

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

Administrative Proceedings Rulings  
Release No. 5779 / June 7, 2018

Administrative Proceeding  
File No. 3-17950

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

**Order Rescheduling Hearing**

The hearing in this matter is currently scheduled to begin in July 2018. The parties have jointly requested that I postpone it until October 2018. For the reasons discussed below, I grant the parties' request.

The Securities and Exchange Commission initiated this proceeding in April 2017, when it issued an order instituting proceedings (OIP). Because the OIP was served on May 2, 2017,<sup>1</sup> I was required to schedule the hearing to begin by March 2, 2018.<sup>2</sup> Owing to a number of factors raised by the parties, I scheduled the hearing to begin on February 20, 2018, near the end of the ten-month window for starting it.<sup>3</sup>

Progress toward the February 2018 hearing stalled in November 2017 when I stayed the case after the parties notified me that they intended to settle and the Commission ratified my appointment and directed me to

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<sup>1</sup> *David Pruitt, CPA*, Admin. Proc. Ruling Release No. 4832, 2017 SEC LEXIS 1574, at \*1 (ALJ May 26, 2017).

<sup>2</sup> *See* 17 C.F.R. § 201.360(a)(2) (establishing a ten-month window for commencement of hearings); Amendments to the Commission's Rules of Practice, Securities Exchange Act of 1934 Release No. 78319, 81 Fed. Reg. 50212, 50214 & n.18 (July 29, 2016).

<sup>3</sup> *David Pruitt, CPA*, Admin. Proc. Ruling Release No. 4842, 2017 SEC LEXIS 1602, at \*3 (ALJ June 1, 2017); *see* Prehearing Tr. 5–12.

reconsider the record.<sup>4</sup> These events and my later order ratifying all prior actions in this case extended the window for starting the hearing to June 2018.<sup>5</sup> But because all discovery and deposition dates had to be rescheduled, I ordered that the hearing would begin in July.<sup>6</sup>

In late March, counsel for Respondent David Pruitt gave the Division an affidavit from Timothy Keenan, an apparently “critical fact witness.”<sup>7</sup> The following week, the parties filed a joint motion for a limited stay of discovery. In a supporting memorandum, the Division asserted that the affidavit “will significantly impact the preparation for and conduct of the hearing scheduled for July 2018, and may impact whether a hearing is even necessary.”<sup>8</sup> It proposed to stay all discovery except for the Division’s deposition of Keenan.<sup>9</sup> The Division also offered that a stay would “enable the Division to appropriately advise the Commission as to what, if any, actions are warranted in light of these new facts.”<sup>10</sup> In a later-filed supporting memorandum, Pruitt explained that he expected that after taking Keenan’s deposition, the Division would seek dismissal of the OIP.<sup>11</sup> On the basis of the parties’ representations, I stayed discovery until early May 2018.<sup>12</sup>

Things did not work out as the parties anticipated. After Keenan’s deposition on May 2, 2018, the parties held a series of discussions but, by

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<sup>4</sup> *Pending Admin. Proc.*, Securities Act of 1933 Release No. 10440, 2017 WL 5969234, at \*1 (Nov. 30, 2017); *David Pruitt, CPA*, Admin. Proc. Ruling Release No. 5229, 2017 SEC LEXIS 3596, at \*3 (ALJ Nov. 15, 2017).

<sup>5</sup> *See* 17 C.F.R. § 201.360(a)(2)(ii); *Pending Admin. Proc.*, 2017 WL 5969234, at \*1; *David Pruitt, CPA*, Admin. Proc. Ruling Release No. 5603, 2018 SEC LEXIS 477, at \*21 (ALJ Feb. 15, 2018); *David Pruitt, CPA*, Admin. Proc. Ruling Release No. 5599, 2018 SEC LEXIS 470 (ALJ Feb. 14, 2018).

<sup>6</sup> *Pruitt*, 2018 SEC LEXIS 477, at \*21–22.

<sup>7</sup> *See* Division’s Mem. in Support of Joint Mot. for a Limited Stay of Discovery at 1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 2.

<sup>10</sup> *Id.*

<sup>11</sup> Resp. Mem. in Support of Joint Mot. for a Limited Stay of Discovery at 1.

<sup>12</sup> *David Pruitt, CPA*, Admin. Proc. Ruling Release No. 5671, 2018 SEC LEXIS 847 (ALJ Apr. 5, 2018).

May 22, 2018, realized that settlement would not be possible.<sup>13</sup> They then conferred regarding a new date to hold the hearing.<sup>14</sup> The parties explain that they are now faced with the need to schedule and conduct depositions during the summer when counsel and witnesses are likely to be unavailable at various times.<sup>15</sup> Given this challenge, they propose to hold the hearing starting in October 2018.<sup>16</sup>

Given the circumstances, including the delay associated with ratification, the discovery stay, the parties' efforts to settle after Keenan's deposition, the need to complete discovery, and the parties' agreement, I GRANT the parties' joint request.<sup>17</sup> The hearing in this matter will commence on October 15, 2018. No further extensions will be granted.

Within seven days, the parties must confer and submit a proposed prehearing schedule.

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James E. Grimes  
Administrative Law Judge

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<sup>13</sup> Letter from David Oliwenstein at 2 (June 5, 2018). Hoping to avoid unnecessary effort and expense, the parties conducted no discovery after Keenan's deposition while they discussed possible settlement. *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See 17 C.F.R. §§ 201.111, .161(a).