

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

Administrative Proceedings Rulings
Release No. 5174 / October 16, 2017

Administrative Proceeding
File No. 3-17950

In the Matter of
David Pruitt, CPA

**Order Granting Motion
for Additional Depositions**

Respondent David Pruitt, CPA, moves for permission to take two depositions in addition to the three that he is entitled by rule to take. The Division of Enforcement opposes, arguing that Pruitt has not shown sufficient need for two additional depositions. Because I find that Pruitt has shown a compelling need for two additional depositions, his motion is GRANTED.

A respondent in a single-respondent case is entitled to notice three depositions. 17 C.F.R. § 201.233(a)(1). If a respondent shows “compelling need,” among other requirements, the respondent may be granted permission to notice two additional depositions. 17 C.F.R. § 201.233(a)(3)(ii).

Pruitt asserts that the Division has identified twenty witnesses it may call during the hearing. Mot. at 1. He identifies the five witnesses he seeks to depose and asserts that each is a percipient witness “closely involved in the events and circumstances” alleged in the order instituting proceedings (OIP). *Id.* at 2–3. According to Pruitt’s description, the witnesses will each address different aspects of the factual allegations contained in the OIP. *Id.* at 3–6.

The Division does not dispute Pruitt’s factual assertions. Instead, it argues that because it has given Pruitt “all of the prior statements of witnesses designated on [its] preliminary fact witness list that [it] currently” possesses, Pruitt has no need to depose additional witnesses. Opp’n at 2. It adds that as a result of the evidence it has disclosed to Pruitt, “[t]here is no mystery as to what each witness will testify to during the hearing.” *Id.* at 3. The Division also notes that Pruitt could simply interview the witnesses he seeks to depose. *Id.*

As an initial matter, the Division does not dispute that Pruitt has complied with the requirements of Rule of Practice 233(a)(3)(ii)(A) through (D). *See* 17 C.F.R. § 201.233(a)(3)(ii)(A)–(D). Indeed, he has identified the witnesses, described their roles, described their expected testimony and why he needs it, and shown that the witnesses’ testimony will not be unreasonably cumulative or duplicative. Mot. at 2–6.

Pruitt has also shown sufficient need to warrant granting him the opportunity to notice two additional depositions. Among the twenty witnesses identified by the Division, he has focused on five who allegedly have direct knowledge of the specific factual circumstances at issue in this proceeding.

The Division’s arguments in opposition are not convincing. It essentially argues that additional depositions are not warranted because it has complied with its disclosure obligations under Rules 230 and 231. But those obligations apply in every case. If the Division’s compliance with its disclosure obligations were a basis to deny a motion for additional depositions, no respondent would ever be able to obtain additional depositions, and Rule 233(a)(3) would be meaningless.

A final point. Pruitt notes that one of my colleagues has held that expert witness depositions do not count against the deposition limit in Rule 233(a). Mot. at 2 n.3. Citing a decision issued by a different administrative law judge, the Division argues that expert witness depositions do count against the limit. Opp’n at 4–5. In the event the disagreement about whether expert witness depositions count against the limit in Rule 233(a) ripens into a live controversy, I will adjudicate it. Nothing said in this order should be construed as expressing an opinion on this question.

James E. Grimes
Administrative Law Judge