

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 4399/November 29, 2016

ADMINISTRATIVE PROCEEDING  
File No. 3-16383

In the Matter of

CHARLES L. HILL, JR.

ORDER GRANTING MOTION IN LIMINE

In May 2015, Respondent Charles L. Hill, Jr., submitted a request that I issue a subpoena *ad testificandum* directed to Matthew F. McNamara. Hill included McNamara on his recently amended witness list. McNamara is the assistant regional director in the Securities and Exchange Commission's Atlanta regional office. Hill seeks McNamara's testimony about various aspects of the Commission's decision to institute this proceeding, apparently in support of his due process and equal protection arguments. *See* Amended Witness List at 5-6.

The Division of Enforcement moves in limine to preclude McNamara's testimony. It argues that (1) McNamara is not a percipient witness; (2) the reasoning behind the Commission's charging decision is privileged and irrelevant; (3) Hill has not made an "initial showing" of a due process or equal protection violation; and (4) McNamara has no basis to testify about the reasons behind the Commission's decision to institute this proceeding. *Mot. in Limine* at 2-12.

Hill responds that in light of previous rulings, he anticipates that I will sustain the Division's objection. He therefore simply seeks to preserve this issue for purposes of appeal. Fair enough. In light of my previous rulings<sup>1</sup> and relevant precedent,<sup>2</sup> the Division's motion *in limine* is GRANTED.

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<sup>1</sup> *Charles L. Hill, Jr.*, Admin. Proc. Rulings Release No. 4253, 2016 SEC LEXIS 3876 (ALJ Oct. 14, 2016); *Charles L. Hill, Jr.*, Admin. Proc. Rulings Release No. 2757, 2015 SEC LEXIS 2208 (ALJ June 2, 2015).

<sup>2</sup> *See Mohammed Riad*, Investment Advisers Act of 1940 Release No. 4420A, 2016 WL 3627183, at \*50 (July 7, 2016) (holding that class-of-one "equal protection claim[s] [are] not legally cognizable in this context"); *David F. Bandimere*, Securities Act of 1933 Release No. 9972, 2015 WL 6575665, at \*18 (Oct. 29, 2015) ("even if a class-of-one equal-protection claim were cognizable in this context, Bandimere has failed to make the requisite threshold showing that he was 'treated differently from others similarly situated.' Individuals asserting such a claim

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James E. Grimes  
Administrative Law Judge

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‘must show an extremely high degree of similarity between themselves and the persons to whom they compare themselves.’”) (citations and footnotes omitted); *Harding Advisory LLC*, Advisers Act Release No. 3796, 2014 WL 988532, at \*6-8 (Mar. 14, 2014) (addressing “the independence of the Commission’s decision-making process” in relation to the Division’s charging recommendation); *Wheat, First Sec., Inc.*, Securities Exchange Act of 1934 Release No. 48378, 2003 WL 21990950, at \*10 (Aug. 20, 2003) (“Administrative due process is satisfied where the party against whom the proceeding is brought understands the issues and is given an opportunity to meet the charges.”); *cf. United States v. Curtis*, 344 F.3d 1057, 1064 (10th Cir. 2003) (discussing the broad discretion prosecutors enjoy regarding charging decisions).