

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

Administrative Proceedings Rulings
Release No. 6542 / April 15, 2019

Administrative Proceeding
File No. 3-17849

In the Matter of

**Angel Oak Capital Partners, LLC,
Peraza Capital & Investment,
LLC,
Sreeniwas Prabhu, and
David W. Wells**

**Order Addressing the Use of
Prior Sworn Statements at the
Hearing**

Relying on language in the order instituting proceedings (OIP), the Division of Enforcement submits that Commission Rule of Practice 235, which imposes certain procedural requirements on the use of prior sworn statements at a hearing, does not apply.¹ The OIP recites that this proceeding has been instituted to determine whether to impose disgorgement, interest, and civil penalties.² In relevant part, it provides that I may decide this proceeding “on the basis of testimony, affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence.”³ Relying on this language, the Division asserts that “while Rule 235 may have special procedural requirements for the use of prior sworn statements, the OIP in this case removes these procedural requirements.”⁴

¹ See Letter from John D. Worland, Jr. (Apr. 5, 2019); see also 17 C.F.R. § 201.235.

² OIP at 9.

³ *Id.*

⁴ Worland Letter at 2.

I do not read the language of the OIP as broadly as the Division. The relevant part of the OIP does not purport to address whether or how the Commission's Rules of Practice apply in this proceeding. Indeed, it does not mention the rules.⁵ Instead, the OIP merely describes *what* materials I may rely on in deciding this matter, not *how* those materials should be received.⁶ I therefore disagree with the Division and determine that Rule of Practice 235 applies to this proceeding.

The parties are free to stipulate to the admission of any prior sworn statement.⁷ But absent agreement, I must apply "the presumption that witnesses will testify orally in an open hearing."⁸

James E. Grimes
Administrative Law Judge

⁵ Rule of Practice 100 states that the Commission may order "that an alternative procedure shall apply or that compliance with an otherwise applicable rule is unnecessary" if the Commission determines doing so "would serve the interests of justice and not result in prejudice to the parties to the proceeding." 17 C.F.R. § 201.100(c). The Commission has not explicitly done so in the OIP.

⁶ It is true that prior sworn statements can be considered in this proceeding and were, in fact, considered in adjudicating the parties' motions for summary disposition. But Rule 250(c) specifically allows consideration of "undisputed" prior sworn statements and testimony in adjudicating a motion for summary disposition. 17 C.F.R. § 201.250(c); *cf.* Fed. R. Civ. P. 56(c)(1)(A) (permitting consideration of affidavits, declarations, and depositions on motion for summary judgment). There is no indication that the Commission in the OIP intended to bypass its rules for considering prior sworn statements at a live hearing.

⁷ See 17 C.F.R. § 201.235(a)(5).

⁸ *Id.*