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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2053/November 25, 2014

ADMINISTRATIVE PROCEEDING
File No. 3-16142

In the Matter of JOHN JORDAN	GENERAL PREHEARING ORDER

On September 22, 2014, the Securities and Exchange Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings against Respondent pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934. A hearing is scheduled to commence on March 24, 2015.

This order sets forth the following general rules and guidelines I will follow during these proceedings.

1. Settlement. Pursuant to Commission Rule of Practice 240(c)(2), I am available for a settlement conference. *See* 17 C.F.R. § 201.240(c)(2). Participation in a settlement conference is entirely voluntary. By participating in a settlement conference, however, a party will waive: (1) the right to claim bias or prejudgment by me based on any views I express during the conference; (2) the right to a public proceeding; (3) the right to a proceeding on the record; and (4) any objection to my conferring with another party ex parte in the course of settlement. Absent extraordinary circumstances, requests that I participate in a settlement conference must be made no later than three weeks before the scheduled hearing date.

2. Subpoenas. My general practice is to sign subpoenas the afternoon after the day they are received, absent notice of an objection. Parties should therefore review requests for subpoenas as soon as they are received. If a party wishes to object to a subpoena, the party should immediately notify this Office, with copy to opposing counsel, so that I do not issue the subpoena. Failure to notify my office of an objection before the subpoena is issued does not waive the opportunity to object. A party's motion to quash will be due within five business days of the filing of the subpoena. Any opposition to the motion to quash will be due within three business days thereafter.

3. Exhibit lists. A comprehensive exhibit list prevents other parties from being surprised in the middle of the hearing. Given this fact, exhibit lists shall be exchanged among the

parties and should include all documents that a party expects to use in the hearing for any purpose. This includes documents that are relevant only for impeachment purposes or which are presumptively inadmissible. The parties should serve their opponents with any amendments to their individual exhibit lists. Because I rely on the parties' exhibit lists, the parties should provide me with a paper copy of their final exhibit lists at the beginning of the hearing. There is no need in the interim to submit exhibit lists or amendments to my office. Following the hearing, I will issue a separate order directing the parties to file a list of all exhibits, admitted and offered but not admitted, together with citations to the record indicating when each exhibit was admitted.

4. Expert reports and testimony. Expert witness disclosures must, at minimum, comply with Rule 222(b), including the provision of a "brief summary" of an expert's expected testimony. 17 C.F.R. § 201.222(a)(4), (b). I prefer to streamline the hearing process by substituting the expert's report for direct testimony. Expert reports should be as specific and detailed as those presented in federal district court pursuant to Federal Rule of Civil Procedure 26. The filing of the expert's report according to the prehearing schedule essentially constitutes the filing of the expert's direct testimony. During the hearing, the expert will not be subject to direct examination, and will simply be sworn in and proffered for cross-examination. As necessary, I will entertain requests for brief direct examination of a party's expert.

5. Hearing schedule. The first day of the proceeding will begin at 9:30 a.m. Unless circumstances require a different schedule, we will begin each subsequent day at 9:00 a.m. Each day of the proceeding should last until at least 5:15 p.m. I generally take one break in the morning, lasting about 15 minutes, and at least one break in afternoon. I generally break for lunch between noon and 12:30 p.m., for about one hour and 15 minutes.

6. Hearsay. Evidence that is irrelevant, immaterial, or unduly repetitious is inadmissible; all other evidence is presumptively admissible. 17 C.F.R. § 201.320. As a result, the fact that evidence constitutes hearsay goes to weight, not admissibility, and is thus a proper subject for cross-examination or post-hearing briefing.

7. Hearing issues.

   A. Examination.

      1) In general, the Division of Enforcement presents its case first, because it has the burden of proof. The Respondent then presents his case. If necessary, the parties may agree to proceed in some other order and may take witnesses out of order.

      2) If the Division calls a non-party witness that the Respondent also wishes to call as a witness, the Respondent should cross-examine the witness as if he or she were calling the witness in his or her own case. This means that cross-examination may exceed the scope of direct examination. This will avoid the need to recall a witness just so the witness can testify for the Respondent's case.

3) I am flexible regarding the manner of presenting the Respondent's testimony, so long as the parties agree on it. By way of example, if the Division calls the Respondent as its last witness, the parties may agree that the Respondent's counsel will conduct the direct examination, followed by the Division's cross-examination, which may exceed the scope of direct. In the absence of any agreement, the Respondent's testimony will proceed in the usual manner, i.e., the Respondent will be called as a witness and examined potentially multiple times. If the Division calls the Respondent as witness and the Respondent later testifies as part of his own case, the Division's cross-examination during the Respondent's case will be limited to the scope of the direct examination.

4) In general, cross-examination may be conducted by leading questions, even as to Division witnesses that the Respondent wishes to call in his own case. Counsel may not lead his or her client, however. Thus, if the Respondent is called as a witness in the Division's case, that Respondent's counsel may not ask leading questions on cross-examination. Similarly, if a Commission employee is called as a witness for the Respondent, the Division may not ask leading questions on cross-examination.

B. Other hearing issues.

1) Avoid leading questions on direct examination. Leading questions during direct examination of a non-hostile witness are objectionable. Repeatedly having to rephrase leading questions slows down the hearing.

2) Hit the high points on cross-examination. It is a waste of time to wade into every bit of minutiae that is related to your case. Cross-examination is more effective and less stultifying if you emphasize the strong points and address tangential points quickly, if at all.

8. Pleadings. Pre-hearing and post-hearing briefs are limited to 14,000 words. *Cf.* 17 C.F.R. § 201.450(c) (imposing a word-limit for briefs filed before the Commission). Parties may seek leave to exceed this limit through a motion filed seven days in advance of the relevant briefing deadline. To enhance the readability of pleadings, I urge counsel to limit the use of acronyms to those that are widely known. *See* Antonin Scalia & Bryan A. Garner, Making Your Case: The Art of Persuading Judges 120-22 (2008); *Nat'l Ass'n of Regulatory Util. Comm'rs v. U.S. Dep't of Energy*, 680 F.3d 819, 820 n.1 (D.C. Cir. 2012). For the same reason, counsel should use the same font size in footnotes as that used in the body of a pleading.

The parties are reminded that they must file hard copies of all filings with the Office of the Secretary, but also that they have agreed to send each other—and this Office, when applicable—electronic copies, via e-mail, of materials to be filed and exchanged.

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James E. Grimes
Administrative Law Judge