

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
 Terrell McSweeney**

In the Matter of

Louisiana Real Estate Appraisers Board,

DOCKET NO. 9374

the parties request that the Commission move the starting date for the evidentiary hearing to May 30, 2018, and adopt the attached schedule of pretrial proceedings.

BACKGROUND

On May 30, 2017, the Commission issued a Complaint against the Board alleging that the Board had violated Section 5 of the FTC Act by unreasonably restraining price competition in real estate appraisal services provided to appraisal management companies in Louisiana. In its June 16, 2017 Answer to the Complaint, the Board denied any violation of Section 5 and raised several affirmative defenses, including a defense of state action immunity. On July 11, 2017, the Governor of the State of Louisiana issued an Executive Order requiring the Board and state agencies to take certain actions intended to address state active supervision over the Board in connection with regulating the customary and reasonable fee requirement. On July 17, 2017, the Board issued a resolution to implement this Executive Order and to address past and pending investigations under the appraisal fee regulation at issue. Arguing that these actions change the factual and legal basis for the proceeding, on July 18, 2017, the Board sought a 120-day stay of the proceedings to provide the State of Louisiana time to implement the Governor's and the Board's directives. Complaint Counsel opposed this motion, arguing that these developments would not yield an effective supervision regime and did not eliminate the need for Commission intervention. On July 28, 2017, the Court granted a 90-day stay of the proceedings based on "recent developments in the state law challenged in the Complaint that fundamentally change the factual and legal basis of this proceeding" that may "help narrow the claims, defenses, and discovery to those limited issues, and avoid wasteful effort and expense." Complaint Counsel

disagree, and submit that these efforts do not and will not exempt all of the Board's past or future actions from the antitrust laws. The 90-day stay will expire on October 26, 2017.

The Board is currently in the process of replacing and re-adopting a customary and reasonable fee rule (hereinafter "Replacement Rule"). Pursuant to the Governor's Executive Order, the Board has submitted the Replacement Rule to the Louisiana Commissioner of Administration for approval, modification, or rejection. The Louisiana Senate and House Commerce Committee oversight committees may also elect to hold hearings regarding the proposed regulation. The Board anticipates this review will be completed in time for the Replacement Rule to be published in the November 20, 2017 Louisiana Register.¹ Upon publication, the Replacement Rule will be in effect.²

ARGUMENT

The Board's Answer in this proceeding raised affirmative defenses including that its regulatory activities are immune from federal antitrust oversight under the state action doctrine. The Board submits that additional efforts by the State of Louisiana and the Board raise significant new factual and legal issues regarding whether future Board conduct, implementation and enforcement of the Replacement Rule, is immunized by the state action doctrine. Complaint Counsel disagree, and submit that these efforts do not and will not change the factual and legal issues relevant to this case or the appropriate remedy. The parties nevertheless agree that the state action immunity defense may present significant issues for discovery and hearing in this case.

¹ Under APA rules, publication of the Louisiana Register occurs on the 20th day of each month.

Good cause exists for the Commission to move the hearing date from January 30, 2018 to May 30, 2018. Moving the hearing date ahead by 120 days and adopting the attached schedule of pretrial proceedings to account for the 90-day stay of these proceedings granted by the Court, as well as the 30-day stay requested here by the parties, will provide sufficient time for both Complaint Counsel and Respondent to complete discovery and prepare a full record for the Final Hearing.

For these reasons, good cause exists for a short extension of the stay through November 26, 2017. Because the Board expects that changes to the challenged state regulatory regime will be completed within a relatively short period, and given the Court's expressed interest in extending the stay so that discovery will not

/s/Geoffrey M. Green
Geoffrey M. Green
Sean P. Pugh
Lisa B. Kopchik
Christine M. Kennedy
Michael J. Turner
Thomas H. Brock

Federal Trade Commission

Bureau of Competition
600 Pennsylvania Ave., N.W.
Washington, DC 20580
Telephone: (202) 326-3201
Email: SPugh@ftc.gov

Counsel Supporting the Complaint

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS: Maureen K. Ohlhausen, Acting Chairman
Terrell McSweeney**

In the Matter of

Louisiana Real Estate Appraisers Board,

Respondent.

DOCKET NO. 9374

**[PROPOSED] ORDER ON JOINT EXPEDITED MOTION TO EXTEND THE STAY OF
PART 3 ADMINISTRATIVE PROCEEDINGS AND MOVE THE EVIDENTIARY
HEARING DATE**

On October 16, 2017, the parties filed a joint expedited motiint

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)
)
)
Louisiana Real Estate Appraisers Board,) DOCKET NO. 9374
)

- April 13, 2018 - Complaint Counsel provides to Respondent's Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.

Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.

- April 23, 2018 - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s) (to be provided by 4 p.m. EDT). Any such reports are to be limited to rebuttal of matters set forth in Respondent's expert reports. If material outside the scope of fair rebuttal is presented, Respondent will have the right to seek appropriate relief (such as striking Complaint Counsel's rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondent).

- April 27, 2018 - Respondent's Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent's basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.

Respondent's Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.

- April 27, 2018 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must

provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).¹ See Additional Provision 7.

- May 10, 2018 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- May 10, 2018 - Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists. The Parties are directed to review the Commission's Rules on admissibility of evidence before filing objections to exhibits.
- May 11, 2018 - Deadline for filing motions *in limine* to preclude admission of evidence. See Additional Provision 9.
- May 16, 2018 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- May 16, 2018 - Complaint Counsel files pretrial brief supported by legal authority.
- May 16, 2018 - Deadline for filing responses to motions *in limine* to preclude admissions of evidence.
- May 17, 2018 - Exchange proposed stipulations of law, facts, and authenticity.
- May 18, 2018 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- May 23, 2018 - Respondent's Counsel files pretrial brief supported by legal authority.
- May 24, 2018 - Final prehearing conference to begin at 10:00 a.m. in FTC Courtroom, Room 532, Federal Trade Commission Building, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

¹ Appendix A to Commission Rule 3.31, the Standard Protective Order, states that if a party or third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that party or third party shall file an appropriate motion with the Administrative Law Judge within 5 days after
