

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3715/March 16, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17112

In the Matter of

FRAZER FROST, LLP,
SUSAN WOO, CPA, and
MIRANDA SUEN, CPA

ORDER FOLLOWING PREHEARING
CONFERENCE AND SETTING
PROCEDURAL SCHEDULE

The Securities and Exchange Commission instituted this proceeding on February 11, 2016. A telephonic prehearing conference was held on March 11, 2016. The following schedule confirms the schedule discussed during the conference.

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| March 31, 2016: | Respondents may file a motion for summary disposition preserving their constitutional arguments. |
| April 14, 2016: | Division of Enforcement's opposition to motion for summary disposition is due. |
| April 21, 2016: | Reply to opposition to motion for summary disposition is due. |
| April 29, 2016: | Division files its witness list and provides Respondents with its exhibit list and pre-marked copies of exhibits. |
| May 4, 2016: | Respondents file their witness list and provide Division with their exhibit list and pre-marked copies of exhibits. |
| May 4, 2016: | Expert reports, if any, are due. |
| May 11, 2016: | Motions in limine and amendments to exhibit and witness lists are due. |
| May 18, 2016: | Oppositions to motions in limine are due, and objections to exhibits and witnesses are due. Rebuttal expert reports are |

due. Requests for official notice, stipulations, and admissions of fact are due.

May 25, 2016: Prehearing briefs are due. The parties shall participate in a telephonic prehearing conference, at a time to be determined.

May 31, 2016: The hearing will begin at 9:30 a.m. PDT in Los Angeles, California, at a location to be determined.

The parties are reminded that all filings must be filed in hard copy with the Office of the Secretary. *See* 17 C.F.R. §§ 201.151, .152. They are asked to always email courtesy copies of filings to alj@sec.gov in Word and in PDF text-searchable format. Electronic copies of exhibits should not be combined into a single PDF file, but sent as separate attachments, and should be provided in text-searchable format whenever practicable.

Hearing Guidelines

I will follow the general guidelines described below during these proceedings. The parties should review what follows *and promptly raise any objections they may have to the application of these guidelines in this matter.*

1. Subpoenas. A party's motion to quash a subpoena will be due within five business days of the submission of the subpoena for signing. Any opposition to the motion to quash will be due within five business days thereafter.

2. Exhibits. The parties shall confer and attempt to stipulate to the admissibility of exhibits. In order to avoid duplication of exhibits, the parties should identify joint exhibits. Exhibits are not filed with the Office of the Secretary until the close of the hearing at my instruction.

4. 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 list. 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.

5. Expert reports and testimony. As the parties have agreed, expert reports will be governed by Federal Rule of Civil Procedure 26. Failure to comply with the requirements of Rule 26 may result in the striking of an expert's report. *Cf.* Fed. R. Civ. P. 37(c). The filing of the expert's report according to the prehearing schedule normally constitutes the filing of the expert's direct

testimony. On request, however, a party may conduct a brief direct examination of the party's expert.

6. 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 the afternoon. I generally break for lunch between noon and 12:30 p.m., for about one hour and ten minutes.

7. Hearing issues.

A. Examination.

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

ii) If the Division calls a non-party witness that Respondents also wish to call as a witness, Respondents should cross-examine the witness as if they were calling the witness in their 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 Respondents' case.

iii) I am flexible regarding the manner of presenting the testimony of Respondents, so long as the parties agree on it. By way of example, if the Division calls one of Respondents as its last witness, the parties may agree that Respondents' 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, Respondents' testimony will proceed in the usual manner, *i.e.*, Respondents will be called as witnesses and examined potentially multiple times. If the Division calls one of the Respondents as a witness and that Respondent later testifies as part of her own case, the Division's cross-examination during Respondents' case will be limited to the scope of the direct examination.

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

B. Other hearing issues.

i) 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.

ii) 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. Prehearing 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); *see also Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1320-21 (D.C. Cir. 2014) (Silberman, J., concurring). For the same reason, I ask that counsel use the same font size in footnotes as that used in the body of a pleading.

James E. Grimes
Administrative Law Judge