

Securities Regulation Daily Wrap Up, ENFORCEMENT—S.D.N.Y.: SEC files memo in federal court supporting its Ways and Means Committee subpoena request, (Jul. 3, 2014)

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By Jim Hamilton, J.D., LL.M.

The SEC has filed a memorandum of law with the District Court for the Southern District of New York in support of the SEC's application for an order to show cause and an order requiring compliance with subpoenas (*SEC v. House Committee on Ways and Means of the U.S. House of Representatives*, June 20, 2014).

Investigation. The SEC has asked the court to order the House Ways and Means Committee and the staff director of the Committee's Health Subcommittee to comply with investigative subpoenas that the Commission issued and served on the Committee.

The SEC is investigating whether material inside information concerning an April 2013 announcement by the U.S. Centers for Medicare and Medicaid Services of 2014 reimbursement rates for the Medicare Advantage program was improperly leaked to certain members of the public in advance of the announcement and whether such action resulted in insider trading in violation of the federal securities laws.

The Commission said that the subpoenas seek documents critical to its investigation. The respondents have objected to the request but the SEC maintains that the objections raised by the respondents lack merit.

Sovereign immunity. The SEC said that the invocation of the doctrine of sovereign immunity was misplaced. There is no support in case law that the doctrine may be invoked against an agency of the federal government serving as a plaintiff. Even assuming sovereign immunity could apply here, continued the memorandum, the argument would founder on Congress' explicit waiver of immunity in the Stock Act.

The case is No. 1:14-mc-00193-P1.

Attorneys: Amanda Lynn Straub for SEC. Kerry William Kircher, General Counsel, US House of Representatives, for The Committee on Ways and Means of the US House of Representatives.

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