

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4717/March 29, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17716

In the Matter of

ROBERT L. BAKER,
JACOB B. HERRERA,
MICHAEL D. BOWEN and
TERRENCE A. BALLARD

SCHEDULING ORDER

On December 8, 2016, the Securities and Exchange Commission issued an order instituting proceedings (OIP) in this matter. On March 24, 2017, the parties (excluding Respondent Terrence A. Ballard, who is in default) submitted a joint prehearing conference statement in which they propose a procedural schedule. The parties' schedule contemplates the potential resolution of this proceeding by summary disposition, and the Division of Enforcement notes that the violations alleged in the OIP are well-suited for summary disposition because they do not require proof of scienter. Respondents do not explicitly oppose the Division's request, but caution that there may be disputed facts.

Commission Rule of Practice 250 requires leave to be granted before the filing of motions for summary disposition in cases like this one. 17 C.F.R. § 201.250(c). The OIP alleges that Respondents violated Securities Act of 1933 Sections 5(a) and 5(c), which prohibit the sale of unregistered securities, and Securities Exchange Act of 1934 Section 15(a), which prohibits the sale of securities by unregistered persons. OIP at 1-2. These offenses do not require proof of scienter. *Ronald S. Bloomfield*, Securities Act Release No. 9553, 2014 SEC LEXIS 698, at *22 (Feb. 27, 2014) (for Securities Act Section 5 violations, "[a] showing of scienter, *i.e.*, an intent to deceive, manipulate, or defraud, is not required" (footnote omitted)); *Anthony Fields, CPA*, Exchange Act Release No. 74344, 2015 SEC LEXIS 662, at *73 (Feb. 20, 2015) ("Scienter is not required to prove a violation of [Exchange Act] Section 15(a)(1)."). Since there is a smaller set of facts that would be material to these alleged violations than, for example, allegations of fraud, summary disposition might be appropriate. Nevertheless, I will not grant leave for the filing of summary disposition motions at this time, as the extent to which there will be disputed facts is not yet clear. Notably, Respondents Robert L. Baker and Michael D. Bowen have not yet filed answers, and there has been little time thus far for discovery. Therefore, I include placeholder dates for summary disposition briefing in the schedule, as requested by the parties, but will require a party who wishes to file a motion for summary disposition to submit a motion

for leave to do so at least one week before the scheduled filing date. The motion for leave should discuss the factors mentioned by the Commission in the release accompanying the 2016 revised Rules of Practice. *See* Amendments to the Commission's Rules of Practice, 81 Fed. Reg. 50,212, 50,224-25 (July 29, 2016).

Accordingly, and upon consideration of the joint prehearing conference statement, I ORDER the following procedural schedule:

- June 2, 2017: Deadline for close of discovery.
- Parties are responsible for requesting and serving their own subpoenas for the production of documentary evidence. Subpoena forms are available at <http://www.sec.gov/alj>.
- Motions for leave to file summary disposition motions are due.
- June 9, 2017: Motions for summary disposition are due (if leave to file is granted).
- June 30, 2017: Oppositions to motions for summary disposition are due.
- July 7, 2017: Replies to oppositions are due.
- August 22, 2017: Witness lists and expert disclosures in accordance with 17 C.F.R. § 201.222(b) (if any) are due.
- August 29, 2017: Exhibit lists are due.
- The parties shall exchange with each other, but not file, copies of their pre-marked exhibits.
- September 5, 2017: Motions in limine are due.
- Objections to witnesses and exhibits are due.
- September 12, 2017: Stipulations are due, including stipulations concerning the contents, authenticity, or admissibility of documents.
- Subpoenas requiring the attendance of witnesses at the hearing are due. Parties are responsible for requesting and serving their own subpoenas.
- September 22, 2017: A final telephonic prehearing conference will be held at a time to be established in a later order.

October 3, 2017:

The hearing will begin at a location to be determined in the Dallas/Fort Worth, Texas, area. My office will secure a hearing location. The parties and their counsel should be prepared to proceed with the hearing on this date, as requests for postponement are “strongly disfavor[ed].” 17 C.F.R. § 201.161(b).

After the close of the parties’ evidentiary presentation, I will establish a post-hearing schedule for the filing of briefs, proposed findings of facts, and exhibits.

Witness lists shall include witnesses’ names, occupations, addresses, and a brief summary of their expected testimony. 17 C.F.R. § 201.222(a)(4). Exhibit lists shall be emailed to my office at alj@sec.gov in Microsoft Excel or Word format and include exhibit numbers, a description of each exhibit, and Bates-stamp numbers, if any. Exhibits shall not be filed with the Office of the Secretary until after the hearing concludes. In addition to the required filing with the Office of the Secretary, electronic courtesy copies of filings should be emailed to alj@sec.gov in both PDF text-searchable format and, when possible, Microsoft Word format. Electronic copies of exhibits should not be combined into a single PDF file, but submitted as separate attachments.

Jason S. Patil
Administrative Law Judge