

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2416 /March 12, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16182

In the Matter of

PAUL EDWARD "ED" LLOYD, JR., CPA : ORDER

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Proceedings on September 30, 2014. The hearing is scheduled to commence on March 16, 2015, in Charlotte, North Carolina. As previously ordered, expert reports are to be used in lieu of direct testimony by expert witnesses, if any, at the hearing; any such expert witnesses are to be made available for cross-examination and may also supplement their reports based on information disclosed during the hearing. *See Paul Edward "Ed" Lloyd, Jr., CPA, Admin. Proc. Rulings Release No. 22217, 2015 SEC LEXIS 147, at *1 n.2 (Jan. 14, 2015).*

Under consideration are Respondent Lloyd's expert report, consisting of a January 15, 2015, opinion letter of Wyoming attorney Thomas N. Long (Respondent's Exhibit 40); Lloyd's March 6, 2015, Motion for Deposition; the Division of Enforcement's (Division) March 9, 2015, Opposition; the Division's March 9, 2015, Motion to Strike Respondent's Exhibit 40; and Respondent Lloyd's March 11, 2015, Response. Long's opinion is limited: he states that the operating agreement of a Wyoming LLC, such as Forest Conservation 2012, at issue in this proceeding, may be created or amended orally and memorialized later and draws certain conclusions from this based on assumptions as to disputed facts. Lloyd urges that Long's testimony be taken by video conference or by deposition, as travel to Charlotte would present a hardship due to Long's eldercare responsibilities. The Division opposes this and also urges that Exhibit 40 be stricken or excluded *in limine*, stating that it is inappropriate to receive expert testimony consisting of a legal opinion and that Long's opinion is also irrelevant to factual issues such as the alleged inconsistency between sums collected from participants and sums invested, and the initial omission of three participants from the list of subscribers.

Since this is not a jury trial, the fact that Long is providing a legal opinion is not *per se* objectionable. *Cf. Wells Fargo Bank N.A. v. Texas Grand Prairie Hotel Realty, LLC*, 710 F.3d 324, 329 (5th Cir. 2013) (safeguards provided by *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), not as essential in a bench trial); *accord, David E. Watson, PC v. United States*, 668 F.3d 1008, 1015 (8th Cir. 2012); *United States v. Brown*, 415 F.3d 1257, 1269-70 (11th Cir.

2005); *see also City of Anaheim*, Securities Exchange Act of 1934 Release No. 42140, 1999 SEC LEXIS 2421, at *4 (Nov. 16, 1999) (“The Federal Rules of Evidence are designed for juries and do not apply to administrative adjudications.” (citing *Opp Cotton Mills, Inc. v. Adm’r*, 312 U.S. 126, 155 (1941))). Concerning relevance, the Commission’s standard of relevance is very low. *See Herbert Moskowitz*, Exchange Act Release No. 45609, 2002 SEC LEXIS 693, at *46, n.68 (Mar. 21, 2002); *City of Anaheim*, 1999 SEC LEXIS 2421, at *4-5 & n.7. Exhibit 40 will not be excluded. If the Division wishes to cross examine Long, it may do so in hearing testimony by video conference or telephone. Respondent will make the necessary arrangements for this to occur, preferably during the hearing sessions in Charlotte.

/s/ Carol Fox Foelak

Carol Fox Foelak
Administrative Law Judge