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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.

RESPONDENTS IRONRIDGE GLOBAL PARTNERS, LLC AND IRONRIDGE GLOBAL IV, LTD.'S RESPONSE IN SUPPORT OF SUBPOENA TO THE SECURITIES AND EXCHANGE COMMISSION

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Respondents, Ironridge Global Partners, LLC ("Partners LLC") and Ironridge Global, IV, Ltd. ("Global IV"), respectfully submit this Response in support of their request for a subpoena to the SEC.

INTRODUCTION

The Division began its investigation of Respondent Partners LLC looking for evidence that it had committed securities fraud and had unlawfully transacted in unregistered securities when its subsidiary, Global IV, completed a court-approved Section 3(a)(10) exchange. As relevant here, a Section 3(a)(10) exchange is one in which a debt holder such as Global IV extinguishes debt in exchange for the debtor's stock – all of which a court reviews for fairness.

The SEC abandoned both those theories, but nonetheless rooted around for a year and a half in search of new ones. Finding none that were established, the Division created the novel theories it advances here. For example, the Division asserts that Global IV should have registered as a dealer for engaging in court-approved exchanges, but not because Global IV is a dealer under the long list of established factors for identifying dealers. Instead, the Division alleges that Global IV is a dealer for novel reasons – such as that for unclear reasons Global IV is allegedly an underwriter, which it contends is purportedly enough *alone* to make Global IV a dealer. The SEC advances this theory even though (1) Global IV meets none of the established criteria for being an underwriter, and (2) SEC guidance says that being an underwriter is just one of many factors and, more importantly, is *not* enough alone to make an entity a dealer that must register with the Commission or fall within an exemption. Also, the broker-dealer registration requirements do not apply in the context of an exempt Section 3(a)(10) exchange, and even if they did Global IV would be exempt as a foreign broker-dealer.

Accordingly, the legal basis for the SEC's novel theory remains a mystery to Respondents. And so does the evidence that allegedly supports this theory. The Division has

buried any potential evidence that purportedly supports this theory in a data dump of over 43,000 documents, many of which are in a format which makes them difficult to review. For those reasons, Respondents have requested a subpoena that will (1) require the Division to explain the legal basis for one of the claims against Respondents and also (2) help Respondents identify the evidentiary basis for those claims by requiring the Division to produce the documents it will rely upon at the hearing.

The Division moves to quash that subpoena, arguing that Respondents' requests are analogous to contention interrogatories and that the Division need not identify its legal theories or the evidence that supports them. Those arguments fail. That the requests are purportedly like contention interrogatories *supports* allowing them, because such interrogatories are routine ways of identifying the key issues in a case. That is particularly true here, when the SEC's theories are novel and have no basis in established SEC guidance. Moreover, the Division does have an obligation to identify its legal theories where, as here, doing so is necessary to give Respondents a fair opportunity to prepare a defense. And the government indeed must identify the documents on which it will rely when, as here, it has buried them in a data dump. The Court should grant the subpoena requests.

BACKGROUND

The Securities Act of 1933 exempts certain securities from its purview. Among those securities are those that are "issued in exchange for one or more bona fide outstanding . . . claims," when the "terms and conditions of such issuance and exchange are approved[] after a hearing upon the fairness of such terms and conditions . . . by any court . . ." 15 U.S.C. § 77c(a)(10). Such court-approved exchanges are often called "Section 3(a)(10) exchanges."

Since 2011, Global IV has engaged in court-approved Section 3(a)(10) exchanges. Specifically, Global IV bought bona fide outstanding claims that businesses (like law firms and

auditors) have against public companies for unpaid debts. Global IV and the public company reached proposed settlements under which Global IV would relinquish the claims in exchange for some of the public company's stock. In every case, a court examined the proposed settlement for fairness. If the court approved the settlement, the transaction was effected by the public company issuing some of its shares to a registered broker-dealer where Global IV had an account. Over time, the registered broker-dealers sold some of those shares for Global IV's benefit.

In October 2013, the SEC directed the Enforcement Division to investigate alleged dealings between one of those issuers and Partners LLC (which was then the sole stockholder of Global IV). Specifically, the SEC directed the Division to investigate just two issues: (1) whether there had been violations of Section 17(a) of the Securities Act and Section 10(b) of the Securities Exchange Act of 1934, which prohibit securities fraud; and (2) whether Partners LLC's exchange with that issuer violated Securities Act Section 5's securities-registration requirement (although it was Global IV, not Partners LLC, that engaged in the exchange and Section 3(a)(10) exempts the securities from the Securities Act).

The Division uncovered no evidence that Respondents had engaged in securities fraud. Indeed, on July 23, 2014, the Division issued a Wells notice that it had made a preliminary determination to recommend an enforcement action against Partners LLC – but not for securities fraud. Rather, the Division had preliminarily decided to assert alleged violations of Securities Act Section 5 and also Exchange Act Section 15(a), which requires entities to register if they are broker/dealers. On the latter charge, the Division asserted that Partners LLC was an "underwriter," which was purportedly enough alone to have required Partners LLC to register as a dealer (which Partners LLC of course had not done).

In January 2015, the Division issued new Wells notices, this time to both Global IV and Partners LLC. In the Wells notice to Global IV, the Division alleged that Global IV had violated Securities Act Section 5 and Exchange Act Section 15(a). In the Wells Notice to Partners LLC, the Division abandoned its prior theories and instead alleged that Partners LLC was vicariously responsible for Global IV's alleged Section 15(a) violation. Specifically, the Division alleged that Partners LLC had violated under Exchange Act Section 20(a), which makes liable any person who "controls any person liable under any provision of this chapter" unless the controller acted in "good faith."

In April 2015, the Division informed Partners LLC's counsel that it was yet again amending the Wells notice to allege that Partners LLC had violated Exchange Act Section 20(b) for allegedly using Global IV to violate the broker/dealer registration requirement. Section 20(b) makes it "unlawful for any person . . . to do any act . . . which it would be unlawful for such person to do under the provisions of this chapter . . . through or by means of any other person."

On April 15, 2015, Partners, LLC's, counsel met with the SEC to discuss the Wells notices. There, the Division stated (among other things) that Global IV's purported status as an underwriter was the "linchpin" in the allegation that Global IV is a dealer that must register under Exchange Act 15(a) – notwithstanding that the SEC Staff had previously issued a no-action letter to an institutional investor who admitted that it was an underwriter but nevertheless sought confirmation that it was not required to register under Section 15(a). *Acqua Wellington North Am. Equities Fund, Ltd.*, SEC No-Action Letter, 2001 WL 1230266 (Oct. 11, 2001). The Division also said that Global IV was a dealer because Global IV allegedly resold the shares immediately after acquiring them, because the court-approved exchanges were profitable, because Global IV's sales of the shares allegedly were a huge percentage of the stocks' daily

trading volume, and because Global IV provided investment advice to issuers – none of which are true.

On June 23, 2015, the Commission issued an Order Instituting Proceedings against Partners LLC and Global IV. The order is mostly a recitation of innocuous and irrelevant facts, followed by a summary conclusion of wrongdoing. It contains little from which Respondents can divine the basis for the claims that have been brought against them. Absent from the Order are any allegations that Respondents committed securities fraud under Sections 17(a) and 10(b); allegations that any Respondent violated the Securities Act's Section 5 registration requirement; or allegations that Partners LLC is liable as a "control person" under Exchange Act Section 20(a). Instead, the Commission alleges that Global IV and Partners LLC violated Exchange Act Section 15(a) because Global IV is a dealer that failed to register – a theory that appeared nowhere in the original order starting the investigation. To support the allegation that Global IV was a dealer, the Commission alleges that Global IV had engaged in "serial underwriting activity" (apparently because it had engaged in multiple court-approved exchanges); had "provided related investment advice" (apparently referring to the negotiations of Global IV's attorneys with the defendant issuers' attorneys over the terms of the stipulation to settle the debts); and had "received and sold billions of shares" in connection with the court-approved Section 3(a)(10) exchanges (apparently referring to the shares issued to Global IV's registered broker-dealers to effect the exchanges).

Additionally, the Commission alleges that Partners LLC violated Exchange Act 20(b) due to the conduct of Global IV – another theory that appeared nowhere in the original order starting the investigation of Partners LLC. Despite that the Commission itself could not settle on a theory of the case after more than a year of investigation (and even now is refusing to explain the

factual and legal bases for its theories), the Commission alleges that Partners LLC acted "willfully" because it somehow knew that Global IV was required to register as a dealer.

The Enforcement Division has now for the first time produced documents from its investigative file. That production included 43,000 electronic documents and two banker's boxes full of hard-copy documents. During a July 27, 2015, conference, the Division promised to produce electronic versions of the hard-copy documents. Two weeks later the Division produced those electronic files. Rather than produce those documents (which included email printouts) in their native format with attachments intact (which would have made searching and using the files much easier), the Division had simply scanned all the documents together into 8 PDFs, some with over 1000 images.

After receiving the Division's data dump, Respondents requested that the Court issue a subpoena requiring the Division to produce (1) guidance that provides the legal basis for the Division's claims and (2) documents that the Division intends to rely upon to support those claims.

ARGUMENT

I. The Novelty and Ambiguity of the SEC's Claims Justify Respondents' Request for SEC Guidance.

The Court should grant Respondents' request for a subpoena to obtain any guidance that provides a legal basis for the SEC's newly-found Section 15(a) claim. That request seeks information relevant to Respondents' Due Process defense that the Division is suing Respondents based on a novel liability theory about which Respondents (and other investors) had no advanced notice. Moreover, the Division is incorrect that it may keep its legal theory secret.

A. The Subpoenaed Documents (or Lack Thereof) Will Yield Information Relevant to Respondents' Due Process Defense.

The Court may grant a reasonable subpoena request if the request seeks information relevant to a respondent's defense. *See* Rule of Practice 232(b). This rule supports the subpoena's first request.

Respondents have asserted a defense that the Divisions' Section 15(a) claim – that Global IV is an unregistered dealer – violates the Due Process Clause, which forbids the Division from enforcing novel liability theories against respondents without fair notice. *See Upton v. SEC*, 75 F.3d 92, 98 (2d Cir. 1996).[1] The reason is that the Division here is eschewing the traditional factors for determining whether a whether an entity is a dealer, such as (1) whether the entity holds itself out as being willing to buy and sell a particular security on a continuous basis (which Global IV does not); (2) whether the entity runs a matched book of repurchase agreements (same); (3) whether the entity writes derivatives contracts that are securities (same); and so on.[2]

Instead, the Division is attempting to establish that Global IV is a dealer based on new theories and "factors" that have no support in existing guidance or caselaw. For example, the Division contends that Global IV is a dealer *solely* because Global IV is allegedly an underwriter, which traditionally was just one of many factors. That theory is so unheard-of that the Staff previously issued a no-action letter to an admitted underwriter that had not registered as a broker-dealer. *Acqua Wellington North Am. Equities Fund, Ltd.*, SEC No-Action Letter, 2001 WL 1230266, at *4 (Oct. 11, 2001). Additionally, the Division has floated other novel reasons

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[1] *See also* Michael S. Piwowar, SEC Commissioner, "Remarks to the Securities Enforcement Forum" (Oct. 14, 2014), http://www.sec.gov/News/Speech/Detail/Speech/1370543156675 (stating that the Commission fails to provide "due process" when it "create[s] interpretation[] of the laws or regulations or impose new regulatory requirements")

[2] *E.g.*, "Guide to Broker-Dealer Registration" (April 2008), http://www.sec.gov/divisions/marketreg/bdguide.htm.

why Global IV is a dealer (though the Division has apparently abandoned some): that Global IV negotiates with issuers over which debts Global IV will acquire and trade for securities; that Global IV's securities sales allegedly represent large portions of the stock's trading volume on certain days; and that Global IV has profited on many of the Section 3(a)(10) exchanges.

The subpoena's first request for all guidance the supports the Division's § 15(a) theory seeks information relevant to Respondents' Due Process defense. Specifically, the request seeks either an admission that there is no such guidance or that the guidance the Division relies upon does not support its theory. Such an admission or guidance will demonstrate that the SEC's new dealer theory is indeed a novel one and that the Division is therefore violating the Due Process Clause here. For that reason, the Court should allow the first request.

B. The Division's Arguments Against the Subpoena Fail.

The Division objects to the subpoena's first request for several unpersuasive reasons. First, the Division analogizes the request to a "contention interrogatory," which the Division contends district courts have "repeatedly" rejected for being too burdensome. Assuming the analogy is apt, it proves the opposite. The Federal Rules of Civil Procedure explicitly authorize contention interrogatories – including those that ask for legal theories, i.e., "the application of law to fact." Fed. R. Civ. P 33(a)(2) ("An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact . . . ."). Courts thus routinely allow them if, like here, the requests seek "material" information (rather than "each and every" fact supporting a claim or defense) and the interrogatory comes at a time when the responding party has had an opportunity to develop a response through discovery. *E.g., Scandaglia v. TransUnion Interactive, Inc.*, No. 09-2121, 2010 WL 317518, at *5 (N.D. Ill. Jan. 21, 2010) (allowing interrogatory asking a party to "explain the factual and legal basis of any denial of a request to admit"); *see also id.* at *6; *Cmty. Voice Line, LLC v. Great Lakes*

Commc'n Corp., No. 12-4048, 2013 WL 4048495, at *8 (N.D. Iowa Aug 1, 2013). Thus, that the subpoena may be similar to a contention interrogatory is not a ground to quash the subpoena under the facts of this case. To the contrary, that similarity is grounds for *granting* the subpoena.

The Division also argues that Respondents are "not entitled to disclosure of the Division's legal theories . . ." and that subpoenas may only be used to obtain factual evidence. The Division is incorrect on both points. The Court may indeed require the Division to identify its (novel) theory. *See In the Matter of Ernst & Whinney*, Admin. File No. 3-6579, 1986 WL 175655, at *2 (Feb. 12, 1986). As for the second contention, the Division cites no rule that the Court may issue a subpoena to obtain fact evidence only. In fact, this Court has required the Division to identify cases before. *See* ***EXHIBIT A*** (directing the division to identify cases in the *Hill* matter). *In re the Matter of Wolfson* is not to the contrary. Admin File No. 3-14726, 2012 WL 8702983 (March 28, 2012). There, the court held that the respondent was not entitled to the Division's legal authority because – unlike here – he had already been "sufficiently informed of the . . . legal bases of the allegations as to permit a specific response thereto and prepare an adequate defense." *Id.* at *2. The Division's arguments therefore fail.

The Division also argues that it has already produced some – but not all – of the legal authority that supports the Division's theory. But if the Division has already disclosed supporting legal authority, then why is the Division arguing now that having to do so would be unduly burdensome? More to the point, none of the cases the Division has previously cited support the Divisions' theory that allegedly being an underwriter is alone enough to make one a dealer. To the contrary, some appear not even to mention one's underwriter status as a factor. *E.g.*, *SEC v. Martino*, 255 F. Supp. 2d 268 (S.D.N.Y. 2003); *In re Bell Atlanta Corp. Secs. Litig.*, No. 91-514, 1995 WL 761304, at *1 (E.D. Pa. Dec. 26, 1995). And almost all, if not all, of the

SEC's cases also relied on a list of traditional factors that identify dealers, not just one.[3] Thus, the cases the SEC cites cannot be the guidance that supports the SEC's current theory (whatever it may be) and that Respondents seek with the subpoena.

Next, the Division argues that it may keep its legal theories secret until prehearing submissions. As the Division concedes, however, those submissions are not due until November 20 – which is just 10 days before the final hearing. That will not give Respondents time to prepare a defense based on those theories in time for the hearing. Respondents, and particularly Partners LLC, have no earthly idea why they find themselves the subject of an enforcement proceeding – and the Commission does not want to tell them until 10 days before the hearing, presumably because the Commission still has no idea either. Shoot first and aim later is a violation of Due Process.

In a footnote, the Division contends that the request is impermissible because it seeks guidance or authorities that are already public. But the request's primary goal is not to obtain guidance and authorities that are public (all of which Respondents and their counsel have read, and none of which support the Commission's theories); the primary goal is to obtain an admission from the Division that there is *no* public guidance or authority that supports the Division's theory. In any event, there is no bar against discovery of publicly-available information. *Morgan v. Safeway*, No. 11-1667, 2012 WL 2135601, at *2 (D. Md. June 11, 2012) ("Moreover, even publicly available information might properly be the subject of a valid request for production of documents.").

Finally, the Division argues that the subpoena's first request seeks "written work product" – specifically, the Division's action memorandum and other attorney memoranda. But

[3] *SEC v. Ofill*, No. 07-1643, 2012 WL 246061, at *7, 9 (N.D. Tex. Jan. 26, 2012); *Martino*, 255 F. Supp. 2d at 283-24; *SEC v. Hansen*, No. 83-3692, 1984 WL 2413, at *10-11 (S.D.N.Y. April 6, 1984); *Eastside Church of Christ v. Nat'l Plan, Inc.*, 391 F.2d 357, 361-62 (5th Cir. 1968).

Respondents are not seeking the Action Memorandum or other attorney memoranda with this request. Respondents seek only guidance and case law, nothing more or less than the reason this proceeding is being brought. The Division's arguments fail, so this Court should allow the subpoena's first request.

II. The Division Should Identify the Documents on Which It Will Rely.

The Court should also grant the requests for documents on which the Division will rely. The Division has impermissibly buried those documents in a data dump, so without the requests Respondents will not know what evidence allegedly supports the Division's theory and thus what evidence to defend against.

A. The Division's Data Dump Justifies the Request.

Courts do not countenance the government's attempts to bury its evidence in massive document productions. *See United States v. Bortnovsky*, 820 F.2d 572, 574-75 (2d Cir. 1987) (criticizing the government for "providing mountains of documents to defense counsel who were left unguided as to which documents would" be relevant). To the contrary, in cases where the government produces thousands of documents, courts require the government to identify the particular documents on which it will rely at trial. *United States v. Upton*, 856 F. Supp. 727, 747-48 (E.D.N.Y. 1994); *United States v. Turkish*, 458 F. Supp. 874, 882 (S.D.N.Y. 1978); *United States v. McDonald*, No. 01-1168, 2002 WL 2022215, at *2-4 (E.D.N.Y. Aug. 6, 2002); *see also See In the Matter of Donald Sheldon*, Admin. File No. 3-6628, 1986 WL 175657, at *2 (1986) (requiring the Division to disclose information when the "magnitude of the investigatory file" is great and such disclosure was therefore necessary to help the respondent prepare a complete defense). Those courts explain that doing so is necessary to "allow the defendant to adequately prepare his or her defense." *Upton*, 856 F. Supp. at 747-48.

This is such a case. The Division has buried its evidence in a document dump that Respondents could not reasonably sort through in time for the hearing. Indeed, the Division has produced 43,000 electronic documents that it had collected and reviewed over a year and a half. The Division has also produced two bankers' boxes worth of hard copy documents, which the Division later scanned together into a few massive PDFs that are difficult to review. As courts have done repeatedly in these circumstances, the Court should allow Respondents' requests for the documents on which the Division will rely at the final hearing. This is especially true given the Division's novel and nebulous legal theories in this case: not only are Respondents asked to search through a haystack, they have no idea what needle they are looking for.

B. The Division's Arguments Fail.

The Division raises several unpersuasive arguments against being required to disclose the documents that it will rely on. Those arguments should be rejected.

To begin, the Division again analogizes the requests to contention interrogatories, which the Divisions says are impermissible. That argument fails for the reasons above. More to the point, the correct analogy is to document requests. Courts *do* allow requests for documents on which a party intends to rely, explaining that they help "eliminate the element of surprise at trial" and "promote a swifter resolution of the case." *Flag Fables Inc. v. Jean Anne's Cnty. Flags and Crafts, Inc.*, 730 F. Supp. 1165, 1187 (D. Mass. 1989); *Cmty. Voice Line*, 2013 WL 4048495, at *7 (holding that it is "appropriate" to require a party to produce documents that "it intends to rely on").[4] As explained above – that includes in instances where the government has buried

[4] *See also Allstate Ins. Co. v. Warns*, No. 11-1846, 2012 WL 5842791, at *4 (D. Md. Nov. 15, 2012) (ordering party to produce documents in response to a request for "all documents . . . upon which [the party] intends to rely to support her defenses and affirmative defenses"); *Flag Fables*, 730 F. Supp. at 1186-87 (ordering a party to produce documents on which it intended to rely, despite an objection that doing so would prematurely reveal the party's trial strategy); Fed. R.

documents among thousands produced. *United States v. Upton*, 856 F. Supp. 727, 747-48 (E.D.N.Y. 1994); *Turkish*, 458 F. Supp. at 882; *McDonald*, 2002 WL 2022215, at *2-4. The Division's analogy fails.

The Division also argues that the Commission has "found that respondents are not entitled to itemization of all the evidence on which the Division intends to rely." There is no such categorical rule. *See In the Matter of Oregon King Consolidated Mins, Inc.*, 1964 WL 67520, at *8 (Oct. 2, 1964) (holding that this purported rule is "only a guideline" that might not apply in some cases). One of the cases on which the Division relies held specifically that courts may require the Division to make disclosures – particularly when, as here, the "magnitude of the investigatory file" is great and the respondent therefore needs "guidance on the boundaries of the allegations" to have a "reasonable opportunity to prepare [his] defense." *Donald Sheldon*, 1986 WL 175657, at *2; *see also Oregon King*, 1964 WL 67520, at *2; *In the Matter of Hagen & Co., Inc.*, Admin. File No. 3-1097, 1967 WL 88948, at *2 (July 18, 1967).

Moreover, the cases on which the Division relies show only that courts do not require the Division to make disclosures in circumstances different from those here. In *Jeffrey Wolfson,* the could held that the respondents was not entitled to additional evidence – but primarily because the Division (unlike here) had voluntarily provided much of the information the respondent had requested. 2012 WL 8702983. And in *In the Matter of J. Kenneth Alderman, CPA,* the court held that the respondents were not entitled to additional evidence where the Division had (unlike here) voluntarily disclosed evidence that provided a "roadmap" of the Division's case in chief. Admin. File No. 3-15127, 2013 WL 10619170, at *1 (Feb 20, 2013). Those cases are not at all like the present case.

Civ. P. 26(a)(1) (requiring parties to produce "a copy" or a "description" of "all documents" that a party "may use to support its claims or defenses . . . .").

Finally, the Division contends that it should not have to produce the requested documents until November 2, when exhibit lists are due. But that will be too late for the Respondents' experts to analyze those documents, because expert reports are due October 26. And given the size of the full investigatory file, the documents' number is likely to be so large that Respondents will struggle to analyze them and prepare a defense by the November 30 hearing. To give respondents a fair opportunity to prepare a defense, the Court should allow Respondents to subpoena the documents now. *See Upton*, 856 F. Supp. at 727 (directing the government to produce the documents it would rely upon even though the government had promised to "designate its trial exhibits" "prior to trial").

CONCLUSION

The Division's steadfast refusal to provide Respondents with any inkling of the factual or legal basis for the novel claims that have been brought against them – even after the proceeding has been filed – highlights the fundamental Due Process problem of attempting to regulate by enforcement, particularly when doing so on the fly.

For the reasons set forth above, Respondents respectfully request that the Court overrule the Division's objection and grant Respondents' request for a subpoena to the Division.

Dated: August 17, 2015.

Respectfully submitted,

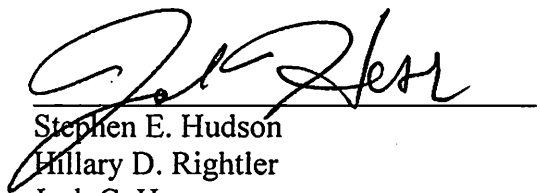

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EXHIBIT A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2706/May 21, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16383

In the Matter of CHARLES L. HILL, JR.	ORDER GRANTING IN PART SUBPOENA REQUEST

On May 13, 2015, Respondent Charles L. Hill, Jr., submitted a request that I issue a subpoena to the Securities and Exchange Commission. In his request, Mr. Hill described ten sets of "documents and communications" that he seeks. Because the Division of Enforcement promptly notified my Office that it intended to oppose Mr. Hill's request, I did not issue the requested subpoena. As promised, the Commission's Office of Litigation and Administrative Practice within the Office of the General Counsel filed an opposition on May 20, 2015. Mr. Hill's response is thus due May 28, 2015. *See* 17 C.F.R. §§ 201.160(a), .232(e)(1).

I have determined to immediately grant Mr. Hill's request as it relates to the fifth and eighth items listed in his request. The fifth item seeks "documents and communications" that:

> identify any and all administrative proceedings brought by the Commission, other than this proceeding, in which the Commission chose to pursue insider trading claims against an unregulated individual solely under Section 14(e) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 14e-3 promulgated thereunder.

The Office of the General Counsel argues that this request is protected by the deliberative process privilege because it "seek[s] documents related to the Commission's decision to pursue insider-trading claims under Section 14(e) of the Exchange Act." Opp'n at 4. The Office of the General Counsel further asserts that the identity of the other administrative proceedings is covered by attorney-client privilege and the work-product doctrine. *Id.* at 5-7. The Office of the General Counsel does not allege that the identity of other proceedings is irrelevant, assert that Mr. Hill could easily find the requested information himself, or argue that the request is "unreasonable, oppressive[,] or unduly burdensome." *See* 17 C.F.R. § 201.232(e)(2).

The identity of administrative proceedings is a matter of public record. As such, documents that identify administrative cases brought "against . . . unregulated individual[s] solely under Section 14(e) of the Securities Exchange Act . . . and Rule 14e-3 promulgated thereunder," are not protected by the privileges asserted.

Insofar as documents and communications exist that are responsive to item five—that is documents and communications that list administrative proceedings of the type described—they must be disclosed. To the extent responsive documents contain information not pertinent to the request in item five, the unrelated information may be redacted before disclosure.

Item eight requests:

> All documents and communications that support, or reflect or are related to the allegations made by Lillian McEwen, a former SEC administrative law judge, as reported by the Wall Street Journal on May 6, 2015, that chief administrative law judge Brenda Murray "questioned [her] loyalty to the SEC" as a result of finding too often in favor of defendants and that SEC administrative law judges are expected to work on the assumption that "the burden was on the people who were accused to show that they didn't do what the agency said they did."

The Office of the General Counsel objects to this request asserting that "[i]t is difficult to perceive how" the requested documents could be relevant. Opp'n at 8. I disagree. Documents and communications responsive to the request in item eight shall be disclosed.

Because I have granted Mr. Hill's request as it relates to items five and eight, he need not address those items in his response. I will address the balance of Mr. Hill's request after reviewing his response. Mr. Hill is directed to submit a revised subpoena covering only the matters described in items five and eight.

IT IS SO ORDERED.

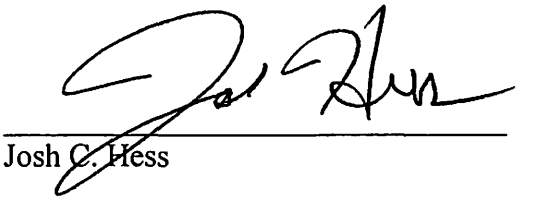
James E. Grimes
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2015, I filed an original and three copies of the foregoing with the Office of the Secretary, Securities and Exchange Commission, Attn: Secretary of Commission Brent J. Fields, 100 F Street NE, Mail Stop 1090, Washington, DC 20549, by Federal Express overnight delivery and filed a copy by facsimile transmission to (202) 772-9324, and served a true and correct copy upon counsel of record by electronic mail, as follows:

Mr. Robert Gordon: gordonr@sec.gov
Securities and Exchange Commission

The Honorable James E. Grimes: alj@sec.gov
Administrative Law Judge
William Miller: millerwi@sec.gov



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