

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5230 / May 7, 2019

INVESTMENT COMPANY ACT OF 1940
Release No. 33467 / May 7, 2019

Admin. Proc. File No. 3-19024

In the Matter of ASCENSION ASSET MANAGEMENT, LLC and GRENVILLE M. GOODER, JR.
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ORDER

On March 7, 2019, the Commission issued an order instituting administrative and cease-and-desist proceedings (the “OIP”) pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940 against Ascension Asset Management, LLC and Grenville M. Gooder, Jr. (collectively, “Respondents”).¹ In compliance with the statutory provision governing cease-and-desist proceedings, the OIP specified that a “public hearing before the Commission for the purposes of taking evidence . . . shall be convened not earlier than 30 days and not later than 60 days” from service of the OIP.² The statute also provides that “an earlier or later date” for the hearing may be “set by the Commission with the consent of any respondent so served.”³

Respondents were served with the OIP on March 11, 2019. As a consequence, in the absence of consent by both respondents regarding a later hearing date, a public hearing was to be held on or before May 10, 2019. On March 26, 2019, the parties were directed to file a statement advising the Commission of any agreement to a later hearing date (or a statement that no agreement could be reached) as soon as practicable.⁴

The parties filed a joint statement on April 16, 2019. They stated that after a prehearing conference and further discussion, they had reached full agreement on a proposed schedule.

¹ Advisers Act Release No. 5121, 2019 WL 1082154 (Mar. 7, 2019).

² *Id.* at *8.

³ 15 U.S.C. § 80b-3(k)(2).

⁴ Advisers Act Release No. 5214, 2019 WL 1353779 (Mar. 26, 2019).

Respondents agreed to waive their right to a hearing within 60 days of service of the OIP and assented instead to a hearing to commence September 9, 2019 in Washington, D.C.

We adopt the parties' proposed schedule, with slight modification, as detailed below:

May 13, 2019	Parties exchange and file expert witness lists.
June 3, 2019	Parties exchange and file rebuttal expert witness lists.
June 21, 2019	Parties complete fact discovery.
June 21, 2019	Parties complete expert discovery.
July 1, 2019	Parties exchange and file initial expert reports, along with expert witness Disclosures (together with information required by 17 C.F.R. §201.222(b)).
July 8, 2019	Parties exchange and file Rule 250 motions for summary disposition.
July 15, 2019	Parties exchange and file rebuttal expert reports, along with expert witness Disclosures (together with information required by 17 C.F.R. § 201.222(b)).
July 22, 2019	Parties exchange and file oppositions to Rule 250 motions for summary disposition.
July 29, 2019	Parties exchange and file replies to Rule 250 motions for summary disposition.
August 19, 2019	Parties exchange and file witness lists, exhibit lists, and stipulations.
August 26, 2019	Parties exchange and file motions <i>in limine and objections to witnesses and/or exhibits, if any</i> .
August 30, 2019	Parties exchange and file oppositions to motion <i>in limine</i> , as well as prehearing briefs.
October 21, 2019	The Division will exchange and file its proposed findings of fact and conclusions of law and posthearing briefs.
November 18, 2019	Respondents will exchange and file their counter-proposed findings of fact and conclusions of law and posthearing brief.
December 6, 2019	The Division will exchange and file its reply to Respondents' counter-proposed findings of fact and conclusions of law and posthearing briefs.

We note that Respondents reserve the right to amend their Answer until completion of fact discovery, and to raise constitutional arguments “at any time.” Both parties reserve the right to conduct depositions upon oral examination pursuant to Rule of Practice 233(a)(2).

The Commission finds that it would serve the interests of justice and not result in prejudice to any party to specify further procedures in this matter.⁵ To the extent conflicting, the procedures specified in this order supersede those specified in the OIP.

Accordingly, IT IS ORDERED that a public hearing for purposes of taking evidence on the questions set forth in Section III of the OIP shall be convened before an Administrative Law Judge on September 9, 2019, as provided by Rule of Practice 110.⁶ The Chief Administrative Law Judge shall by rotation to the extent practicable designate an ALJ to be the presiding hearing officer.⁷ The presiding hearing officer shall specify the time and place of the hearing by further order. The presiding hearing officer shall exercise the full powers conferred by the Commission’s Rules of Practice and the Administrative Procedure Act.⁸

Attention is called to Rule of Practice 151(b) and (c), providing that when, as here, the Commission has assigned a case to a hearing officer, all papers shall be filed with the Office of the Secretary (with a copy provided to the hearing officer) and that all motions, objections, or applications shall be directed to and decided by the presiding hearing officer.⁹ This includes, without limitation, filings under Rules of Practice 210, 221, 222, 230, 231, 232, 233, and 250.¹⁰ The parties should comply with the hearing officer’s instructions regarding the provision of electronic courtesy copies. We note that the parties have agreed to accept service of filings via email.

IT IS FURTHER ORDERED that the proposed procedural schedule set forth in the joint statement filed by the parties on April 16, 2019 following their pre-hearing conference and further discussions is adopted as modified above. Any request for modification of the schedule shall be directed to and decided by the presiding hearing officer.

IT IS FURTHER ORDERED that, pursuant to Rule of Practice 360(a)(2), the hearing officer shall issue an initial decision no later than 120 days from the occurrence of one of the following events: (A) the completion of post-hearing briefing in a proceeding where the public hearing has been completed; (B) where the hearing officer has determined that no public hearing

⁵ Rule of Practice 100(c), 17 C.F.R. § 201.100(c).

⁶ 17 C.F.R. § 201.110. The hearing officer shall have authority to give effect to any further agreement by both respondents to a later hearing date, but absent such agreement the public hearing must commence by the week of September 9, 2019.

⁷ 17 C.F.R. § 200.30-10(a)(2).

⁸ *See, e.g.*, Rule of Practice 111, 17 C.F.R. § 201.111; 5 U.S.C. § 556.

⁹ 17 C.F.R. § 201.151(b)-(c). Any motion or other prehearing request currently pending before the Commission is referred to the hearing officer for disposition.

¹⁰ 17 C.F.R. §§ 201.210, 221, 222, 230, 231, 232, 233, 250.

is necessary, upon completion of briefing on a motion pursuant to Rule of Practice 250;¹¹ or (C) the determination by the hearing officer that a party is deemed to be in default under Rule of Practice 155 and no public hearing is necessary.¹² This proceeding shall be deemed to be one under the 120-day timeframe specified in Rule of Practice 360(a)(2)(i) for the purposes of applying Rules of Practice 233 and 250.¹³

IT IS FURTHER ORDERED that the initial decision be issued on the basis of the record before the hearing officer, as defined by Rule of Practice 350,¹⁴ and that the record index shall be prepared and certified in accordance with Rule of Practice 351.¹⁵

IT IS FURTHER ORDERED that, upon issuance of an initial decision, Rules of Practice 360(d), 410, and 411 shall govern further Commission consideration of this matter.¹⁶

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

By the Commission.

Vanessa A. Countryman
Acting Secretary

¹¹ 17 C.F.R. § 201.250.

¹² 17 C.F.R. § 201.155.

¹³ 17 C.F.R. §§ 201.233, .250, .360(a)(2)(i).

¹⁴ 17 C.F.R. § 201.350.

¹⁵ 17 C.F.R. § 201.351.

¹⁶ 17 C.F.R. §§ 201.360(d), 410, 411. Prior to issuance of an initial decision, interlocutory Commission review shall be governed by Rule of Practice 400. 17 C.F.R. § 201.400.