

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10617 / March 20, 2019

INVESTMENT ADVISERS ACT OF 1940
Release No. 5204 / March 20, 2019

INVESTMENT COMPANY ACT OF 1940
Release No. 33405 / March 20, 2019

Admin. Proc. File No. 3-15574

In the Matter of

HARDING ADVISORY LLC
and WING F. CHAU

ORDER

On January 6, 2017, the Commission issued an opinion and order finding that respondents Harding Advisory LLC and Wing F. Chau violated the antifraud provisions of the federal securities laws.¹ While respondents' appeal was pending in the United States Court of Appeals for the D.C. Circuit, the Supreme Court held in *Lucia v. SEC* that Commission administrative law judges are inferior officers for purposes of the Appointments Clause of Article II of the Constitution.² On September 19, 2018, the D.C. Circuit ordered that the Commission's opinion and order be "set aside and [the] case . . . remanded to the agency for a new hearing either before another Administrative Law Judge or before the Commission, in accordance with *Lucia v. SEC*."³ Respondents filed a petition for rehearing en banc, which the D.C. Circuit denied,⁴ and the court's mandate issued on January 17, 2019.⁵

¹ *Harding Advisory LLC*, Securities Act Release No. 10277, 2017 WL 66592 (Jan. 6, 2017).

² 138 S. Ct. 2044 (2018).

³ Doc. No. 1751503, No. 17-1070 (D.C. Cir. Sep. 19, 2018).

⁴ Doc. No. 1767629, No. 17-1070 (D.C. Cir. Jan. 9, 2019).

⁵ Doc. No. 1768801, No. 17-1070 (D.C. Cir. Jan. 17, 2019).

We now direct the conduct of further proceedings consistent with this order, the D.C. Circuit's mandate, and the Supreme Court's decision in *Lucia*. We order that respondents be provided with the opportunity for a new hearing before an ALJ who did not previously participate in the matter. We remand this proceeding to the Office of Administrative Law Judges for that purpose and vacate any prior opinions and orders we have issued in the matter.

Absent express agreement by the parties regarding alternative procedures, the Chief Administrative Law Judge shall by rotation to the extent practicable designate an ALJ who did not previously participate in this matter to be the presiding hearing officer.⁶ Any agreement by the parties regarding alternative procedures shall be submitted to the Chief Administrative Law Judge by April 17, 2019. Otherwise, the Chief Administrative Law Judge shall designate a presiding ALJ no later than May 1, 2019.

The assigned ALJ shall exercise the full powers conferred by the Commission's Rules of Practice and the Administrative Procedure Act and shall not give weight to or otherwise presume the correctness of any prior opinions, orders, or rulings issued in the matter.⁷ Within 21 days of being assigned to the proceeding, the ALJ shall issue an order directing the parties to submit proposals for the conduct of further proceedings. After considering the parties' submissions, the ALJ shall hold a new hearing and prepare an initial decision; but if a party fails to submit a proposal, the ALJ may enter a default against that party pursuant to Rule of Practice 155 or impose another appropriate sanction under Rule of Practice 180.⁸

The Rules of Practice as amended on July 13, 2016 shall govern this proceeding,⁹ unless the presiding ALJ determines, after giving the parties notice and an opportunity to be heard, that

⁶ 17 C.F.R. § 200.30-10(a)(2).

⁷ *E.g.*, Rule of Practice 111, 17 C.F.R. § 201.111; 5 U.S.C. § 556.

⁸ 17 C.F.R. §§ 201.155, .180.

⁹ This proceeding was instituted before the effective date of the amended Rules of Practice, and we directed the ALJ to issue an initial decision within 300 days of service of the order instituting proceedings. *Harding Advisory LLC*, Securities Act Release No. 9467, 2013 WL 5670841, at *13 (Oct. 18, 2013) (order instituting proceedings). For purposes of applying the amended Rules of Practice, this proceeding shall be deemed to be one under the 120-day timeframe as specified in Rule of Practice 360(a)(2). The ALJ shall compute the deadlines for scheduling a hearing and issuing an initial decision as specified in amended Rule of Practice 360(a)(2) from the date the proceeding is assigned to a hearing officer pursuant to this order, rather than the date of service of the OIP. The deadlines stated in this order, like those in Rule of Practice 360, confer no procedural or substantive rights on any party, and the presiding ALJ may, for good cause shown, modify any of them, including the date by which the initial decision must be issued. This grant of authority allowing the presiding ALJ to modify the deadlines stated in this order supersedes the provisions in Rule of Practice 360(a)(3)(i) and (ii) governing the circumstances under which the deadlines to issue initial decisions may be extended.

application of a particular amended rule would not be just and practicable or otherwise would work a manifest injustice under the circumstances of the case, in which case the former rule applies.

This order does not preclude the Commission from subsequently assigning the proceeding to the Commission itself or to any member of the Commission at any time.

By the Commission.

Vanessa A. Countryman
Acting Secretary