

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

Administrative Proceedings Rulings  
Release No. 5728 / May 15, 2018

Administrative Proceeding  
File No. 3-17950

In the Matter of  
**David Pruitt, CPA**

**Order Scheduling  
Prehearing Conference  
and Requesting Declaration**

Respondent David Pruitt served subpoenas on the Securities and Exchange Commission's Division of Corporation Finance and the Office of the Chief Accountant. The Division of Enforcement and the Office of Litigation and Administrative Practice in the Commission's Office of the General Counsel have moved to quash the subpoenas (the "joint motion").

Pruitt seeks six categories of evidence. The first concerns "documents and communications" related to requests from his former employer for guidance from Corporation Finance or the Chief Accountant from January 1, 1977, through the present. The other five categories concern how the Commission has interpreted, internally or in communication with registrants, certain statutory phrases.

The joint motion asserts that the subpoenas seek irrelevant and immaterial evidence, are overbroad and unduly burdensome, and seek documents protected by the deliberative-process and work-product privileges.

To address the joint motion, I ORDER that a telephonic prehearing conference will be held on May 29, 2018, at 2:30 p.m. EDT.<sup>1</sup> The parties should be prepared to address the relevance of the evidence that is the subject of the subpoenas. I note that although the evidence covered by categories two through six does not appear to be particularly relevant, the

---

<sup>1</sup> The parties may agree to a different date and time for the conference and notify my office.

Division has in previous cases presented testimony about the reasoning behind the adoption of certain securities provisions.<sup>2</sup>

The Division and Office of the General Counsel bear the burden to show any privilege applies.<sup>3</sup> By May 23, 2018, they should supplement their motion with a declaration providing factual support for their assertions.<sup>4</sup> In particular, a supporting declaration is necessary to properly invoke the joint motion's claims of privilege.<sup>5</sup> The supporting declaration should also provide factual support for the arguments that the subpoenas are overbroad and unduly burdensome.

---

James E. Grimes  
Administrative Law Judge

---

<sup>2</sup> See, e.g., *Ambassador Capital Mgmt.*, Initial Decision Release No. 672, 2014 WL 4656408, at \*37-38 (ALJ Sept. 19, 2014), *finality order*, Investment Advisers Act of 1940 Release No. 3979, 2014 WL 6985132 (Dec. 11, 2014); see also *optionsXpress, Inc.*, Securities Act of 1933 Release No. 10125, 2016 WL 4413227, at \*27 (Aug. 18, 2016) (noting that a respondent relied on testimony of a former Director of the Division of Trading and Markets and Commission Chief Economist to support its interpretation of a rule).

<sup>3</sup> *Senate of the Com. of Puerto Rico on Behalf of Judiciary Comm. v. U.S. Dep't of Justice*, 823 F.2d 574, 585 (D.C. Cir. 1987).

<sup>4</sup> See *Wood ex rel. United States v. Am. Inst. in Taiwan*, 286 F.3d 526, 534 (D.C. Cir. 2002); *Keith L. Mohn*, Securities Exchange Act of 1934 Release No. 42144, 1999 WL 1036827, at \*4 n.16 (Nov. 16, 1999).

<sup>5</sup> See *Drummond Co. v. Terrance P. Collingsworth, Conrad & Scherer, LLP*, 816 F.3d 1319, 1327 (11th Cir. 2016) (“blanket assertion of work product privilege does not entitle Scarola to the wholesale protection from Drummond’s subpoenas that he sought”); *Landry v. FDIC*, 204 F.3d 1125, 1135 (D.C. Cir. 2000) (describing what is required to invoke deliberative-process privilege); see also *Grand Cent. P’ship, Inc. v. Cuomo*, 166 F.3d 473, 482 (2d Cir. 1999) (noting that because a predecisional document precedes a decision, an agency seeking to invoke the deliberative-process privilege typically must identify the decision to which the predecisional document relates).