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

Administrative Proceedings Rulings
Release No. 5521 / January 24, 2018

Administrative Proceeding
File No. 3-18292

In the Matter of

Anton & Chia, LLP,
Gregory A. Wahl, CPA,
Michael Deutchman, CPA,
Georgia Chung, CPA, and
Tommy Shek, CPA

Scheduling and General Prehearing Order

On January 22, 2018, I held a telephonic prehearing conference attended by the Division of Enforcement and attorneys representing all of the Respondents. As discussed at the prehearing conference, the hearing in this matter will be held in Los Angeles and will take about three weeks, beginning on Monday, October 1, 2018. The hearing will be adjourned on October 8 for Columbus Day and on October 10 and 11 in light of a preexisting commitment of counsel.[1]

I set the following prehearing schedule:

February 23, 2018: Respondents' deadline to file any motions to dismiss.[2]

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[1] Because the parties agreed to a hearing date, I deem them to have consented to waiving their right to a hearing between thirty and sixty days after service of the order instituting proceedings. *See* 15 U.S.C. § 78u-3(b).

[2] As discussed, this schedule does not contemplate the filing of motions for summary disposition. If any party is granted leave to file such a motion, the schedule will be adjusted as necessary. *See* 17 C.F.R. § 201.250(c).

April 6, 2018:	Parties to disclose the number of expert witnesses they plan to call, and their identities, if known.
July 13, 2018:	Deadline to complete fact witness depositions (but not expert depositions).
	Parties to exchange and file expert reports pursuant to Rule of Practice 222(b).
August 3, 2018:	Parties to exchange and file rebuttal expert reports.
September 7, 2018:	Parties to exchange and file witness lists.
September 14, 2018:	Parties to exchange and file exhibit lists and premarked exhibits.
September 21, 2018:	Parties to exchange and file objections to witness and exhibit lists, motions in limine, and prehearing briefs.[3]
September 26, 2018:	Responses to motions in limine due.
September 27, 2018:	Final telephonic prehearing conference at 11:30 a.m. Eastern.
October 1, 2018:	Hearing commences in Los Angeles.
October 24, 2018:	Hearing closes (tentative).

Below, I set forth some of the general rules and guidelines I intend to follow leading up to and during the hearing. Any objection to these general rules and guidelines may be made by written motion or, if appropriate, orally during any prehearing conference.

1. Settlement. If the parties desire a settlement conference with an administrative law judge (ALJ), they should jointly file a motion for a settlement conference, and a settlement ALJ may be appointed. *E.g.*, *Airtouch Commc'ns, Inc.*, Admin. Proc. Rulings Release No. 2253, 2015 SEC LEXIS 271 (ALJ Jan. 23, 2015). The settlement

[3] I am not imposing a deadline for the filing of stipulations, although the parties should endeavor to file stipulations at the same time as the prehearing briefs.

ALJ will not discuss any representations or submissions of the parties with the presiding ALJ. The parties must agree to waive the following rights: (1) the right to claim bias or prejudgment by myself or the settlement ALJ based on any views expressed during the settlement process; (2) the right to a public proceeding (because the settlement process will not be open to the public); (3) the right to a proceeding on the record (because the settlement process will not be recorded stenographically); and (4) the right to an *inter partes* proceeding (because the settlement ALJ may confer with the parties *ex parte*).

2. Personal or sensitive information. Administrative hearings are presumptively public, as are filings in administrative proceedings. 17 C.F.R. § 201.301. Thus, unless a party moves for confidential treatment or for a protective order, any filing is considered public, as it would be in federal district court. Although the Commission currently has no rules regarding what personal information should not appear in a filing, exercise caution. Omit personal or sensitive information if there is no real need for it.

3. Subpoenas.[4] Pursuant to Commission Rule of Practice 232(b), when I receive a request for a subpoena, I review it to determine if the subpoena is unreasonable, oppressive, excessive in scope, or unduly burdensome. 17 C.F.R. § 201.232(b). If I find it colorably objectionable, I generally issue an order in which I solicit the parties' views on the matter. If I do not find it objectionable, I wait two or three business days, and if no party notifies me that it objects to the subpoena, I sign the subpoena and return it to the requesting party. If a party does object, it should notify this office immediately, and I will set a briefing schedule for any motion to quash. Because I view the briefing schedule set forth in Rule 232 as too slow, any briefing schedule on a party's motion to quash will normally require the filing of such a motion within five business days of the order setting the briefing schedule, and the filing of any opposition within three business days thereafter. No reply brief is permitted. 17 C.F.R. § 201.232(e)(1).

4. Exhibit lists. Exhibit lists shall be exchanged and filed by all parties and should include all documents that a party expects to

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[4] Forms for subpoenas to produce and to appear are available at https://www.sec.gov/alj.

use in the hearing for any purpose. This includes documents that are relevant only for impeachment purposes or that are presumptively inadmissible, such as investigative testimony or other prior sworn statements. Comprehensive exhibit lists prevent other parties from being surprised in the middle of the hearing and also make it easier for me to track the various documents that the parties use during the hearing.

5. Expert reports and testimony. Expert witness disclosures must, of course, comply with Rule 222(b), including the provision of a "brief summary" of an expert's expected testimony. 17 C.F.R. § 201.222(a)(4), (b). However, I prefer to streamline the hearing by substituting the expert's report for direct testimony. Thus, expert reports should be as specific and detailed as those presented in federal district court pursuant to Federal Rule of Civil Procedure 26. The filing of the expert's report according to the prehearing schedule constitutes the filing, in essence, of the expert's direct testimony. During the hearing, the expert is not subject to direct examination, and is simply sworn in and proffered for cross-examination. However, I have entertained requests for brief direct examination of a party's expert.

6. Prior sworn statements. There is no general prohibition on hearsay in Commission administrative proceedings. *See* 17 C.F.R. § 201.320. Prior sworn statements, sworn depositions taken pursuant to Rule 233 or 234, investigative testimony, and other sworn statements or declarations pursuant to 28 U.S.C. § 1746, however, are generally inadmissible. *See* 17 C.F.R. § 201.235(a). But such statements made by a party or its agent – i.e., admissions – may be used for any purpose. 17 C.F.R. § 201.235(b).

7. Laying a foundation. Evidence that is irrelevant, immaterial, or unduly repetitious is inadmissible; other evidence is presumptively admissible, including hearsay if it is relevant, material, and bears satisfactory indicia of reliability so that its use is fair. 17 C.F.R. § 201.320. Thus, I do not generally require a party to lay a foundation for admission of an exhibit, nor is there a need to call a document custodian as a witness. A party may nonetheless lay a foundation if it desires, and doing so may enhance the probative value of a piece of evidence. For example, whether hearsay bears satisfactory indicia of reliability is evaluated in light of a multi-factor test, and laying a foundation with that test in mind may be appropriate. *See* Amendments to the Commission's Rules of Practice, 81 Fed. Reg. 50212, 50226-27 (July 29, 2016).

8. Start of the hearing. I generally do two things at the very beginning of the hearing. First, I rule on any pending motions, particularly motions in limine. Second, I rule on as many evidentiary objections as possible, and admit or exclude as many exhibits as I can, which greatly streamlines the hearing. The parties should therefore be prepared at the start of the hearing to orally address pending motions and evidentiary objections. In general, any evidentiary objection that I do not resolve at the outset will be handled in the "traditional" way, that is, its proponent should lay a foundation and then, if an exhibit, offer it in evidence. The objecting party may then renew its objection.

9. Hearing schedule. Although the precise hearing schedule depends on the circumstances, I generally start the day at 9:00 or 9:30 a.m., and continue until at least 5:00 p.m. I generally take one break in the morning, lasting about fifteen minutes, and at least one break in the afternoon, also lasting about fifteen minutes. I generally break for lunch between noon and 12:30 p.m., for about one hour and fifteen minutes. I am flexible if the parties desire a different schedule.

10. Form of objections. I discourage speaking objections, because they have a tendency to suggest answers to witnesses. On the other hand, it is helpful if an objection includes at least some articulated basis. Thus, my preferred form of objection is "objection," followed by no more than five or six words explaining the basis. For example, "objection – vague," "objection – asked and answered," or "objection – assumes facts not in evidence," are all acceptable ways of objecting.

11. Examination.

    a. In general, the Division puts its case on first, because it has the burden of proof. The respondent then presents his or her case, although I am flexible about permitting the parties to proceed in some other order, and to take witnesses out of order.

    b. Although the Commission Rules of Practice provide respondents the right to move for a ruling as a matter of law at the close of the Division's case in chief, such motions should be "granted in only the rarest of cases." 81 Fed. Reg. at 50225 & n.125 (citing *Rita Villa*, Securities Exchange Act of 1934 Release No. 39518, 1998 WL 4530 (Jan. 6, 1998)); *see*

17 C.F.R. § 201.250(d). As a result, I do not strictly enforce the rule that a respondent does not present any evidence until the Division rests. Instead, if the Division calls a witness that a respondent also wishes to call as a witness, the respondent should cross-examine the witness as if he or she were calling the witness in his or her own case. This means that cross-examination may exceed the scope of direct examination. Indeed, I generally do not enforce the scope rule at all, and I allow multiple redirects and recrosses, until the testimony of the witness is completely exhausted by all parties. This way, a witness need only testify once, and need not be recalled just for a respondent's case.

c. A respondent as a witness is the exception to 11(b), *supra*. I am flexible regarding the manner of presenting respondent testimony, so long as the parties agree on it. For example, if the Division calls a respondent as its last witness, the parties may agree that respondent's counsel conducts the direct examination, followed by the Division's cross-examination, which may exceed the scope of direct. In the absence of any agreement, respondent testimony proceeds in the traditional way, that is, the respondent is called as a witness and examined potentially multiple times.

d. In general, cross-examination may be conducted by leading questions, even as to Division witnesses that a respondent wishes to call in his or her own case. However, counsel may not lead their client. Thus, if a respondent is called as a witness in the Division's case, that respondent's counsel may not ask leading questions on cross-examination. Similarly, if a Commission employee is called as a witness for a respondent, the Division (or whoever represents the employee, such as the Office of General Counsel) may not ask leading questions on cross-examination.

12. Practice tips. Depositions in civil cases, and sworn testimony during investigations, are far more common than Commission administrative hearings, and I have found that certain deposition practices have unfortunately crept into hearings. I offer these practice tips as helpful suggestions to move a case along efficiently.

a. Avoid leading questions on direct. Properly formulated non-leading questions do not always come naturally, and it is easy to fall into the habit, as in a deposition, of asking

leading questions all the time. However, leading questions during direct of non-hostile witnesses are objectionable, and I sustain objections to them. Repeated leading questions, followed by meritorious objections, followed by rephrased questions, slow down the hearing needlessly, and are easily prevented.

b. Hit the high points on cross. The purpose of discovery is to explore the case; the purpose of a hearing is to present the case. It is a waste of hearing resources to bring out on cross every jot and tittle of minutiae that is colorably helpful to your case. Your cross will be much more memorable and powerful if you emphasize the strong points, and marginalize the tangential points.

c. Do not comment on the evidence. You may be able to get away with sarcasm during a deposition, but sarcasm during a hearing, particularly during cross-examination, just makes you look petty and unprofessional. The post-hearing briefs provide ample opportunity to explain your skepticism in detail.

13. Be civil. Civility streamlines every proceeding, and makes my job much easier. A willingness to communicate respectfully with opposing counsel is a sign of strength, not a sign of weakness. Although there is no meet-and-confer requirement in the Commission Rules of Practice, I encourage the parties to attempt to reach agreement on anything they reasonably can. If you cannot reach agreement, I will resolve the matter, but if you do disagree, try not to be disagreeable about it.

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Cameron Elliot
Administrative Law Judge