

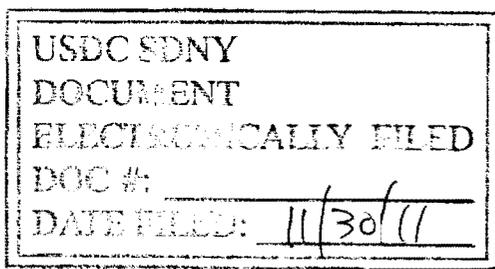
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :  
 :  
Plaintiff, :  
 :  
-v- :  
 :  
RAJAT K. GUPTA and RAJ RAJARATNAM, :  
 :  
Defendants. :  
-----X

11 Civ. 7566 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.



Pending before the Court is the motion of the Securities and Exchange Commission (SEC) - endorsed by the United States Attorney's Office for the Southern District of New York (which was permitted to intervene for this limited purpose) but opposed by both defendants - seeking to stay the taking of any depositions in this civil SEC enforcement action until after the conclusion of defendant Rajat Gupta's parallel criminal proceeding, United States v. Gupta, 11 Cr. 907 (JSR). At the initial pre-trial conference in this case held on November 8, 2011, the Court instructed the SEC, Gupta, and co-defendant Rajaratnam to each submit a list of the ten people they most wished to depose, and to designate which five of those ten people they most wished to depose before the conclusion of the criminal trial. On November 18, 2011, the parties and the intervenor argued the instant motion before the Court, which then directed the U.S. Attorney's Office to identify, in writing, which

witnesses on the parties' deposition lists the Government was unlikely to call as witnesses at Gupta's criminal trial. The Government submitted its list on November 22, 2011, and further letter briefs from the parties and intervenor were received on November 23, 2011 (and will now be docketed). The motion is therefore ripe for decision.

"[T]he Court's starting point is that discovery and other proceedings in a civil action brought by the Securities and Exchange Commission ought to proceed in the normal course, notwithstanding the happenstance that some of the discovery also relates to a parallel criminal matter." SEC v. Saad, 384 F. Supp. 2d 692, 693 (S.D.N.Y. 2005). But this presumption may be overcome in certain circumstances, id., and every such situation must be assessed on the basis of its own particular facts.

Here, the Government and the SEC are seeking only a brief adjournment, since the trial of the criminal case is firmly fixed for April 9, 2012 and should be completed before the end of April. Moreover, the defendants will not be prejudiced by any such delay, for several reasons. First, they have not only already had the benefit of extensive discovery in the closely related cases of SEC v. Galleon et al., 09 Civ. 8811 (JSR) and United States v. Rajaratnam, 09 Cr. 1184 (RJH), but have also

received some or all of the testimony taken by the SEC in its preparation for the instant case. See Transcript, 11/18/11, at 14. Second, as a result of the recently enacted amendment to Rule 13(b) of the S.D.N.Y. Rules for the Division of Business Among District Judges, this Court is able to coordinate the schedules of the parallel civil and criminal cases against Gupta, and has already set a firm trial date of October 1, 2012 in the instant case, thus providing sufficient time after the completion of the criminal case to complete all discovery while at the same time assuring that the parallel civil case will go forward to trial promptly.

Nevertheless, the Court sees no material argument whatsoever for delaying the depositions of the following persons identified by name on the parties' lists who are either persons the Government has indicated it is unlikely to call as witnesses at the forthcoming criminal trial or who are persons who already testified in the Rajaratnam trial about some or all of the same matters that are the subject of the instant parallel proceedings: (1) Lloyd Blankfein; (2) Ian Horowitz, (3) Ananth Muniyappa, (4) Greg Orman, (5) Gary Rosenbach, (6) Leon Shaulov, and (7) Brock Vandervliet. The Court perceives no material prejudice to any party in having these depositions commence now. Moreover, by

having these seven depositions now, even more time will be free for other discovery following the conclusion of the criminal trial.

Accordingly, all depositions in this case are hereby adjourned until after the conclusion of the criminal trial in United States v. Gupta, except for the seven listed above, which can go forward prior to that criminal trial.

SO ORDERED.



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JED S. RAKOFF, U.S.D.J.

Dated: New York, New York  
November 29, 2011