

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4098/August 26, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17352

In the Matter of

SAVING2RETIRE, LLC, and
MARIAN P. YOUNG

SCHEDULING ORDER

The Securities and Exchange Commission instituted this proceeding in July 2016. A telephonic prehearing conference was held on August 25, 2016. During the conference, Respondents waived their right to a hearing within sixty days of service of the order instituting proceedings (OIP). *See* 15 U.S.C. § 80b-3(k)(2). Respondents also confirmed that they, like the Division of Enforcement, want to proceed under the Commission's amended Rules of Practice.¹ Also during the conference, I granted Respondents an extension of time until September 27, 2016, to file their answer to the OIP.

I ORDER the following schedule:

October 25, 2016: Expert reports, if any, are due.

November 15, 2016: Rebuttal reports, if any, are due.

December 2, 2016: Discovery under amended Rule of Practice 233 ends.

December 9, 2016: Motions for summary disposition, if any, under amended Rule 250(c) are due.²

¹ On July 13, 2016, the Commission adopted amendments to its Rules of Practice which take effect September 27, 2016. *See* Amendments to the Commission's Rules of Practice, 81 Fed. Reg. 50212, 50212 (July 29, 2016) (to be codified at 17 C.F.R. pt. 201), <https://www.gpo.gov/fdsys/pkg/FR-2016-07-29/pdf/2016-16987.pdf>. For proceedings initiated between those dates, the Commission provided that parties may elect to apply the new rules. *See id.* at 50228-29 & n.184.

² A motion under amended Rule of Practice 250(c) for leave to file a motion for summary disposition should be filed in conjunction with the motion for summary disposition.

- December 30, 2016: Oppositions to motions filed under amended Rule 250(c) are due.
- January 10, 2017: Parties exchange and file witness and exhibit lists.
- January 11, 2017: Replies to oppositions to motions filed under amended Rule 250(c) are due.
- January 17, 2017: Motions in limine, including objections to witnesses and exhibits are due. Requests for subpoenas are due.³
- January 23, 2017: Parties exchange but do not file premarked exhibits. Stipulations, requests for official notice, and admissions of fact, and amendments to witness lists are due.
- January 26, 2017: Oppositions to motions in limine and oppositions to objections to exhibits and witnesses are due.
- January 30, 2017: Prehearing briefs are due.⁴
- February 1, 2017: The parties will participate in a telephonic prehearing conference, at a time to be determined.
- February 7, 2017: The hearing will begin at 9:30 a.m. CST in Houston, Texas, at a location to be determined.

The parties are reminded that all filings must be filed in hard copy with the Office of the Secretary. *See* 17 C.F.R. §§ 201.151, .152. They are asked to email courtesy copies of filings to alj@sec.gov in Word and in PDF text-searchable format. Electronic copies of exhibits should not be combined into a single PDF file, but sent as separate attachments, and should be provided in text-searchable format whenever practicable.

Hearing Guidelines

I will follow the general guidelines described below during these proceedings. The parties should review what follows *and promptly raise any objections they may have to the application of these guidelines in this matter.*

³ Although January 17, 2017, is the deadline for requesting subpoenas, in order to minimize inconvenience to third parties and so that those third parties have adequate notice, the parties are encouraged not to wait to submit requests for subpoenas.

⁴ Prehearing briefs are optional. The parties should note, however, that I do not normally entertain opening statements and that a prehearing brief serves as the party's opening statement.

1. Subpoenas. A party's motion to quash a subpoena will be due within five business days of the submission of the subpoena for signing. Any opposition to the motion to quash will be due within five business days thereafter.

2. Exhibits. The parties should confer and attempt to stipulate to the admissibility of exhibits. In order to avoid duplication of exhibits, the parties should identify joint exhibits. Exhibits are not filed with the Office of the Secretary until the close of the hearing at my instruction.

3. Exhibit lists. A comprehensive exhibit list prevents other parties from being surprised in the middle of the hearing. Given this fact, exhibit lists shall be exchanged among the parties and should include all documents that a party expects to use in the hearing for any purpose. This includes documents that are relevant only for impeachment purposes or which are presumptively inadmissible. The parties should serve their opponents with any amendments to their individual exhibit list. Because I rely on the parties' exhibit lists, the parties should provide me with a paper copy of their final exhibit lists at the beginning of the hearing. After filing the initial exhibit list, there is no need in the interim to submit amendments to my office. Following the hearing, I will issue a separate order directing the parties to file a list of all exhibits, admitted and offered but not admitted, together with citations to the record indicating when each exhibit was admitted.

4. Expert reports and testimony. Expert witness disclosures must comply with amended Rule of Practice 222(b)(1). 81 Fed. Reg. at 50235. Because this Rule is modeled on Federal Rule of Civil Procedure 26(a)(2)(B), the parties should look to Rule 26(a)(2)(B) and cases interpreting it for guidance. Failure to comply with the requirements of amended Rule 222(b) may result in the striking of an expert's report. The filing of the expert's report according to the prehearing schedule essentially constitutes the filing of the expert's direct testimony. During the hearing, the expert will not be subject to direct examination, and will simply be sworn in and proffered for cross-examination. On request, however, a party may conduct a brief direct examination of the party's expert.

5. Hearing schedule. The first day of the proceeding will begin at 9:30 a.m. Unless circumstances require a different schedule, we will begin each subsequent day at 9:00 a.m. Each day of the proceeding should last until at least 5:15 p.m. I generally take one break in the morning, lasting about fifteen minutes, and at least one break in the afternoon. I generally break for lunch between noon and 12:30 p.m., for about one hour.

6. Hearing issues.

A. Examination.

i) In general, the Division of Enforcement presents its case first because it has the burden of proof. Respondents then present their case. If necessary, the parties may agree to proceed in some other order and may take witnesses out of order.

ii) If the Division calls a non-party witness that Respondents also wish to call as a witness, Respondents should cross-examine the witness as if they were calling the witness in their own case. This means that Respondents' cross-examination of the witness in this circumstance may exceed the scope of what was covered by Division's direct examination of that same witness. This will avoid the need to recall a witness just so the witness can testify for Respondents' case.

iii) I am flexible regarding the manner of presenting the testimony of Respondents, so long as the parties agree on it. By way of example, if the Division calls Respondent Marian P. Young as its last witness, the parties may agree that Respondents will conduct the direct examination, followed by the Division's cross-examination, which may exceed the scope of Respondents' direct examination of that witness. In the absence of any agreement, Respondent Young's testimony will proceed in the usual manner, *i.e.*, Respondent Young will be called as a witness and examined potentially multiple times. If the Division calls Respondent Young as a witness and she later testifies as part of her own case, the Division's cross-examination during Respondents' case will be limited to the scope of the Respondents' direct examination.

iv) In general, cross-examination may be conducted by leading questions, even as to Division witnesses that a Respondent wishes to call in her own case. If Respondents' retain counsel, that counsel may not lead his or her client, however. As a result, if Respondent Young is called as a witness in the Division's case, her counsel may not ask leading questions on cross-examination. Similarly, if a Commission employee is called as a witness for Respondents, the Division may not ask leading questions on cross-examination.

7. Pleadings. Prehearing and post-hearing briefs are limited to 14,000 words. *Cf.* 17 C.F.R. § 201.450(c) (imposing a word-limit for briefs filed before the Commission). Parties may seek leave to exceed this limit through a motion filed seven days in advance of the relevant briefing deadline. To enhance the readability of pleadings, I urge counsel to limit the use of acronyms to those that are widely known. *See* Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* 120-22 (2008); *see also Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1320-21 (D.C. Cir. 2014) (Silberman, J., concurring). For the same reason, I ask that counsel use the same font size in footnotes as that used in the body of a pleading.

James E. Grimes
Administrative Law Judge