

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4499/January 4, 2017

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.

Under consideration are: (1) Respondents’ December 20, 2016, Motion for Two Additional Depositions, and (2) The Division of Enforcement’s December 22, 2016, Opposition.

The Commission’s rule regarding depositions in administrative proceedings is 17 C.F.R. § 201.233 (Rule 233). It provides Respondents with the opportunity to depose five fact witnesses as of right.¹ See Rule 233(a)(2); Amendments to the Commission’s Rules of Practice, 81 Fed. Reg. 50212, 50216-17 (July 29, 2016). Pursuant to Rule 233(a)(3), a party may seek leave to notice up to two additional depositions upon demonstrating “a compelling need.”² Rule 233(a)(3)(ii). To do so, the party must identify and describe the role of each of the seven and describe the matters concerning which each is expected to be questioned and why his/her deposition is necessary for the party’s arguments, claims, or defenses. Rule 233(a)(3)(ii)(A)-(C). The party must also show that the additional depositions will not be unreasonably cumulative or duplicative. Rule 233(a)(3)(ii)(D). The Commission has not elaborated on what constitutes “compelling circumstances” or “compelling need” beyond the requirements specified in Rule 233(a)(3)(A)-(D) except to emphasize that additional depositions should not “undermin[e] the

¹ The depositions must also satisfy 17 C.F.R. § 201.232(e). Rule 233(a)(3)(ii).

² The Division insinuates that Respondents could be considered as “a single respondent” within the meaning of 17 C.F.R. § 201.233(a)(1) in light of the fact that Roni Dersovitz owns RD Legal Capital, LLC, and thus would be limited to three depositions. The Commission has, however, chosen to initiate this proceeding against two respondents, not one. Also, it is noted that the Division has not restricted itself to three depositions.

goal of providing a prompt and efficient administrative forum” or “compromis[e] the hearing schedule.” *See* Amendments to the Commission’s Rules of Practice, 81 Fed. Reg. at 50217.

Respondents seek to notice additional depositions for Alan Mantell and Arthur Sinensky, whom they describe as investors in one of the private funds at issue. Respondents state that they are the only investors whom they seek to depose and that they appear on the Division’s list of potential witnesses. Respondents argue that five depositions are too few in the instant proceeding inasmuch as the Division has identified sixty potential witnesses that it might call at the hearing, and, together, the parties have identified ninety-nine potential witnesses. Respondents list the information required by Rule 233(a)(3)(ii)(A)-(D) and argue that, rather than causing delay, the additional depositions will enable Respondents to focus their case before the hearing, thus contributing to the efficiency of the proceeding. The Division argues that, if Respondents considered investor testimony to be important, they failed to prioritize their original five proposed deponents correctly and should not be rewarded for this. The Division also notes that two of Respondents’ original five deponents appear on Respondents’ list of potential witnesses as well as on the Division’s and that it has provided its notes of interviews with Mantell and Sinensky to Respondents, so that Respondents know the substance of what they told the Division.

The Division in essence weighs the compelling nature of the testimony of each of the seven possible deponents and argues that they should be ranked in a different order if Respondents wish to depose Mantell and Sinensky so as to restrict the number to five. However, in light of the unusually large number of potential hearing witnesses identified by the Division alone and the unique matters on which each of the seven are proposed to be questioned, Respondents’ motion will be granted.

Rule 233(a)(i)(B) requires the undersigned to “consider [Respondents’] motion on an expedited basis.” In view of the one-week delay in ruling on the motion, the dates for conclusion of depositions of fact witnesses and for expert disclosures will be postponed to January 20 and 27, 2017, respectively.³ To avoid “undermining the goal of providing a prompt and efficient administrative forum” or “compromising the hearing schedule,” depositions must be completed by January 20 without exception. *See* Amendments to the Commission’s Rules of Practice, 81 Fed. Reg. at 50217.

IT IS SO ORDERED.

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

³ *See RD Legal Capital, LLC*, Admin. Proc. Rulings Release No. 4237, 2016 SEC LEXIS 3818 (A.L.J. Oct. 7, 2016) (adopting prehearing schedule as proposed by the parties, including January 13 and 20, 2017, as the dates for conclusion of depositions of fact witnesses and for expert disclosures, respectively).