

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 760 / March 18, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15127

In the Matter of	:	ORDER ON MOTION TO QUASH
	:	SUBPOENA TO BARBARA S. MARTIN
J. KENNETH ALDERMAN, CPA,	:	
ET AL.	:	

The Securities and Exchange Commission (Commission) issued its Order Instituting Administrative and Cease-and-Desist Proceedings on December 10, 2012, pursuant to Sections 9(b) and 9(f) of the Investment Company Act of 1940. The hearing is scheduled to commence on April 2, 2013.

On March 7, 2013, this Office received a request by Respondents J. Kenneth Alderman and Allen B. Morgan, Jr. (Respondents) for issuance of a subpoena to Barbara S. Martin (Subpoena Request), a Commission employee. On March 12, 2013, the Division of Enforcement (Division) filed a Motion to Quash the Subpoena Request (Motion), as did the Office of Compliance Inspections and Examinations (OCIE), through the Office of the General Counsel (OGC). On March 15, 2013, Respondents filed an Opposition.

The Motion is denied. It is undisputed that Barbara S. Martin is an OCIE examiner “involved in the examinations” of Morgan Asset Management, Inc. (Morgan), conducted by Commission staff in 2003, 2005, and 2007. Motion, p. 1; Opposition, p. 4. Respondents represent that Ms. Martin’s proposed testimony will pertain to “what she saw, what she heard, what she communicated, and to whom she communicated,” during at least the 2007 examination. Opposition, p. 4. By contrast, the Division represents that, based on its discussions with Respondents, Ms. Martin will be asked about “her analysis of whether the pricing procedures employed by [Morgan] and the resulting net asset values . . . complied with various rules and regulations.” Motion, pp. 1-2. The Division and OCIE argue that Ms. Martin’s testimony is irrelevant and privileged.

As a percipient witness, at least some of Ms. Martin’s testimony appears to be entirely appropriate, and the Division has not demonstrated that compliance with the proposed subpoena will be unreasonable, oppressive, or unduly burdensome. See 17 C.F.R. § 201.232(e)(2). If Respondents seek to elicit inadmissible testimony, the Division may, of course, object on a question-by-question basis at the hearing. Additionally, I am willing to entertain a motion in

limine regarding any particular proposed testimony, as well as a motion to intervene by OGC, should OGC desire to represent Ms. Martin at the hearing.

SO ORDERED.

Cameron Elliot
Administrative Law Judge