

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 1347/March 28, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-14630

In the Matter of

DANIEL J. GALLAGHER

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ORDER

The Securities and Exchange Commission instituted this proceeding with an Amended Order Instituting Proceedings (OIP) on October 18, 2013, pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934. The OIP alleges that Daniel J. Gallagher (Gallagher) violated the antifraud provisions of the securities laws and was convicted of securities fraud and wire fraud in United States v. Gallagher, 2:11-cr-806 (E.D.N.Y. Apr. 23, 2013), appeal docketed, No. 13-1956 (2d Cir. May 17, 2013). A prehearing conference was held today. Kevin P. McGrath, Esq., appeared on behalf of the Division of Enforcement (Division), and Gallagher appeared pro se.

Gallagher reported that he has been able to commence reviewing the Division's investigative file, made available pursuant to 17 C.F.R. § 201.230, but that the file is voluminous. Previously, the Division filed a motion for summary disposition, pursuant to 17 C.F.R. § 201.250(a), in accordance with leave granted at the December 5, 2013, prehearing conference. Daniel J. Gallagher, Admin. Proc. Rulings Release No. 1084, 2013 SEC LEXIS 3825 (A.L.J. Dec. 5, 2013). To allow time for Gallagher's review of the investigative file, the date for his opposition was postponed to May 23, 2014. A status conference will be held by telephone on April 23, 2014, at 10:30 a.m. EDT. The parties were encouraged to settle.

Gallagher noted his appeal of United States v. Gallagher, stating that the case against him was wrongly decided. The undersigned advised that he is foreclosed from arguing in this proceeding that the facts concerning his involvement in the criminal wrongdoing are not proven. It is well established that the Commission does not permit criminal convictions to be collaterally attacked in its administrative proceedings. See Ira William Scott, 53 S.E.C. 862, 866 (1998); William F. Lincoln, 53 S.E.C. 452, 455-56 (1998). Further, the pendency of the appeal in United States v. Gallagher does not preclude "follow-on" action based on the conviction. Joseph P. Galluzzi, 55 S.E.C. 1110, 1116 n.21 (2002); John Francis D'Acquisto, 53 S.E.C. 440, 444 n.9 (1998).

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge