

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

U.S. Commodity Futures Trading Commission, Civil No. 09-3332 (MJD/FLN)

Plaintiff,

v.

Trevor Cook, et al.,

ORDER

Defendants.

and

United States Securities and Exchange Commission, Civil No. 09-3333 (MJD/FLN)

Plaintiff,

v.

Trevor Cook, et al.,

Defendants.

D. Gerald Wilhelm for the United States.
Steven C. Seeger for Plaintiff United States Securities and Exchange Commission.
David Slovick for Plaintiff United States Commodity Futures Trading Commission.
Gregory M. Erickson & William F. Mohrman for Investor Respondents.
Defendant Patrick Kiley, *pro se*.
Tara C. Norgard for Receiver.

THIS MATTER came before the undersigned United States Magistrate Judge on February 28, 2011 on the Motion of the United States to Intervene Pursuant to FED.R.CIV.P. 24 [Civil No. 09-3332: #625] [Civil No. 09-3333: #674].

In *Donaldson v. United States*, 400 U.S. 517, 529-530 (1971), the Supreme Court held that the right of a third party to intervene under Rule 24(a)(2) in a summons enforcement action is “permissive only and is not mandatory,” and that the determination of whether intervention is

appropriate in a particular case requires the “usual process of balancing opposing equities.” The Court identified circumstances in which intervention by a third party for purposes of quashing a subpoena is appropriate, including where the third party asserts a privilege over the material sought by the subpoena. *Id.*

Unlike the taxpayer in *Donaldson*, who asserted no proprietary interest over the documents that were the subject of that enforcement action, the United States in the instant case asserts a proprietary interest in the papers that are the subject of the subpoena issued by the Investor Respondents. The Court expresses no opinion as to whether the United States will ultimately be able to prove that the documents at issue are subject to a privilege. The Court finds only that the United States has claimed an interest in the documents sufficient to merit intervention.

Based upon the foregoing and all the files, records and proceedings herein, **IT IS HEREBY ORDERED** that the Motion of the United States to Intervene Pursuant to FED.R.CIV.P. 24 [Civil No. 09-3332: #625] [Civil No. 09-3333: #674] is **GRANTED**.

DATED: March 10, 2011

s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge