

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

Administrative Proceedings Rulings
Release No. 5671 / April 5, 2018

Administrative Proceeding
File No. 3-17950

In the Matter of
David Pruitt, CPA

**Order Granting
Limited Postponement
of Discovery Deadlines**

For the reasons stated by the parties, I GRANT IN PART their motion for a limited stay of discovery.¹ All discovery deadlines, except those pertaining to the deposition of Timothy Keenan scheduled for April 25, 2018, and document production related to his deposition, are POSTPONED until May 2, 2018. That will provide the parties with sufficient time after his deposition to evaluate the impact of Keenan's testimony on this proceeding. The parties have requested that the postponement last until May 9, 2018, but in light of the length of time this proceeding has been pending and the default twenty-one day limit to postponements, I find that a shorter postponement is appropriate.²

¹ 17 C.F.R. §§ 201.111, .161(a). The Rules of Practice authorize stays in only limited circumstances, but the Securities and Exchange Commission construes motions for stays as motions for postponement or adjournment. *See John Thomas Capital Mgmt. Grp.*, Securities Act of 1933 Release No. 9728, 2015 WL 728006, at *2 & n.13 (Feb. 20, 2015); *see, e.g.*, 17 C.F.R. §§ 201.161(c)(2), .210(c)(3).

² *See* 17 C.F.R. § 201.161(c)(1). The parties may of course advance the date of Keenan's deposition.

The obligation to comply with the subpoenas issued to the Commission's Division of Corporation Finance and Office of Chief Accountant is suspended until I rule on the pending motion to quash those subpoenas.³

The parties suggest that the postponement of discovery deadlines may require delaying the start of the hearing, currently scheduled to commence July 16, 2018. I will entertain a motion to continue the hearing, but the parties are advised that if the hearing is continued, it will likely begin the week of August 13, 2018, and continue the first week of September.

James E. Grimes
Administrative Law Judge

³ I will issue a decision on the motion to quash after the postponement expires on May 2, 2018. Although I am postponing discovery deadlines, nothing in this order prevents the parties from conferring in an attempt to narrow the scope of Pruitt's request. *See* Opp'n to Mot. to Quash at 9 n.22. Indeed, I encourage the parties to make use of the opportunity that the postponement presents. *See* Mot. at 7-8 (suggesting that no search for responsive documents has been conducted); *accord Drummond Co. v. Terrance P. Collingsworth, Conrad & Scherer, LLP*, 816 F.3d 1319, 1327 (11th Cir. 2016) ("generalized, blanket assertion of work product privilege does not entitle [a movant] to . . . wholesale protection from [a party's] subpoenas"); *Williams v. District of Columbia*, 806 F. Supp. 2d 44, 49 (D.D.C. 2011) (affidavit or other evidence needed to support claim of privilege in discovery dispute); *Coker v. Duke & Co., Inc.*, 177 F.R.D. 682, 686 (M.D. Ala. 1998) (affidavit or other evidence needed to support claim of undue burden in discovery dispute); *Diamond State Ins. Co. v. Rebel Oil Co.*, 157 F.R.D. 691, 699-700 (D. Nev. 1994) (refusing to speculate regarding work product protection where the movant "had the burden of proof . . . but failed to submit sufficient supporting evidence").