

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

Administrative Proceedings Rulings  
Release No. 6842 / April 12, 2022

Administrative Proceeding  
File No. 3-20801

In the Matter of  
**DF Growth REIT II, LLC**

**Order Setting Prehearing  
Schedule**

On April 11, 2022, the parties filed a joint prehearing conference statement that outlined the subjects they discussed, noted areas of disagreement, and proposed differing prehearing schedules.

Before setting a prehearing schedule, I address Respondent's preliminary argument that it has been prejudiced because the Securities and Exchange Commission has not issued an order instituting proceedings (OIP). Joint Prhr's Statement at 1–2. However, an OIP is “an order issued by the Commission commencing a proceeding or an order issued by the Commission to hold a hearing.” 17 C.F.R. § 201.101(a)(7). Here, the Commission issued two documents that can be characterized as the OIP. The Commission's March 16, 2022, order temporarily suspending Respondent's Regulation A exemption commenced the proceeding in that it provided Respondent with notice of the proceeding, granted Respondent the right to request a hearing, stated the legal authority and jurisdiction for the proceeding, contained “a short and plain statement of the matters of fact and law” leading to the Commission's action, and stated the nature of the action taken (temporary suspension) as well as what would happen if Respondent did not request a hearing (permanent suspension). See 17 C.F.R. § 201.200(a)(1), (b); *Am. Cryptofed DAO LLC*, Securities Exchange Act of 1934 Release No. 93971, 2022 WL 118206, at \*2 (Jan. 12, 2022) (“The purpose of the OIP is to provide notice of what violations of the securities laws are alleged ....”). Then, following Respondent's request, the Commission, on March 31, 2022, set this matter for a hearing. The Commission's issuances constitute the OIP.

I set the following prehearing schedule, footnoting how I resolve conflicts between the parties when necessary:

- April 18, 2022: Division of Enforcement to make available to Respondent all documents it is required to produce under 17 C.F.R. § 201.230.<sup>1</sup>
- April 20, 2022: Respondent may file an answer to the OIP.<sup>2</sup>
- May 13, 2022: Motions for summary disposition, if any.<sup>3</sup>
- May 16, 2022: Parties to exchange and file witness and exhibit lists, and exchange (but not file) copies of exhibits. Expert witness disclosures and reports, if any.
- May 23, 2022: Oppositions to motions for summary disposition, if any.
- May 26, 2022: Summary disposition replies, if any.
- May 31, 2022: Motions in limine, prehearing briefs, and any joint stipulations.
- June 2, 2022: Final telephonic prehearing conference with the judge at 4:00 p.m. Eastern.

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<sup>1</sup> Respondent points out that the Division was required to make documents available no later than seven days after service of the OIP. 17 C.F.R. § 201.230(d). In light of the atypical way in which this proceeding was instituted, I am extending the Division's deadline.

<sup>2</sup> Respondent contemplates filing an answer. *See* Joint Prhr'g Statement at 2, 5. Although the OIP did not require Respondent to file an answer, "any respondent in any proceeding may elect to file an answer." 17 C.F.R. § 201.220(a). Generally, answers are due 20 days from the date of service of the OIP. 17 C.F.R. § 201.220(b). For these purposes, it is fair to consider the 20 days to run from March 31, the date of the order setting a hearing, which would make an answer deadline of April 20.

<sup>3</sup> Respondent appears amenable to such a deadline. *See* Joint Prhr'g Statement at 9; 17 C.F.R. § 201.250(b) (providing for motions for summary disposition in cases designated under the 30-day timeframe once a respondent's answer has been filed and documents have been made available under Rule 230).

June 6, 2022: Hearing commences in San Diego, CA, and is expected to last 2–4 days. My office will coordinate finding a location for the hearing.

/s/ Jason S. Patil  
Administrative Law Judge