

UNITED STATES OF AMERICA  
Before the  
COMMODITY FUTURES TRADING COMMISSION

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In the Matter of:

U.S. SECURITIES & FUTURES CORP., NANCY : CFTC Docket No. 01-01  
BELLASSI, THOMAS GONG, JOHN HING, :  
DANIEL REYNOLDS, and JIPING WU, et al. : ORDER DENYING REVIEW

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Respondents U.S. Securities & Futures Corporation (“USSFC”), Nancy Bellassi, Thomas Gong, John Hing, Daniel Reynolds, and Jiping Wu seek interlocutory review of an Administrative Law Judge’s (“ALJ”) refusal to reopen the evidentiary record under Commission Rule 10.69.<sup>1</sup> In essence, respondents challenge the ALJ’s conclusion that their motion failed to establish that there were reasonable grounds for failing to introduce the proffered material into evidence at the time of the original hearing.<sup>2</sup> The Division of Enforcement (“Division”) opposes respondents’ application. It emphasizes that the ALJ did not abuse his discretion when he declined to certify his ruling as fit for immediate Commission review, and argues that the record does not establish the type of extraordinary circumstances that warrant such review.

Commission Rule 10.101 governs interlocutory review. To foster efficiency and preserve resources, the rule generally requires a petitioner to overcome two hurdles to obtain immediate review of an ALJ’s ruling. Ordinarily, petitioner must show both that: (1) the ALJ has certified

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<sup>1</sup> Counsel for these respondents filed a single joint motion. Except where necessary for clarity, this decision refers to the group as “respondents.”

<sup>2</sup> Respondents seek to introduce a deposition on written interrogatories that the ALJ authorized under Commission Rule 10.44. According to respondents, the deponent, Hennig Fasch, was a central figure in the alleged fraud scheme at the heart of this proceeding. They claim that the failure to introduce the deposition into evidence at the time of the original hearing was the product of a good faith misunderstanding by counsel.

his ruling as appropriate for immediate review;<sup>3</sup> and (2) that there are extraordinary circumstances that justify disregarding the normal presumption that the Commission will consider appellate challenges in an enforcement proceeding only after the ALJ has issued a final decision.<sup>4</sup> While the language of the rule does not contemplate immediate Commission review when an ALJ denies certification, our precedent indicates that this hurdle may be overcome by a showing that the ALJ's denial of certification was an abuse of discretion. *In re Global Minerals & Metals Corp.*, [2000-2002 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 28,655 at 52,559 (CFTC Oct. 3, 2001).

Respondents' application fails to address the propriety of the ALJ's denial of their request for certification. Moreover, our review of the record does not establish a basis for concluding that the denial of certification amounted to an abuse of discretion.<sup>5</sup> In these circumstances, immediate review is not warranted.

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<sup>3</sup> The certification focuses on three factors: (1) whether the ruling at issue involves a controlling question of law or policy; (2) whether an immediate appeal may materially advance the ultimate resolution of the issues in the proceeding; and (3) whether subsequent reversal of the ruling would cause unnecessary delay or expense to the parties.

<sup>4</sup> Commission precedent indicates that a determination of extraordinary circumstances involves a balancing of:

[T]he benefits of immediate intervention against those flowing from our policy of discouraging piecemeal appeals, including conservation of Commission resources and preservation of the orderly conduct of Commission proceedings.

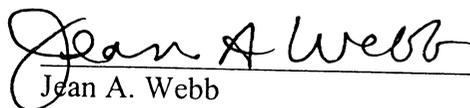
*In re Bilello*, [1992-1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,032 at 41,311 (CFTC March 24, 1994). Rulings that resolve important questions of first impression likely to have a material impact on other proceedings are more likely to warrant immediate intervention than rulings resting on judgments involving facts and circumstances that vary from case to case

<sup>5</sup> Because the case had been fully briefed at the time respondents submitted their motion, the ALJ could reasonably question both whether immediate appeal would materially advance the ultimate resolution of the issues in the proceeding and whether subsequent reversal of the ruling would cause unnecessary delay or expense to the parties. If the ALJ ultimately rules in respondents' favor, the issues raised in their application may become moot. If respondents are found liable, they may challenge the ALJ's ruling in an appeal from the initial decision. If the Commission concludes on review that respondents' challenge to the ALJ's ruling has merit, we may independently determine the weight to be properly accorded to the deposition.

Accordingly, respondents' application for interlocutory review is denied.

IT IS SO ORDERED.

By the Commission (Chairman NEWSOME and Commissioners HOLUM, LUKKEN, and BROWN-HRUSKA).

A handwritten signature in cursive script that reads "Jean A. Webb". The signature is written in black ink and is positioned above a horizontal line.

Jean A. Webb

Secretary to the Commission

Commodity Futures Trading Commission

Dated: May 12, 2003