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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4832/May 26, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17950

In the Matter of DAVID PRUITT, CPA	SCHEDULING ORDER

The Securities and Exchange Commission instituted this proceeding in April 2017. A telephonic prehearing conference was held on May 25, 2017. During the conference, Respondent confirmed that he waived his right to a hearing between thirty and sixty days after service of the order instituting proceedings (OIP). *See* 15 U.S.C. § 78u-3(b). In addition, the Division of Enforcement represented that it is in the process of producing the entire investigatory file. *See* 17 C.F.R. § 201.230. The parties also confirmed that Respondent was served with the OIP on May 2, 2017.

I ORDER the following schedule:

June 6, 2017:	Respondent to file answer to OIP.
July 14, 2017:	Deadline for Respondent to amend answer.
August 23, 2017:	Parties to submit a joint letter regarding the location of the hearing.
August 31, 2017:	Parties exchange preliminary fact witness lists.
September 15, 2017:	Disclosure of expert witnesses.
October 27, 2017:	Parties exchange and file expert reports, if any.
December 1, 2017:	Deadline for requests under Rule of Practice 232 for deposition subpoenas and for subpoenas to produce documents.
December 8, 2017:	Deadline for non-expert depositions.

	Parties exchange and file rebuttal expert reports.
December 22, 2017:	Production under Rule of Practice 230 of any previously undisclosed materials in the investigatory file.
	Deadline for expert witness depositions.
January 12, 2018:	Motions for summary disposition, if any, under Rule 250(c) are due. A motion under Rule 250(c) for leave to file a motion for summary disposition should be filed in conjunction with the motion for summary disposition.
February 2, 2018:	Oppositions to motions filed under Rule 250(c) are due.
February 9, 2018:	Replies to oppositions to motions filed under Rule 250(c) are due.
	Parties exchange and file witness and exhibit lists.
February 16, 2018:	Motions in limine, including objections to witnesses and exhibits are due.
	Stipulations, requests for official notice, and admissions of fact are due.
	Prehearing briefs, if any, are due.[1]
	Requests under Rule 232 for subpoenas requiring the attendance and testimony of a witness at the hearing are due.[2] Requests for such subpoenas submitted after this date will be permitted only upon a showing of good cause.
February 23, 2018:	The parties will participate in a telephonic prehearing conference at a time to be determined.
March 1, 2018:	Parties exchange but do not file premarked exhibits.
	Amendments to witness lists are due.

[1] Prehearing briefs are optional. The parties should note, however, that I do not normally entertain opening statements and that a prehearing brief serves as the party's opening statement.

[2] Although February 16, 2018, is the deadline for requesting such subpoenas, in order to minimize inconvenience and provide adequate notice to third parties, the parties are encouraged not to wait to submit requests for such subpoenas.

March 2, 2018: The hearing will begin at 9:30 a.m. at a location to be determined.[3]

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 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 should confer and attempt to stipulate to the admissibility of exhibits. 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.

3. 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. After filing the initial exhibit list, there is no need in the interim to submit 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.

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[3] Ordinarily, a hearing would not be set to begin ten months after service of the OIP. *See* Amendments to the Commission's Rules of Practice, Exchange Act Release No. 78319, 81 Fed. Reg. 50212, 50214 n.18 (July 29, 2016) ("the maximum [ten-month] prehearing period should be the exception rather than the norm"). In this instance, however, several factors influenced the decision to set the hearing to begin on March 2, 2018. These include (1) Respondent's recent retention of current counsel, *i.e.*, after the conclusion of the Commission's investigation; (2) difficulties discussed during the prehearing conference concerning disclosure of the investigative file; (3) the size of the investigative file; and (4) the Division's seeming concession during the conference that Respondent's proposal to start in March 2018 is appropriate.

4. Expert reports and testimony. Expert witness disclosures must comply with Rule of Practice 222(b)(1). Because this Rule is modeled on Federal Rule of Civil Procedure 26(a)(2)(B), the parties should look to Rule 26(a)(2)(B) and cases interpreting it for guidance. Failure to comply with the requirements of Rule 222(b) 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 essentially constitutes the filing of the expert's direct testimony. During the hearing, the expert will not be subject to direct examination, and will simply be sworn in and proffered for cross-examination. On request, however, a party may conduct a brief direct examination of the party's expert.

5. 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 fifteen 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.

6. Hearing issues – Examination.

i) In general, the Division of Enforcement presents its case first because it has the burden of proof. Respondent then presents his 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 Respondent also wishes to call as a witness, Respondent should cross-examine the witness as if he were calling the witness in his own case. This means that Respondent's cross-examination of the witness in this circumstance may exceed the scope of what was covered by Division's direct examination of that same witness. This will avoid the need to recall a witness just so the witness can testify for Respondent's case.

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

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

v) 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.

7. 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.

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James E. Grimes
Administrative Law Judge