

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 4026/July 27, 2016

ADMINISTRATIVE PROCEEDING  
File No. 3-17319

In the Matter of  
  
JAN E. HELEN

ORDER FOLLOWING  
PREHEARING CONFERENCE

On June 28, 2016, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Respondent pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940.

On July 19, 2016, the parties submitted a proposed stipulated prehearing schedule. On July 25, 2016, Respondent filed his answer. On July 26, 2016, I held a prehearing conference attended by the Division of Enforcement and counsel for Respondent. I adopt the parties' proposed prehearing schedule as follows:

- August 26, 2016: Motions for summary disposition may be filed.
- September 9, 2016: Oppositions to motions for summary disposition may be filed.
- October 10, 2016: The parties shall exchange witness and exhibit lists, and shall exchange pre-marked exhibits.
- October 17, 2016: The parties shall exchange and file expert reports, if any.
- October 24, 2016: The parties shall exchange and file objections to witnesses and exhibits, if any, and motions in limine, if any.
- October 31, 2016: The parties shall exchange and file stipulations, if any, and rebuttal expert reports, if any.
- November 7, 2016: The parties shall exchange and file oppositions to motions in limine, if any, and shall file prehearing briefs.

November 14, 2016: The hearing will commence at a time and location to be determined in Denver, Colorado.

The parties are asked to email electronic copies of any filings in PDF text-searchable format to [alj@sec.gov](mailto:alj@sec.gov). Email, however, does not substitute for the required filing with the Office of the Secretary. If any motion or brief includes exhibits, such exhibits should be emailed as separate attachments, not a combined PDF.

During the prehearing conference, I also addressed and denied Respondent's two affirmative defenses, laid out in his answer. First, Respondent asserted that this proceeding was invalid "on the grounds that the presiding administrative law judge . . . was not appointed in conformity with the Appointments Clause of the Constitution of the United States, despite performing functions making her an inferior officer." Answer at 4. I explained to the parties that I in fact was appointed as the chief administrative law judge by the Commission, and at Respondent's counsel's request, have provided my certificate of appointment to the Office of the Secretary for inclusion in the record. Moreover, the Commission has previously rejected arguments that a proceeding before the Commission's administrative law judges is unconstitutional because of failure to be "properly appointed," finding that "the appointment of Commission ALJs is not subject to the requirements of the Appointments Clause." *J.S. Oliver Capital Mgmt., L.P.*, Exchange Act Release No. 78098, 2016 SEC LEXIS 2157, at \*3, 93 (June 17, 2016).

Second, Respondent alleged that he will be "deprived of due process of law due to the paucity of procedural protections provided to him under the SEC's Rules of Practice." Answer at 4. However, "broad attacks on the procedures of the administrative process have been repeatedly rejected by the courts." *Harding Advisory LLC*, Securities Act Release No. 9561, 2014 SEC LEXIS 938, at \*34-35 (Mar. 14, 2014) (citation omitted). Agency adjudication has been repeatedly upheld as comporting with due process, and such adjudication has protections assuring that the hearing officer exercises independent judgment, free from pressures by the parties or other officials within the agency. See *Butz v. Economou*, 438 U.S. 478, 513-14 (1978); *Blinder, Robinson & Co. v. SEC*, 837 F.2d 1099, 1104-08 (D.C. Cir. 1988); *The Stuart-James Co.*, Exchange Act Release No. 28810, 1991 SEC LEXIS 168, at \*4-5 (Jan. 23, 1991). I am unaware of any authority requiring that agency procedures be coextensive with those in district court. Moreover, Respondent will be given ample opportunity to defend the proceeding. See *Jonathan Feins*, Exchange Act Release No. 41943, 1999 SEC LEXIS 2039, at \*25-26 (Sept. 29, 1999) ("Administrative due process is satisfied where the party against whom the proceeding is brought understands the issues and is afforded a full opportunity to meet the charges during the course of the proceeding."). Accordingly, there is no basis for Respondent's due process defense at this stage of the proceeding; if Respondent wishes to further brief the issue in his post-hearing brief to preserve it for the record, he is free to do so.

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Brenda P. Murray  
Chief Administrative Law Judge