

Gregory G. Skordas (#3865)
SKORDAS, CASTON & HYDE, LLC
341 So. Main Street, Suite 303
Salt Lake City, UT 84111
Telephone: (801) 531-7444
Facsimile: (801) 531-8885
Attorneys for Frank Gillen

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

<p>IN THE MATTER OF:</p> <p>CITY LIPPS COSMETICS, LLC; CITY LIPPS MARKETING, LLC; JORY C. ALLEN; CHAD D. WRIGHT; and FRANK J. GILLEN;</p> <p>Respondents.</p>	<p>MOTION TO STAY ORDERS TO SHOW CAUSE</p> <p>Docket No. SD.06.0068 Docket No. SD.06.0069 Docket No. SD.06.0070 Docket No. SD.06.0071 Docket No. SD.06.0072</p>
<p>IN THE MATTER OF: FRANK J. GILLEN,</p> <p>Respondent.</p>	<p>Docket No. SD.07.0009</p>

Respondent, Frank J. Gillen, by and through his attorney, Gregory G. Skordas, hereby moves the Division of Securities, Utah Department of Commerce, for an Order staying the Orders to Show Cause filed in the cases indicated above, until the conclusion of criminal charges pending in *State of Utah v. Frank J. Gillen*, case # 071401445, in the Fourth Judicial District Court for Utah County, State of Utah.

Briefly stated, the motion is requested on Fifth Amendment grounds, because the criminal case involves factually related charges. This motion is supported by a memorandum of law.

DATED this 3 day of September, 2007.

SKORDAS, CASTON & HYDE, LLC



Gregory G. Skordas
Attorney for Respondent Frank Gillen

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of ~~May~~ ^{September}, 2007, I mailed a true and correct copy of the foregoing **MOTION TO STAY ORDERS TO SHOW CAUSE**, by United States first class mail, postage pre-paid, to the following:

Division of Securities
Utah Department of Commerce
160 East 300 South
P.O. Box 146760
Salt Lake City, Utah 84114-6760



Skordas, Caston & Hyde, L.L.C.

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<p>IN THE MATTER OF:</p> <p>CITY LIPPS COSMETICS, LLC; CITY LIPPS MARKETING, LLC; JORY C. ALLEN; CHAD D. WRIGHT; and FRANK J. GILLEN;</p> <p>Respondents.</p>	<p>MEMORANDUM IN SUPPORT OF MOTION TO STAY ORDERS TO SHOW CAUSE</p> <p>Docket No. SD.06.0068 Docket No. SD.06.0069 Docket No. SD.06.0070 Docket No. SD.06.0071 Docket No. SD.06.0072</p>
<p>IN THE MATTER OF: FRANK J. GILLEN,</p> <p>Respondent.</p>	<p>Docket No. SD.07.0009</p>

Respondent, Frank J. Gillen, by and through his attorney, Gregory G. Skordas,
files the following memorandum in support of his Motion to Stay Orders to Show Cause.

FACTUAL BACKGROUND

1. On or about September 13, 2006, an Order to Show Cause was filed in Docket # SD 06-0072. This matter involves a charge of securities fraud against Gillen, pursuant to Utah Code

Ann. § 61-1-1.

2. On or about April 3, 2007, criminal charges were filed against Gillen in the Fourth Judicial District Court for Utah County, State of Utah (*State of Utah v. Frank J. Gillen*, case # 071401445). The charges included three felony counts pursuant to Utah Code Ann. § 61-1-1.

3. Also on or about April 3, 2007, a second Order to Show Cause as to Gillen was filed in Docket No. SD.07.0009. This matter also involves a charge of securities fraud against Gillen, pursuant to Utah Code Ann. § 61-1-1.

4. The two administrative actions pending herein are founded upon the same facts as the criminal action currently pending in the Fourth Judicial District Court.

ARGUMENT

The two administrative matters against Gillen should be stayed pending the resolution of the Fourth District Court criminal case because Gillen will not be able to preserve his Fifth Amendment privilege against self-incrimination in the absence of a stay. In *S.E.C. v. Dresser*, the court held that:

. . . the strongest case for deferring civil proceedings until after completion of criminal proceedings is where a party under indictment for a serious offense is required to defend a civil or administrative action involving the same matter. The noncriminal proceeding, if not deferred, might undermine the party's Fifth Amendment privilege against self-incrimination . . . [and] . . . expose the basis of the defense to the prosecution in advance of criminal trial, or otherwise prejudice the case. If delay of the noncriminal proceeding would not seriously injure the public interest a court may be justified in deferring it.

See Dresser, 628 F.2d 1368, 1375-76 (D.C. Cir. 1980).

Other courts have held that a variety of factors should be weighed in determining

whether a stay should be granted, including: (1) the extent to which Fifth Amendment rights are implicated; (2) the interests of plaintiff and potential prejudice resulting from delay; (3) the burdens that the civil proceeding may impose upon defendant if it is not stayed; (4) judicial efficiency; (5) the interests of non-parties to the civil proceeding and the public interest. *See S.E.C. v. Healthsouth Corp.*, 261 F. Supp. 1298, 1326 (N.D. Ala. 2003).

As to the first factor, Gillen's Fifth Amendment concerns are paramount and should be given the weight due to constitutional concerns. On the second factor and fourth factors, there will not likely be a significant delay in the prosecution of the criminal case. Criminal cases are routinely resolved in a matter of months. Furthermore, testimony and evidence developed in the criminal matter may be used in the civil proceedings and may actually be helpful in avoiding duplicative efforts in the civil proceedings.

The third factor overlaps with the first, and also militates in Gillen's favor. The burden is that "the noncriminal proceeding, if not deferred, might undermine the party's Fifth Amendment privilege against self-incrimination . . . [and] . . . expose the basis of the defense to the prosecution in advance of criminal trial, or otherwise prejudice the case." *See Dresser*, 628 F.2d at 1375-76.

Finally, the public interest is already adequately protected by the pending criminal proceedings.

CONCLUSION

For the foregoing reasons, Respondent Gillen respectfully requests that the two civil proceedings described above be stayed pending the resolution of the criminal charges pending in the Fourth District Court.

DATED this 8 day of September, 2007.

SKORDAS, CASTON & HYDE, LLC



Gregory G. Skordas
Attorney for Respondent Frank Gillen

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I hereby certify that on the 7th day of ~~May~~^{September}, 2007, I mailed a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO STAY ORDERS TO SHOW CAUSE**, by United States first class mail, postage pre-paid, to the following:

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