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ADMINISTRATIVE PROCEEDING  
FILE NO. 3-11465

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
June 8, 2004

SECURITIES & EXCHANGE COMMISSION  
MAILED FOR SERVICE

JUN 10 2004

FIRST CLASS

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In the Matter of	:	
	:	
PUBLIC FINANCE	:	
CONSULTANTS, INC.,	:	REVISED SCHEDULING ORDER
ROBERT D. FOWLER,	:	
DOLPHIN AND BRADBURY	:	
INCORPORATED,	:	
and ROBERT J. BRADBURY	:	
	:	

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The Division of Enforcement (Division) and Respondents Dolphin and Bradbury, Inc., and Robert J. Bradbury have alerted me to a discrepancy between the schedule agreed upon at the May 26, 2004, prehearing conference and the Scheduling Order of May 27, 2004. After reviewing the transcript of the prehearing conference, I agree with the parties. The revised schedule below will govern the preparation for the hearing.

- June 14, 2004: Division to identify any expert witnesses and provide information required by Rule 222(a)(4) and (b) of the Commission's Rules of Practice;
- June 21, 2004: Respondents to identify any expert witnesses and provide information required by Rule 222(a)(4) and (b) of the Commission's Rules of Practice; Division to file a list of proposed hearing exhibits and a list of proposed fact witnesses, in accordance with Rule 222(a)(3) and (4) of the Commission's Rules of Practice;
- June 23, 2004: Telephonic prehearing conference at 10 a.m. Eastern time, with the Division to initiate the call and obtain a court reporter;
- July 6, 2004: Respondents to file a list of proposed hearing exhibits and a list of proposed fact witnesses, in accordance with Rule 222(a)(3) and (4) of the Commission's Rules of Practice;
- July 19, 2004: Division to file direct testimony of its expert witnesses;

- Aug. 3, 2004: Respondents to file direct testimony of their expert witnesses; parties to exchange proposed hearing exhibits; Division to file its prehearing brief in lieu of opening statement at the hearing;
- Aug. 11, 2004: Respondents to file their prehearing briefs in lieu of opening statements at the hearing; and
- Aug. 16, 2004: Hearing to commence in Philadelphia, Pa., at a site to be determined; estimated duration, two weeks.


The parties also seek clarification of the May 27 Scheduling Order, insofar as it requires them to comply with Rule 222(a)(4) and (b) of the Commission's Rules of Practice when they designate their expert witnesses on June 14 and June 21, 2004, respectively.

As to Rule 222(a)(4), I do not expect the parties to summarize the expected testimony and the expected conclusions of their experts. However, the parties must identify the specific issues their experts will address. For example, if the Division states on June 14 that its expert will offer opinion testimony on Issues A, B, and C, then Respondents may rely on that statement in choosing their expert and preparing their defense. I would not expect the Division's expert to address Issues D, E, and F when that expert submits his testimony on July 19. To be more specific, the prehearing conference did not resolve the issue of whether the Division's expert would offer opinion testimony about the materiality of the alleged omissions. The Division must clarify its intentions by June 14, after it has carefully considered the Commission's admonition in Barry C. Scuttillo, 80 SEC Docket 2646, 2657-58 n.33 (July 28, 2003):

We have made it clear . . . that neither a law judge nor this Commission requires expert testimony on questions of law. See Robert D. Potts, CPA, 53 S.E.C. at 208 and n.56; Pagel, Inc., 48 S.E.C. 223, 230 (1985), aff'd, 803 F.2d 942 (8th Cir. 1986). Thus we have not deemed it necessary to rely on the experts' opinions as to whether [respondent] was reckless.

As to Rule 222(b), the parties must present a statement of the expert's qualifications, a list of other proceedings in which the expert has given expert testimony, and a list of publications authored or co-authored by the expert.

SO ORDERED.

  
James T. Kelly  
Administrative Law Judge