

**Salomon Smith Barney, et al. re: Metromedia Fiber Network
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE SALOMON ANALYST METROMEDIA :
LITIGATION :
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02 Civ. 7966 (GEL)

ORDER

GERARD E. LYNCH, District Judge:

Defendants' motion to quash deposition notices for Charles O. Prince and Sanford I. Weill is denied. Each deposition shall be limited, however, to four hours.

Although courts must be alert to avoid abusive demands to depose senior executives without substantial knowledge of the matters in issue, see Consol. Rail Corp. v. Primary Indus. Corp., 92 Civ. 4927 (PNL) (JCF), 1993 WL 364471, at *1 (S.D.N.Y. Sept. 10, 1993), it nevertheless remains the case that "[h]ighly-placed executives are not immune from discovery," id. at *22. The burden is on the movant to justify a protective order barring a deposition. See SEC v. Sekhri, 98 Civ. 2320 (RPP), 2002 WL 31654969, at *2 (S.D.N.Y. Nov. 22, 2002).

Defendants have not carried that burden here. Weill has submitted an affidavit stating that "[t]o the best of [his] recollection, [he] had no involvement" in the credit facility at issue in this case; plaintiffs are entitled to test this claim at a deposition. Although plaintiffs' belief that Weill may have knowledge of relevant matters is based on speculative testimony by a Metromedia director, the question here is not whether plaintiffs have admissible evidence supporting a finding that Weill committed certain acts, but whether they can show that the requested discovery "appears reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1). Defendants have not shown that the deposition is irrelevant by this standard; nor have they shown that the discovery should be limited for any of the reasons set forth in Rule 26(b)(2).

In addition, both Weill and Prince have issued public apologies recognizing that doubts existed with respect to the objectivity of SSB's research. While defendants are correct that plaintiffs' claims based solely on conflicts of interest have been dismissed, such conflicts may be relevant to issues of motive and intent. See In re Salomon Analyst Metromedia Litig., 373 F. Supp. 2d 235, 238 (S.D.N.Y. 2005).

While the Court will allow the depositions to go forward, it is appropriate to set time limits. The issues on which plaintiffs seek to depose these executives are hardly central to the remaining claims in the case, and it appears from plaintiffs' own submission that they already have access to deposition testimony given by both witnesses in other litigation about the conflict of interest issues. (9/22/06 Joint Letter at 12.) Moreover, it appears that at least some


information Prince may have about relevant matters may derive from privileged sources. (Id. at 3.) Setting time limits is preferable to issuing any advance decrees regarding the proper subject matter to be addressed at the deposition, given that such decrees often lead to time-consuming conflicts over the boundaries of permitted and forbidden topics.

Accordingly, it is hereby ORDERED that:

1. Defendants' motion to quash deposition notices to Charles O. Prince and Sanford I. Weill is denied.
2. The depositions shall be completed by November 3, 2006.
3. Each deposition shall be limited to four hours.
4. The parties shall appear for a post-discovery conference on November 6, 2006, at 10:30 a.m.

SO ORDERED.

Dated: New York, New York
October 10, 2006


GERARD E. LYNCH
United States District Judge