

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 4387/November 23, 2016

ADMINISTRATIVE PROCEEDING

File No. 3-17342

In the Matter of	:	
	:	
RD LEGAL CAPITAL, LLC, and	:	ORDER
RONI DERSOVITZ	:	

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings on July 14, 2016, pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(e) and 203(f) of the Investment Advisers Act of 1940, and Section 9(b) of the Investment Company Act of 1940. The hearing is set to commence on March 20, 2017.¹

Under consideration are (1) the Division of Enforcement’s request for subpoenas directed to Respondents and (2) the issue of whether depositions of a party’s proposed expert witness count against the maximum number of total depositions provided in 17 C.F.R. § 201.233, as articulated in the parties’ September 12, 2016, letters, which reported progress on a number of other issues through “meet and confer.”

Subpoenas

It is unusual for the Division, having conducted an investigation prior to the institution of proceedings, to request subpoenas *duces tecum*, but the Commission’s rules do not prohibit this.² Thus, the subpoenas will be issued, as modified herein.

The subpoenas request as to each Respondent “Documents sufficient to demonstrate [the Respondent’s] financial condition as of July 14, 2016.” Respondents note that they provided a significant amount of data regarding their financial condition to the Division during its investigation and ask that this request be denied. The request will be denied as unreasonable and excessive in

¹ The recently amended rules of practice apply to this proceeding. *RD Legal Capital, LLC*, Admin. Proc. Rulings Release No. 4036, 2016 SEC LEXIS 2661 (A.L.J. Aug. 2, 2016); *see* Amendments to the Commission’s Rules of Practice, 81 Fed. Reg. 50212, 50228-29 (July 29, 2016).

² *See* 17 C.F.R. § 201.232; *see also* Amendments to the Commission’s Rules of Practice, 81 Fed. Reg. at 50216 (“Investigative testimony generally is directed at ascertaining facts in order for the staff to determine whether to recommend that the Commission authorize an action for violations of the federal securities laws. Once . . . the Commission has instituted an administrative proceeding, issues relevant to a claim or defense may . . . warrant new or additional focus in discovery.” (omitting footnote describing the example of reliance on professionals)).

scope. The information sought will not lead to information relevant to the *Division's* case. Rather, if Respondents wish, pursuant to 17 C.F.R. § 201.630, to present evidence of inability to pay disgorgement, interest, or penalties, it is up to Respondents to present such evidence, including their financial disclosures on Form D-A, in *their* case.

The subpoenas request as to each Respondent “[a]ll documents relating to any legal advice requested by, or provided to, [Respondent or affiliates] concerning any communications since June 2011 regarding RD Legal Funding Partners, LP, RD Legal Funding Offshore Fund, Ltd., RD Legal Special Opportunities Fund L.P., or RD Legal Special Opportunities Fund L.P. Ltd. (‘Funds’) including, without limitation, any offering memoranda, marketing materials or other written or oral communication regarding the Funds.” This request relates to a defense stated in Respondents’ Answer: “Respondents relied in good faith upon the judgment, advice, and counsel of attorneys, accountants, auditors, and other professionals, including but not limited to a nationally-recognized third-party valuation agent, as to matters reasonably believed to be within such persons’ professional or expert competence.”³ Answer at 49. The request is overbroad and burdensome and will be modified. Instead, Respondents will be required, to the extent they have not previously done so, to produce, by December 5, 2016, a narrative describing legal advice concerning the issues alleged in the OIP and to identify all “attorneys, accountants, auditors, and other professionals, including but not limited to a nationally-recognized third-party valuation agent” consulted. *Cf.* 17 C.F.R. § 291.222(a)(1). The subpoena directed to RD Legal Capital, LLC, requests notes taken by Katarina Markovic. However, Respondents state that they have fully complied with this request. Sept. 30, 2016, letter at 3.

Depositions

As applicable in this proceeding, amended 17 C.F.R. § 201.233 provides that, by right, Respondents, collectively, may depose five persons, and the Division may depose five persons. Respondents urge that depositions of expert witnesses not count against the limit, and the Division urges the opposite. Both point to the Commission’s noting that one commenter had urged that the limit not apply to experts while failing to clarify one way or the other whether the limit does or does not apply.⁴ In view of the Commission’s failure to specify that depositions of experts count toward the limit, it is concluded that they do not. Deposing the opposing party’s expert witnesses is a developmental step from the practice of interviewing them. Further, to require depositions of experts to count against the limit would invite gamesmanship.

Subpoenas directed to Reed Smith and to Marcum were issued today at the Division’s request. Insofar as the subpoenas may be subject to applications to quash or modify, pursuant to 17 C.F.R. § 201.232(e), the Division is encouraged to confer proactively with the recipients to narrow the scope of the documents sought so as to reduce burden, to avoid impinging on privileges, and to eliminate duplication of information sought.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge

³ As amended, 17 C.F.R. § 201.220(c) requires a respondent to disclose such reliance in its answer. *See* Amendments to the Commission’s Rules of Practice, 81 Fed. Reg. at 50219-20.

⁴ *See* Amendments to the Commission’s Rules of Practice, 81 Fed. Reg. at 50215-17.