

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 3350/November 24, 2015

ADMINISTRATIVE PROCEEDING  
File No. 3-16590

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In the Matter of

BRIAN J. OURAND

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ORDER

The hearing in this proceeding is scheduled to commence on December 14, 2015. Previous orders addressed Brian J. Ourand's request, pursuant to 17 C.F.R. 201.232 (Rule 232), for subpoenas seeking the attendance of witnesses to testify at the hearing. *Brian J. Ourand*, Admin. Proc. Rulings Release Nos. 3257, 2015 SEC LEXIS 4391 (A.L.J. Oct. 26, 2015); 3287, 2015 SEC LEXIS 4523 (A.L.J. Nov. 3, 2015). Under consideration are Ourand's resubmitted subpoena requests and the Division of Enforcement's objection to a subpoena directed to Office of the Chief Counsel, U.S. Securities and Exchange Commission, Attn: Jennifer McCarthy.<sup>1</sup>

The Division argues that the testimony sought by the McCarthy subpoena is not relevant to any issue in the proceeding. Previously, Ourand had been ordered to show the general relevance and reasonable scope of the testimony sought from each subpoenaed person.<sup>2</sup> In response, as to the resubmitted McCarthy subpoena, Ourand stated, in full, "Auditor/Compliance Officer." This does not show any relevance or scope of the testimony sought, and compliance with the subpoena would be unreasonable. *See* Rule 232(b), (e)(2). Accordingly, it will not be issued.

Some of the additional subpoenas are directed to an office, *e.g.*, "Western Union, Attn: Correspondence Desk," without identifying an individual whose testimony Ourand proposes to offer. Ourand is reminded that only natural persons are capable of testifying.

Finally, the Division has filed objections to some of Ourand's exhibits, citing Federal Rule of Evidence 802 – hearsay. However, hearsay is not a basis for exclusion of evidence in Commission administrative proceedings, and the Federal Rules of Evidence do not apply. *Del Mar Fin. Servs., Inc.*, Exchange Act Release No. 48691, 2003 SEC LEXIS 2538 (Oct. 24, 2003).

IT IS SO ORDERED.

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

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<sup>1</sup> Pursuant to Rule 232(e), "any party may . . . request that the subpoena be quashed."

<sup>2</sup> As originally submitted, Ourand's request did not "show the general relevance and reasonable scope of the testimony . . . sought." *See* Rule 232(b); *Brian J. Ourand*, 2015 SEC LEXIS 4391, at \*1.