

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4119/September 2, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17104

In the Matter of

BIOELECTRONICS CORP.,
IBEX, LLC,
ST. JOHN'S, LLC,
ANDREW J. WHELAN,
KELLY A. WHELAN, CPA, and
ROBERT P. BEDWELL, CPA

ORDER DENYING WITHOUT PREJUDICE
RESPONDENTS' MOTION TO CONTINUE
TRIAL DATE AND FOR LEAVE TO FILE
AMENDED EXPERT REPORTS

On February 5, 2016, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Respondents pursuant to Section 8A of the Securities Act of 1933 (Securities Act), Sections 4C, 15(b), and 21C of the Securities Exchange Act of 1934, and Rule 102(e) of the Commission's Rules of Practice. The hearing is scheduled to begin on September 12, 2016, in Washington, D.C., as to Respondents BioElectronics Corp., IBEX, LLC, St. John's, LLC, Andrew J. Whelan, and Kelly A. Whelan, CPA (Respondents).¹

On August 31, 2016, Respondents filed a motion to continue the trial date and for leave to file amended expert reports (Motion). Respondents are ambiguous regarding the requested length of continuance. *Compare* Motion at 1 (requesting a continuance to October 3, 2016, or three weeks), *with id.* at 3 (requesting a continuance for thirty days, or until October 12, 2016).

Even the shorter of the requested continuances is unwarranted, however. I have considered the factors recited in Rule 161 regarding extensions of time. *See* 17 C.F.R. § 201.161(b)(1). Although the relative lack of previous extensions of time weighs in favor of granting a continuance, the remaining factors weigh against it. Of particular concern is the fact that Respondents' request was lodged only twelve days before the scheduled hearing start date.

Moreover, requests for extensions of time are "strongly disfavor[ed]," except where the requesting party makes a "strong showing" that denial "would substantially prejudice their case." 17 C.F.R. § 201.161(b)(1). Respondents have failed to make such a showing. Respondents filed

¹ The proceeding is stayed as to Robert P. Bedwell, CPA. *BioElectronics Corp.*, Admin. Proc. Rulings Release No. 4091, 2016 SEC LEXIS 2983 (ALJ Aug. 24, 2016).

their motion for a more definite statement in March 2016, only a few days after the hearing date was set; they could have easily sought relief from the hearing date in April 2016, when the Division filed its more definite statement. *See* Motion at 1-2. Although I encourage the parties to reach stipulations, Respondents offer no explanation why they need more time to do so. *See id.* at 2. And this case is not document-intensive by Commission administrative proceeding standards. *See id.* All parties combined have listed only slightly more than three hundred proposed exhibits, and the Division's recent turnover of 634 megabytes of documents is not unduly prejudicial as "electronic data dump[s]" go. *See id.*; *Harding Advisory LLC*, Securities Act Release No. 9561, 2014 WL 988532, at *1 (Mar. 14, 2014) (describing an investigative file purportedly containing 11.5 terabytes of data).

Nonetheless, I will entertain a joint request to continue the proceeding. The Motion is therefore DENIED WITHOUT PREJUDICE to the extent it seeks a continuance of the hearing start date. The parties are encouraged to meet and confer on this issue, and on all other disputed issues.

As for leave to file amended expert reports, the Respondents' stated justification is the need to "properly respond to unanticipated expert testimony and exhibits received" when the parties recently exchanged expert reports. Motion at 2. This request is also DENIED WITHOUT PREJUDICE. Certainly it stands to reason that the parties would wish to rebut their opponents' expert reports, but they may be able to agree to a modification of the prehearing schedule if they first meet and confer about the matter. For example, in lieu of amended expert reports, they may wish to prepare rebuttal expert reports.

The parties are reminded that the final prehearing conference is scheduled for Wednesday, September 7, 2016, at 2:00 pm EDT. The parties should be prepared at that time to report the results of any meet-and-confer they may conduct.

SO ORDERED.

Cameron Elliot
Administrative Law Judge