
The October 1 Order recounted the foregoing procedural history and, as required by the Commission’s August 22 Order, ordered the parties “to submit proposals for the conduct of further proceedings” by November 16, 2018. On October 9, 2018, Respondents Carnahan and CYIOS filed a motion for certification of the October 1 Order for appeal. On October 18, 2018, the undersigned denied the motion as patently failing to meet the standards of 17 C.F.R. § 201.400(c)(2) (Rule

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1 The ordering clause reads in full: “Respondents and the Division of Enforcement should submit a joint proposal for the conduct of further proceedings by November 16, 2018. A party who is unable to agree should submit a separate proposal by that date.”
Under consideration is Respondents Carnahan and CYIOS’s motion, dated October 25, 2018, for reconsideration of the October 18 Order; the Division of Enforcement’s opposition; and Respondents’ motion to strike the opposition.

Respondents reiterate their contention that this proceeding runs afoul of 28 U.S.C. § 2462, which provides a five year statute of limitations that applies to this proceeding. As stated in the October 18 Order, this contention is incorrect. This proceeding – Administrative Proceeding No. 3-16386 – was instituted on February 13, 2015, and the OIP alleges violations occurring within five years of that date. The proceeding has been pending continuously since February 13, 2015. The Commission’s August 22 Order did not dismiss or otherwise terminate it, but, rather, provided respondents in this and any other pending proceeding “with the opportunity for a new hearing before an ALJ who did not previously participate in the matter.” Pending Admin. Proc., Securities Act Release No. 10536, 2018 SEC LEXIS 2058, at *2-3.

Respondents’ motion to strike cites Rule 470: “No response to a motion for reconsideration shall be filed unless requested by the Commission.” As Respondents note, there has been no request by the Commission. However, Rule 470 is inapplicable. It applies to “a motion for reconsideration of a final order issued by the Commission,” while Respondents moved for reconsideration of a nonfinal order issued by the undersigned.

In light of the above, Respondents motion for reconsideration will be denied.

IT IS SO ORDERED.

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

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2 The provisions of Rule 400(c)(2) apply to petitions for interlocutory review by the Commission in its administrative proceedings.

3 See 17 C.F.R. § 201.470(a), which reads in full: “Scope of Rule. A party or any person aggrieved by a determination in a proceeding may file a motion for reconsideration of a final order issued by the Commission.” (emphasis added)).