

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 2911/July 8, 2015

ADMINISTRATIVE PROCEEDING  
File No. 3-16349

In the Matter of  
  
BARBARA DUKA

ORDER DENYING MOTION FOR  
ADJOURNMENT OF HEARING

The Securities and Exchange Commission (Commission) issued an Order Instituting Administrative and Cease and Desist Proceedings (OIP) against Respondent Barbara Duka on January 21, 2015, pursuant to Section 8A of the Securities Act of 1933, Sections 15E(d) and 21C of the Securities Exchange Act of 1934, and Section 9(b) of the Investment Company Act of 1940. A hearing is scheduled to begin on September 16, 2015.

On July 6, 2015, Duka filed a Motion for Adjournment of Hearing (Motion), requesting that I postpone the hearing and all prehearing submission dates by ten weeks. In support of the Motion, Duka argues that “the enormity of the investigative file,” which contains approximately 830,000 documents, “precludes counsel’s reasonable ability to prepare adequately for the hearing scheduled for mid-September 2015.” Motion at 2. The Motion also represents that the Division of Enforcement recently supplemented its production to Duka, whose counsel is “still evaluating the record for other gaps.” *Id.* at 5. The Division does not take a position on Duka’s requested adjournment, but filed a Notice of Clarification (Notice) on July 7, 2015, explaining that: (1) its recent supplemental production contained 1,036 Excel spreadsheets which were requested by Duka for the first time on June 26, 2015; (2) while the native files had not previously been produced, the metadata for each spreadsheet and a slip sheet flagging the existence of the native files were included in the Division’s original production; and (3) the Division produced the native files within two business days of Duka’s request. Notice at 1-2.

I have evaluated Duka’s Motion in light of the factors listed in Commission Rule of Practice 161, which directs that I consider (1) the length of the proceeding to date; (2) the number of postponements, adjournments, or extensions already granted; (3) the stage of the proceeding at the time of the request; (4) the impact of the request on my ability to complete the proceeding in the time specified by the Commission; and (5) any other such matters as justice may require. 17 C.F.R. § 201.161(b)(1). The OIP issued on January 21, 2015, over five months ago. Duka was previously granted one extension, giving her additional time to file her Answer. *Barbara Duka*, Admin. Proc. Rulings Release No. 2321, 2015 SEC LEXIS 570 (Feb. 18, 2015). I have already ruled on the parties’ motions for summary disposition, and the first pre-hearing submissions are due in approximately one month. *See Barbara Duka*, Admin. Proc. Rulings

Release No. 2893, 2015 SEC LEXIS 2714 (July 2, 2015); Admin. Proc. Rulings Release No. 2889, 2015 SEC LEXIS 2700 (July 1, 2015); Admin. Proc. Rulings Release No. 2378, 2015 SEC LEXIS 881 (Mar. 4, 2015). After Duka's counsel expressed concern during a February prehearing conference about having time to adequately prepare for a hearing starting in July or August 2015, and specifically requested a hearing starting after Labor Day, the hearing was scheduled for mid-September 2015, already well past the guidelines provided in Rule 360(a). *See* 17 C.F.R. § 201.360(a)(2) ("there shall be approximately 4 months from the order instituting the proceeding to the hearing"); Prehearing Transcript (Tr.) at 7-9. A ten-week postponement of the hearing would render it impossible for me to issue an initial decision in the 300-day timeline ordered by the Commission.

I have also considered whether the prejudice to Duka if her Motion is denied justifies a departure from the "policy of strongly disfavoring" such adjournments enunciated in Rule 161(b)(1), 17 C.F.R. § 201.161(b)(1). Duka has been aware of the size of the Division's investigative file since at least February 2015. Tr. 7. The Motion represents that her counsel have taken steps to mitigate the difficulty involved in reviewing the file by using tailored word and term searches and hiring contract attorneys to assist in the review. Motion at 2, 4. The Motion provides no explanation for why these actions, commonly undertaken by attorneys faced with large document productions, were insufficient to cull the number of pertinent documents to a reasonable number in the intervening five months. While the Motion calls the Division's earlier production "incomplete," the Division has explained that the number of recently produced documents is relatively small and that counsel for Duka waited months before requesting them. Notice at 1-2. The Motion supplies no evidence supporting Duka's contention that this supplemental production suggests "other gaps" in the materials provided by the Division. *See* Motion at 5.

Even if the investigative file is, as Duka argues, vast and difficult to review, the Commission has previously rejected the argument that it was "not feasible" for a respondent to review the contents of a large electronic document production in advance of a scheduled hearing. *See John Thomas Capital Mgmt. Grp. LLC*, Investment Advisers Act of 1940 Release No. 3733, 2013 WL 6384275, at \*5 (Dec. 6, 2013); Motion at 2-4. Furthermore, the requested ten-week extension would place the beginning of the hearing at or around November 25, 2015, the day before the Thanksgiving holiday, and push completion of the hearing well into December, presenting the potential for other scheduling conflicts for the parties, counsel, and witnesses. *Cf.* Tr. 11 (Duka's counsel requesting that the hearing be scheduled to avoid a religious holiday).

For these reasons, I find that Duka has failed to make the showing required by Rule 161(b)(1). Accordingly, the Motion for Adjournment of Hearing is DENIED.

SO ORDERED.

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Cameron Elliot  
Administrative Law Judge