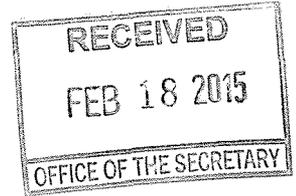


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



In the Matter of)
)
)
Judy K. Wolf) **Administrative Proceeding**
) **File No. 3-16195**
) **Judge Cameron Elliot**
Respondent.)
)

**RESPONDENT JUDY K. WOLF'S OPPOSITION TO THE DIVISION OF
ENFORCEMENT'S MOTION FOR ADMISSION OF RESPONDENT'S
INVESTIGATIVE TESTIMONY**

Respondent Judy K. Wolf, through counsel, opposes the Division of Enforcement's Motion (the "Division") for Admission of Respondent's Investigative Testimony. This Opposition is based on the Memorandum of Points and Authorities below.

INTRODUCTION

Introduction of the transcripts of Ms. Wolf's testimony will not streamline the hearing, as the Division contends. Instead, it will unnecessarily prolong the examination of Ms. Wolf, the primary witness, on numerous issues only marginally relevant to this case. To streamline what the parties have always anticipated should be a one day hearing, Ms. Wolf stipulated to numerous facts – proposed by the Division – about both her March 13, 2013, testimony and her April 10, 2014, testimony. The introduction of her prior two days of testimony will vitiate the benefit of the stipulations and prolong the hearing.

BACKGROUND

The Division's investigation "focused on the sufficiency of Wells Fargo's written policies and procedures to prevent the misuse of material nonpublic information." Stipulated

Facts ¶ 68. Ms. Wolf's testimony was relevant to that investigation, because she participated in the development and enforcement of one of Wells Fargo's efforts to discover the misuse of material nonpublic information. Ms. Wolf drafted, along with her supervisors, and primarily enforced Wells Fargo's written policies and procedures on insider trading reviews. *Id.* ¶¶ 10-11, 15. Therefore, as part of its investigation, the Division took Ms. Wolf's testimony for much of the day on March 13, 2013. Not surprisingly, given the broad focus of the Division's investigation, much of Ms. Wolf's testimony is entirely unrelated to the narrow issue in this proceeding: Did Ms. Wolf willfully aid and abet or cause Wells Fargo's failure to produce promptly an accurate copy of a requested record?¹

On April 10, 2014, Ms. Wolf testified again for over eight hours. *Id.* ¶ 3.² The vast majority of Ms. Wolf's April 10, 2014, testimony relates to issues entirely irrelevant and immaterial to the issue in this proceeding, as well. For example, Ms. Wolf testified about numerous insider trading reviews that she conducted, and about issues related to the development of the insider trading review procedures.

To the extent the transcripts contain relevant material, the parties have already stipulated to those facts. Mr. Brown states in his declaration that Ms. Wolf testified to a number of subjects that are at issue in the Order Instituting Proceedings ("OIP") "including her background,

¹ On March 13, 2013, Ms. Wolf testified for over four hours. Brown Decl. ¶ 2. The transcript of her testimony is 165 pages cover-to-cover, *id.*, and contains approximately 145 pages of testimony. Much of Ms. Wolf's March 13, 2013, testimony relates to issues entirely irrelevant and immaterial to the issues in this proceeding. For example, her testimony discusses Ms. Wolf's ability to review employees' emails, the process for escalating suspected insider trading to supervisors and other departments, and other generalities about the review process that do not bear on the sole issue in this proceeding.

² The transcript of her testimony is 265 pages long cover-to cover, *id.*, and contains approximately 250 pages of testimony.

training, and experiences 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).” The topics are only marginally relevant, but Ms. Wolf agreed to stipulations to address those facts. *See* Stipulated Facts ¶¶ 1-27. Similarly, Ms. Wolf agreed to stipulations that address facts and issues that are more directly relevant, as well, including the circumstances surrounding the creation of the Burger King compliance log and the production of the log to the Division staff. *See* Stipulated Facts ¶¶ 36-43, 46-62.

The Division complains that despite the stipulations about Ms. Wolf’s testimony, “not all of the relevant facts elicited from Wolf over the course of her two days of testimony, separated by 13 months, are covered by the stipulated facts.” Brown Decl. ¶ 5. But this provides no justification for larding this record with two lengthy transcripts containing issues that Ms. Wolf will be required to address should her prior testimony be admitted.

DISCUSSION

This Court’s General Prehearing Order states that this Court will “entertain, but not automatically grant, motions by the [Division] to admit the investigative testimony . . . of a respondent.” General Prehearing Order ¶ 6. The Division acknowledges that the reason for admitting investigative testimony, when a respondent will testify in person, as will occur in this case, is to “streamline the hearing.” *Id.*; *see also* Division’s Mot. at 1. Admitting the hundreds of pages of Ms. Wolf’s investigative testimony, however, will not streamline the hearing and will have the opposite effect for two significant reasons.

First, the wholesale introduction of the investigative transcripts will confuse the issues in this hearing by introducing hundreds of pages of testimony -- much of which would be objected to if the Division attempted to solicit such testimony from Ms. Wolf during the hearing -- into the record. Put differently, the Division proposes to streamline these proceedings on one narrow issue by introducing a large amount of irrelevant material that covers numerous issues. That is the antithesis of streamlining.

Second, by replacing the process of question, objection, ruling with one of wholesale admission of the transcripts, Ms. Wolf will receive no guidance on which portions of her testimony the Division intends to or may rely on. Once the transcripts are in evidence, the Division may rely on them, or any portion of them, for its closing and/or post-trial briefing, to the extent the Court requires any. Therefore, rather than streamlining the testimony in this case, the introduction of the earlier investigative testimony potentially substantially broadens the number of issues that Ms. Wolf's will have to address during the hearing.

In conclusion, while Ms. Wolf shares the goal of streamlining this proceeding, and has endeavored to do so by agreeing to nearly every stipulation proposed by the Division, the Division's motion to admit the hundreds of pages of Ms. Wolf's investigative testimony runs counter to that goal and should be denied.

CONCLUSION

For the foregoing reasons, the Division's Motion for Admission of Respondent's Investigative Testimony should be denied.

Date: February 17, 2015

Respectfully submitted,



Steven N. Herman
Zuckerman Spaeder LLP
1800 M Street, NW, Suite 1000
Washington, DC 20036

Attorney for Judy K. Wolf

