearing, and that I intended to give both parties an opportunity to be heard on that subject before the hearing commenced. *Id.*

On April 1, 2016, McDuff filed a motion for a ruling on the scope of the hearing, with an attached memorandum and declaration. McDuff argues that the hearing should “not be limited to the broker-dealer issue” but “must be plenary instead.” Mem. at 5. McDuff contends that he requires resolution of this issue immediately, so that he can begin subpoenaing the thirty-five witnesses he believes are necessary at the hearing. Decl. at 1-2.

As stated in my February 29 order, I intend to give the parties an opportunity to be heard on this subject before the hearing. Accordingly, I ORDER the parties to confer and provide my office with a time and date for a telephonic prehearing conference. I also DENY McDuff’s motion without prejudice, and will allow him to re-raise his motion at the prehearing conference. The parties should also be prepared to identify what witnesses they will call at the hearing.

SO ORDERED.

Cameron Elliot
Administrative Law Judge