

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 4560/January 27, 2017

ADMINISTRATIVE PROCEEDING

File No. 3-17614

In the Matter of :
 :
LAURENCE I. BALTER d/b/a : ORDER
ORACLE INVESTMENT RESEARCH :

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings on October 4, 2016, pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940. The hearing, expected to last one week, was set to commence on June 19, 2017, in Hawaii, where Respondent and customer witnesses reside. Under consideration are Respondent's January 18, 2017, Omnibus Motion; the Division of Enforcement's January 20, 2017, Opposition; and Respondent's January 24, 2017, e-mail reply.

Respondent seeks: (1) an extension of the February 17, 2017, date for the close of fact discovery to March 17, 2017; (2) leave to depose two additional persons beyond the three that he may depose by right; and (3) to deny, quash, or modify the Division's notice to depose Respondent.

Extension of Date

Previously, February 17, 2017, was set as date for the close of fact discovery. *Laurence I. Balter d/b/a Oracle Inv. Research*, Admin. Proc. Rulings Release No. 4525, 2017 SEC LEXIS 118 (A.L.J. Jan. 13, 2017) (Scheduling Order) (setting the prehearing schedule). Respondent requests an extension of that date to March 17, 2017, stating that neither Respondent nor Brian Barbata, his largest investor, are available to be deposed until later in February and that Barbata is unavailable during June 2017, when the hearing is scheduled, so that his deposition testimony would be crucial evidence. In response, the Division proposes that the February 17 date be postponed as Respondent requests and that the remaining prehearing and hearing schedule be postponed accordingly. This is agreeable to Respondent. Accordingly, the Scheduling Order is amended as follows:

March 17, 2017: Exchange of expert reports and close of fact discovery.

April 24, 2017: Exchange of rebuttal reports.

May 19, 2017: Close of expert discovery.

June 26, 2017: Exchange and filing of witness and exhibit lists, stipulated facts, and requests for official notice.

July 3, 2017: Filing of prehearing briefs, motions *in limine*, and objections to exhibits.
July 7, 2017: Opposition to prehearing briefs, motions *in limine*, and objections.
July 10, 2017: Prehearing conference at 1:00 p.m. EDT (10:00 a.m. PDT).
July 17, 2017: Hearing commences.

As provided in the Scheduling Order, if Respondent believes he needs further discovery following the Division's expert report[s], he may file a motion requesting this and identifying the specific information needed. *See Laurence I. Balter d/b/a Oracle Inv. Research*, 2017 SEC LEXIS 118, at *2.

Additional Depositions

By right, pursuant to 17 C.F.R. § 201.233(a)(1), Respondent may depose three persons. Pursuant to 17 C.F.R. § 201.233(a)(3), he seeks leave to depose two additional persons, for a total of five: the Division's two expert witnesses; investor Brian Barbata; the "Mutual Shareholder Services person most knowledgeable about the account records maintained by it [for Respondent's business at issue in this proceeding]"; and "Sanville & Company's person most knowledgeable about its audit and advice to [Respondent pertaining to the issues in this proceeding.]" Motion at 5. For the reasons set forth in *RD Legal Capital LLC*, Admin. Proc. Rulings Release No. 4387, 2016 SEC LEXIS 4373, at *5 (A.L.J. Nov. 23, 2016), depositions of expert witnesses will not count against the three person limit. Thus the motion for leave to depose two additional persons will be denied as moot.

Division's Notice to Depose Respondent

Respondent moves to quash or modify the notice of deposition and subpoena directed to him, issued on January 18, 2017, at the Division's request. He states that he is not available on the specified date, February 7, 2017, and that he is not available until February 28, 2017. Motion at 9; Balter Decl. at 2-3. Referencing the one-day, seven-hour, time limit on depositions provided in 17 C.F.R. § 201.233(j)(1), he states that, during its investigation, the Division deposed him on two dates for a total of more than eleven hours, after interviewing him informally eight times. Motion at 9-10; Balter Decl. at 3, Exs. 2, 3. Thus, he argues, the requested subpoena is unreasonable, oppressive, and unduly burdensome and should be quashed, or at least modified to be conducted on February 28, 2017, and should be limited to no more than two hours. The parties may reschedule the deposition to a mutually convenient date consistent with the amended prehearing schedule. Respondent's request that the deposition be limited to two hours will be denied. While it may seem unnecessary for the Division, having interviewed and taken testimony from a respondent prior to the institution of proceedings, to depose him during the proceeding, the Commission's rules do not prohibit this or restrict the duration of such a deposition.¹

¹ *See* 17 C.F.R. § 201.232, .233; *see also* Amendments to the Commission's Rules of Practice, 81 Fed. Reg. 50212, 50216 (July 29, 2016) ("Investigative testimony generally is directed at ascertaining facts in order for the staff to determine whether to recommend that the Commission authorize an action for violations of the federal securities laws. Once . . . the Commission has instituted an administrative proceeding, issues relevant to a claim or defense may . . . warrant new or additional focus in discovery." (omitting footnote describing the example of reliance on professionals)).

Justice and Expense

The Commission requires that its rules “shall be construed and administered to secure the just, speedy, and inexpensive determination of every proceeding.” 17 C.F.R. § 201.103(a). Respondent urges that his deposition, if any, and Barbata’s be scheduled on adjoining days, to conserve resources involved in counsel traveling to Hawaii. Motion at 4. In the motion and elsewhere, Respondent states that he supports his family by giving flight lessons and driving Uber and that he is financially pressed. Motion at 9; Balter Decl. at 2-3. The parties are urged to cooperate on the logistics of depositions so as to conserve public and private resources. *See* 17 C.F.R. § 201.233(f) (providing that depositions may be taken remotely). Further, the parties are urged to consider video hearing sessions as well, so as to reduce expenses to Respondent and the Commission to the extent possible.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge