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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SECURITIES AND EXCHANGE
COMMISSION

Plaintiff,

v.

KIMON P. DAIFOTIS and RANDALL MERK,

Defendants.

Civil Case No.: 11-cv-00137-WHA

**ORDER GRANTING STIPULATION
REGARDING DEFENDANTS'
DEADLINES TO MOVE FOR
RECONSIDERATION AND TO
ANSWER AND PLAINTIFF'S
DEADLINE TO MOVE FOR LEAVE
TO FILE AMENDED COMPLAINT**

WHEREAS, on June 6, 2011, the Court entered its Order Granting in Part and Denying in Part Defendants' Motions to Dismiss and Strike (dkt. no. 58), pursuant to which the plaintiff Securities and Exchange Commission ("SEC") may seek leave to amend its complaint to cure the items identified by the Court by June 27, 2011;

WHEREAS, pursuant to Federal Rule of Civil Procedure 12(a)(4), defendants' answers to the SEC's complaint are due on June 20, 2011;

WHEREAS, on June 15, 2011, the Court granted defendants' Motion for Leave to File a Motion for Reconsideration of the portion of the Court's June 6, 2011 Order denying the motions to dismiss the primary liability claims. (*See* Order Granting Defendants' Motion for Leave to File Motion for Reconsideration, dkt. no. 61.);

WHEREAS, the parties have conferred and wish to avoid the duplication of effort and inefficiencies that would result from: (1) defendants having to answer the current complaint in light of the possibility that the SEC may seek leave to amend its complaint; and

(2) the SEC having to file a motion for leave to amend its complaint in view of the defendants' motion for reconsideration; and

WHEREAS, an extension of these deadlines will have no effect on other proceedings in the case and will not change any Court-ordered deadlines.

THE PARTIES HEREBY STIPULATE AND AGREE, subject to the Court's approval, as follows:

1. Defendants shall have until June 22, 2011 to file their motion for reconsideration, noticed on the normal 35-day track.

2. The SEC may file a motion, noticed on the normal 35-day track, for leave to file an amended complaint twenty-one calendar days after the date the Court rules on defendants' motion for reconsideration. A proposed amended complaint shall be appended to the SEC's motion for leave to file an amended complaint. The motion for leave to file an amended complaint shall clearly explain how the amendments to the complaint cure the items identified by the Court.

3. If the SEC seeks leave to amend its complaint, then defendants shall not be required to answer until after the Court rules on the SEC's motion for leave to amend the complaint. If the Court grants the SEC's motion, defendants shall answer or otherwise respond to the amended complaint within **fourteen** days after the amended complaint is served, or as otherwise instructed by the Court in its order. If the Court denies the SEC's motion, defendants shall answer the current complaint within **fourteen** days after the Court issues its order.

4. If the SEC elects not to seek leave to amend the complaint, then defendants shall answer the current complaint within **fourteen** days after the date by which the SEC **would have had to file its motion** for leave to amend its complaint.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: June 17, 2011.



The Honorable William Alsup
United States District Judge