

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4257/October 14, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17352

In the Matter of

SAVING2RETIRE, LLC, and
MARIAN P. YOUNG

ORDER DENYING MARIAN P.
YOUNG'S REQUEST TO QUASH
SUBPOENA

Respondent Marian P. Young moves to quash a subpoena requiring her to appear for a deposition. Young's motion is denied.

The Securities and Exchange Commission recently amended its Rules of Practice to permit parties to notice up to three depositions.¹ *See* 17 C.F.R. § 201.233(a). Relying on Rule 233, the Division contacted Young and informed her that it intended to notice her deposition. Div. Request at Ex. A. The Division proposed to depose Young on October 20, 2016, but asked if that date did "not work for" Young, that she propose a date during the week of October 17 or 31, 2016. *Id.* After Young responded that she did "not yet know a time frame," and suggested not knowing until after I rule on a separate motion, *id.*, the Division asked that I issue a subpoena requiring Young to appear for a deposition in Houston, Texas, on October 20, 2016, *id.* at 1. Among other things, the Division noted that discovery will close in less than two months. *Id.* I issued the subpoena on October 4, 2016. Young then moved to quash.

In her motion, Young does not propose another date on which to conduct her deposition. Instead, she argues that the Division's request is "unreasonable and unduly burdensome" because the parties are allegedly working toward scheduling a mutually agreeable date and because her request for a subpoena for documents is pending while I adjudicate the Division's opposition to it.² Mot. at 2. She also argues that the Division has not explained the relevance or reasonable scope of the testimony it intends to take. *Id.* at 2-3.

¹ The parties jointly elected to have the Commission's amended Rules of Practice apply to this proceeding. *See Saving2Retire, LLC*, Admin. Proc. Rulings Release No. 4098, 2016 SEC LEXIS 3049, at *1 (ALJ Aug. 26, 2016).

² The parties debate whether Young has a history of non-cooperation. No evidence has been presented on this point. I therefore do not base this order on whether Young has been uncooperative.

It is difficult to fathom Young's claim that the Division has not shown that the testimony it plans to elicit is relevant. Because she is a respondent in this proceeding, the relevance of Young's testimony is manifest. Furthermore, requiring her to appear for a deposition is permitted by the amended Rules of Practice that she elected to have apply in this proceeding. And there is nothing unreasonable or unduly burdensome about the Division's request. In federal practice, a party seeking to depose a witness must give other parties "reasonable written notice." Fed. R. Civ. P. 30(b)(1). The Division sought, and I issued, the subpoena on October 4, 2016, eleven business days before the date of the deposition. Given the circumstances, eleven business days constitutes reasonable notice.

Finally, it is significant that Young does not propose an alternative date for her deposition. Instead, she simply asks that the subpoena be quashed as if that would end that matter. But by operation of Rule 233, the Division is entitled to depose her at some point before the period for conducting depositions closes on December 2, 2016. *See Saving2Retire, LLC*, 2016 SEC LEXIS 3049, at *2. Quashing the subpoena would thus be a useless formality.³

James E. Grimes
Administrative Law Judge

³ The parties are free to agree to different date to conduct Young's deposition.