UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16649

In the Matter of

Ironridge Global Partners, LLC, Ironridge Global IV, Ltd.

Respondents.

DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENTS' REQUEST FOR ISSUANCE OF A SUBPOENA DUCES TECUM TO THE COMMISSION

The Division of Enforcement ("the Division") respectfully submits this memorandum[1] opposing the request of Respondents Ironridge Global Partners, LLC and Ironridge Global IV, Ltd., ("Respondents") for issuance of a document subpoena to the Securities and Exchange Commission ("Commission") (the "subpoena requests").[2] In short, Respondents are inappropriately attempting to circumvent the Scheduling Order and to obtain Division counsel's attorney work product through their proposed subpoena. As set forth below, Respondents' subpoena requests should be denied because: (1) they amount to impermissible contention

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[1] Because the Court has not formally issued the requested subpoena, the Division is captioning this memorandum as an opposition to Respondents' request for its issuance. The Division requests that it be afforded the opportunity to file a motion to quash should a subpoena issue.

[2] The Division construes the subpoena as being directed to it based on the nature of the requests, although it is nominally directed to the Commission. (Request No. 1 seeks documents "that the Commission or Enforcement Division contend . . .," while Requests No. 2 and 3 call for documents "the Enforcement Division intends to rely upon in the final hearing . . . ." Subpoena requests, p. 3.) This response is submitted on behalf of the Division only. If, in fact, Respondents intended to direct the requests to the Commission, the Division requests that Respondents promptly give notice. Upon any such notice, the Commission should be afforded an opportunity to object and to brief its objections and/or to join in those of the Division.

interrogatories; (2) they attempt to force the Division to prematurely disclose its legal theories and corresponding support; (3) they seek privileged information, in particular attorney work product that includes mental impressions; and (4) they seek documents which are publicly available.

I. BACKGROUND

On June 23, 2015, the Commission issued an Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("OIP") in which the Division alleges that Respondents violated the broker-dealer registration provisions of the federal securities laws. Pursuant to Rule 230 of the Rules of Practice, the Division has provided "open file" discovery of the investigative file to Respondents. 17 C.F.R. § 201.230. Accordingly, Respondents already have all relevant non-privileged documents in the Division's possession.

II. RESPONDENTS' SUBPOENA REQUESTS

The subpoena requests to which the Division objects seek the following:

1. All documents sufficient to identify all guidance, no-action letters, releases, and decisions by the Commission or SEC ALJs that the Commission or Enforcement Division contend (i) support the allegation in the Order Instituting Proceedings that either Respondent is a broker or dealer under Section 15(a) of the Exchange Act or (ii) gave Respondents notice that either Respondent is a broker or dealer under Section 15(a) of the Exchange Act.

2. All documents the Enforcement Division intends to rely upon in the final hearing in this matter to support the allegation that either Respondent is a broker or dealer under Section 15(a) of the Exchange Act.

3. All documents the Enforcement Division intends to rely upon in the final hearing in this matter to support the allegation that Ironridge Global Partners, LLC, is liable under Section 20(b) of the Exchange Act.

Subpoena requests, p. 3.

III. ARGUMENT AND CITATION TO AUTHORITY

Rule 232(b) prohibits the issuance of subpoenas in administrative proceedings that are "unreasonable, oppressive, excessive in scope, or unduly burdensome." 17 C.F.R. § 201.232(b). As set forth below, each of Respondents' proposed document requests are unreasonable and unduly burdensome for several reasons, and the Court should deny Respondents' request.

A. Request No. 1 is Improper Because It: (1) Is a Contention Interrogatory; (2) Seeks Premature Disclosure of Legal Theories; and (3) Seeks Attorney Work Product

Request No. 1, which seeks documents sufficient to identify all Commission-based legal authority that the Commission or Division contend supports the allegation that Respondent are broker-dealers under Section 15(a) of the Exchange Act, and/or put Respondents on notice that they are broker-dealers under Section 15(a), is essentially a "contention interrogatory," i.e., an attempt to require a party to identify all evidence it contends supports a particular allegation.[3] The Rules of Practice make no provision for such discovery requests, and they repeatedly have been found to be unduly burdensome by district courts interpreting the Federal Rules of Civil

[3] Without waiving its objections to Request No. 1, or making any representation that all legal authority was disclosed, the Division notes that during the Wells process, the investigative staff discussed its supporting legal authority with Respondents' counsel. Indeed, Respondent Ironridge Global Partners, LLC's Feb. 23, 2015 Supplemental Wells Submission includes a five-page subsection entitled "The Cases Cited by the Atlanta Staff Do Not Support a Finding That Global IV Is Required to Register Under Section 15(a)." Thus, Respondents are not without some notice of the Division's theory of liability.

Procedure.[4] Under the Rules of Practice, document subpoenas are a mechanism for the parties to obtain documentary evidence that may be relevant to their claims and defenses at trial, not for forcing the Division to identify all of the Commission authority that supports various allegations in the OIP. Respondents are not entitled to a disclosure of the Division's legal theories and supporting authority in advance of the briefing provided for in Rules 222 and 340. Jeffrey A. Wolfson, et al., Admin. File No. 3-14726, 2012 WL 8702983 at *1 (Mar. 28, 2012) (rejecting request for more definite statement of legal basis for allegations in OIP: "[w]hile these allegations may be disputed, they are purely legal issues that Respondents are capable of ascertaining independently."); 17 C.F.R. § 201.222; 17 C.F.R. § 201.340.

In addition, by seeking to force the Division to identify the legal authority upon which it will rely at the final hearing, the Respondents are attempting to compel the Division attorneys to prematurely reveal their legal theories and authority. The Division will identify the legal authority upon which it relies in the course of briefing on the merits. See Rule 222 (parties shall disclose "the legal theories upon which [they] will rely" in prehearing submissions); Rule 340. The date established by the Court for the parties to file prehearing briefs is November 20, 2015, and the timetable for filing posthearing briefs is typically set at the end of the hearing. See July 28, 2015 Scheduling Order; Rule 340(c)(1). Respondents have the OIP and the Division's Rule 230 materials, which include all of the currently identified documentary evidence that the Division may use to prove the allegations at the hearing.

Further, to the extent that the Division possesses documents evidencing "all guidance, no-action letters, releases, and decisions by the Commission or SEC ALJs" that support the Division's

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[4] See, e.g., Clean Earth Remediation & Constr. Servs., Inc. v. Am. Int'l Group, Inc., 245 F.R.D. 137, 141 (S.D.N.Y. 2007) ("interrogatories seeking identification of all facts supporting a particular allegation are inherently improper"); Montano v. Solomon, No. 2:07-CV-0800 KJNP, 2010 WL 4137476, *4 (E.D. Cal. Oct. 19, 2010) ("Parties are not tasked with laying out every jot and tittle [sic] of their evidentiary case in response to interrogatories.").

allegations, such discussion of relevant legal authority is contained in action memoranda, internal staff memoranda and correspondence, and the like, which are privileged and attorney work product protected by Rule 230(b)(1)(i) and (ii). See also Rita J. McConville, et al., Admin File No. 3-11330, 2004 WL 2173463 at *3 (Sept. 27, 2004) ("documents prepared by Commission staff are treated as attorney work product, and do not have to be made available pursuant to [Rule 230]").[5] Division attorneys' written work containing mental impressions of the relationship between the law and the claims in the OIP is classic work product. Under the case law regarding work product, codified for the federal courts in Fed.R.Civ.P. 26(b)(3), disclosure of notes and memoranda subject to the work product protection will not be ordered unless the party seeking them can overcome the privilege based on a showing of sufficient need. Hickman v. Taylor, 329 U.S. 495, 511 (1947). Even a showing of substantial need may not justify production of work product that will inevitably reveal the attorney's mental processes as s/he prepares for litigation. See Hickman, 329 U.S. at 513; Upjohn Co. v. United States, 449 U.S. 383, 401 (1981). Respondents cannot demonstrate an overriding need to overcome the work product protection (or to circumvent the Scheduling Order) because they will find out what arguments and documents the Division intends to rely upon in due course.

B. Requests No. 2 and 3 are Impermissible Contention Interrogatories that Improperly Seek to Circumvent the Scheduling Order

Respondents' second and third proposed requests seek "[a]ll documents the Enforcement Division intends to rely upon in the final hearing in this matter to support the allegation that"

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[5] Insofar as Respondents ask for copies of guidance, no-action letters, releases, and decisions by the Commission or SEC ALJs, those are "documents which are public and are equally available to both parties. It would be unduly burdensome to require production of such documents by the Commission when they are equally accessible to Respondents." Egan-Jones Ratings Co., et al., Admin. File No. 3-14856, 2012 WL 8718379 at *2 (Oct. 10, 2012) (denying subpoena request and noting "[t]he law, and the sources used to interpret the law, are public."); Raymond James Financial Services, Inc. et al., Admin. File No. 3-11692 (Nov. 30, 2004), p. 3.

Respondents are broker-dealers under Section 15(a) of the Exchange Act (second request) and Ironridge Global Partners, LLC is liable under Section 20(b) of the Exchange Act (third request). Both of these requests are inappropriate under the Rules of Practice for multiple reasons and should be denied.

Like Request No. 1, Requests No. 2 and 3 are contention interrogatories in all but name. As discussed above, under the Rules of Practice and prior interpretations of those Rules by hearing officers, the Division does not have to present its legal theories in advance of the prehearing briefing. Wolfson, 2012 WL 8702983 at *2. Similarly, in analogous contexts, the Commission has found that respondents are not entitled to an itemization of all the evidence on which the Division intends to rely. Kenneth J. Alderman, CPA, et al., Admin. File No. 3-15127, 2013 WL 10619170 at *2 (Feb. 20, 2013); Wolfson, 2012 WL 8702983 at *1; Donald T. Sheldon, et al., Admin File No. 3-6626, 1986 WL 175657 at *2 (June 9, 1986).

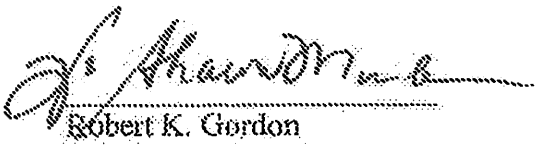
Similarly, Requests No. 2 and 3 improperly seek to circumvent the Scheduling Order by forcing the Division to reveal its exhibit list at this early juncture. Under the Scheduling Order, the parties are to exchange exhibit lists on November 2, 2015. Respondents will receive a list of "[a]ll documents the Enforcement Division intends to rely upon in the final hearing" at that time, but are not entitled to it now.

IV. CONCLUSION

For the reasons stated herein, and any other reasons deemed appropriate by the Court, the Respondents' subpoena request should be deemed unreasonable, oppressive, excessive in scope, and unduly burdensome, see 17 C.F.R. § 201.232(b), and should be denied.

Dated: August 10, 2015

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned counsel for the Division of Enforcement hereby certifies that he has served the foregoing via email and overnight delivery:

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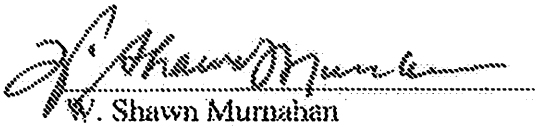

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