



**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING
File No. 3-16195**

In the Matter of

JUDY K. WOLF,

Respondent.

**DIVISION OF
ENFORCEMENT'S MOTION
FOR ADMISSION OF
RESPONDENT'S
INVESTIGATIVE TESTIMONY**

Judge Cameron Elliot

The Division of Enforcement ("Division") hereby moves, pursuant to Rule 201.235 of the Commission's Rules of Practice, 17 C.F.R. § 201.235, and Rule 6 of the General Prehearing Order entered in these proceedings, for an order to admit the investigative testimony of the respondent Judy K. Wolf ("Wolf") at the hearing in these proceedings. This Motion is based on this Memorandum of Points and Authorities and the Declaration of David S. Brown.

At issue in these proceedings is Wolf's liability for wilfully aiding and abetting and causing Wells Fargo Advisors, LLC ("Wells Fargo") to violate Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-4(j) thereunder and Section 204(a) of the Investment Advisers Act of 1940 with respect to Wolf's alteration of a compliance log prior to its production to the Division by Wells Fargo during the course of an investigation without mention of the alteration. *See* Order Instituting Proceedings ("OIP"), ¶¶ 25 and 26.

I. STATEMENT OF FACTS

Wolf initially testified in the investigation on March 13, 2013 as described in Paragraph 21 of the OIP. Brown Dec. ¶ 2. Wolf testified a second time as described in Paragraph 24 of the OIP. *Id.*, ¶ 3. In both sessions of her testimony, Wolf testified about a variety of subjects that are at issue

in these proceedings including her background, training, and experience in the securities industry (OIP, ¶ 9), her responsibilities in the Retail Control Group of the Wells Fargo compliance department including implementing the policies and procedures for conducting the so-called look back reviews of potential insider trading (OIP, ¶¶ 10-13), and her review of trading in Burger King securities (OIP, ¶¶ 15-17). *Id.*, Dec. ¶ 4. Most importantly, Wolf initially testified about the circumstances surrounding the creation of the Burger King compliance log, the production of the log to the Division staff, and that she denied altering the log (OIP, ¶ 19-21). *Id.* Wolf admitted in subsequent testimony, approximately one year later, that she had altered the Burger King log prior to its production, and that Wells Fargo placed on her administrative leave, terminated her employment, and filed a Form U5 citing to her conduct in connection with the staff's investigation (OIP, ¶¶ 22-24). *Id.*

In both sessions of her testimony, Wolf was represented by counsel. Brown Dec. ¶¶ 2, 3.

The parties' Joint Exhibit List includes the transcript of Wolf's testimony taken on March 13, 2013 (Exhibit 521) and the transcript of her testimony on April 10, 2014 (Exhibit 532), both of which Wolf's counsel has objected to. Brown Dec. ¶ 5. Counsel for Wolf and the Division have entered into Stipulated Facts in these proceedings that include references to certain, but not all, relevant parts of Wolf's investigative testimony taken 13 months apart. *Id.*, ¶ 6.

II. ARGUMENT

The introduction of prior sworn statements of witnesses into the record is governed by Rule 201.235 of the Commission's Rules of Practice, 17 C.F.R. § 201.235, which states:

(a) At a hearing, any person wishing to introduce a prior, sworn statement of a witness, not a party, otherwise admissible in the proceeding, may make a motion setting forth the reasons therefor. If only part of a statement is offered in evidence, the hearing officer may require that all relevant portions of the statement be introduced. If all of a statement is offered in evidence, the hearing officer may require that portions not relevant to the proceeding be excluded. A motion to introduce a prior sworn statement may be granted if:

- (1) The witness is dead;
- (2) The witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the prior sworn statement;

(3) The witness is unable to attend or testify because of age, sickness, infirmity, imprisonment or other disability;

(4) The party offering the prior sworn statement has been unable to procure the attendance of the witness by subpoena; or,

(5) In the discretion of the Commission or the hearing officer, it would be desirable, in the interests of justice, to allow the prior sworn statement to be used. In making this determination, due regard shall be given to the presumption that witnesses will testify orally in an open hearing. If the parties have stipulated to accept a prior sworn statement in lieu of live testimony, consideration shall also be given to the convenience of the parties in avoiding unnecessary expense.

(b) [Reserved]

As noted in Rule 6 of the General Prehearing Order entered in these proceedings, “[t]he prior sworn statement of a party, though, is an exception to the exception, and may be admissible” under Rule 201.235. Rule 6 states that the Administrative Law Judge entertains, but does not automatically grant, Division motions to admit the investigative testimony of a respondent under to Rule 201.235.

The Division submits that this motion is appropriate since admission of the transcripts of Wolf’s testimony before the Division staff “may streamline the hearing” as Rule 6 of the General Prehearing Order contemplates because Wolf would be examined “only on those issues not already covered by the statement.” Brown Dec. ¶ 7.

Wolf’s counsel was notified of the Division’s intent to file this motion prior to its filing. Brown Dec. ¶ 8.

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III. CONCLUSION

For the foregoing reasons, the Division respectfully requests that this motion be granted and that both sessions of Wolf's investigative testimony be admitted in these proceedings.

Dated: February 9, 2015

Respectfully submitted,

DIVISION OF ENFORCEMENT

By its Attorneys:

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