HARD COPY

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' MOTION FOR SUMMARY DISPOSITION

Robert K. Gordon
W. Shawn Murnahan
Kyle A. Bradley
Attorneys for the Division of Enforcement
Securities and Exchange Commission
Atlanta Regional Office
950 East Paces Ferry Road NE, Suite 900
Atlanta, GA 30326
Telephone: (404) 842-7669
Fax: (703) 813-9364

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

Pursuant to Rule of Practice 250 and the Court's July 28, 2015 Scheduling Order, the Division of Enforcement ("the Division") respectfully submits this memorandum opposing Respondents Ironridge Global Partners, LLC's ("Ironridge") and Ironridge Global IV, Ltd.'s, ("Global IV") (collectively, "Respondents") motion for summary disposition ("Respondents' Motion").

I. INTRODUCTION

From April 2011 through at least March 2014, Ironridge operated Global IV as an unregistered dealer in violation of Section 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") by engaging in serial underwriting activity, providing related investment advice, and receiving and selling over five billion shares of capital stock worth more than $56 million in connection with microcap financing services that relied on a novel use of the exemption contained in Section 3(a)(10) of the Securities Act of 1933 ("Securities Act"). Registering as a dealer would likely have impacted significantly the $22 million in profits that Respondents earned from this conduct, as the compensation would have violated FINRA rules regarding underwriting compensation. For the same reason, registration would likely have limited the dilutive and devaluating impact on shareholders of Respondent's underwriting activities.

At the outset of the relevant period, Ironridge designed and promoted a "liabilities for equity" or "LIFE" financing program, through which Ironridge arranged to have Global IV purchase outstanding claims from an issuer's creditors in exchange for the issuer agreeing to settle the aggregated claims now belonging to Global IV. The resulting settlements entitled Global IV to receive a number of unrestricted shares in an unregistered transaction that provided for the receipt of steeply discounted shares. In 33 different transactions, Global IV obtained shares directly from the issuers and promptly dumped them in the market at the direction of Ironridge's principals. Global IV's sales activity frequently represented a significant percentage of the average daily

volume for the issuers' stocks and often resulted in massive dilution of the issuer's outstanding shares and a substantial decline in the issuer's share prices.

In their papers, Respondents repeatedly contend that they are surprised that the Division has brought an enforcement action based on Global IV's dealer status, arguing that they were not on notice of even the possibility Global IV should register. Respondents' claimed surprise is not credible. As the founders of Global IV testified, the company was set up to qualify for the foreign broker-dealer exemption. They were aware of the registration requirements, but sought to avoid them by going offshore. As the Division will show, however, the founders missed their mark in that Global IV does not qualify for that exemption. It is, however – as its founders conceived – a dealer.

Respondents seek summary disposition making three primary arguments. First, Respondents argue that finding them liable for alleged violations would violate due process because it would be inconsistent with the Commission's prior guidance on activities requiring registration as a dealer. Respondents contend that the Commission has established a rigid, ten-factor test, and, by their reckoning, nine of those factors allegedly support the conclusion that Global IV is not a dealer. But the Commission's prior guidance has not employed such a rigid test. Rather, the Commission has advised that any one of ten factors can make one a dealer. Here, the regularity with which Global IV engaged in underwriting, i.e., by distributing massive quantities of newly-issued shares into the market, shows that Global IV was operating as a dealer.

Second, Respondents argue that Global IV is not an underwriter because it "does not promote issuers' securities." This argument fails to acknowledge the full scope of Respondents' conduct, and is also based on an inapplicable definition of underwriter that is much narrower than the one found in the Securities Act and the Exchange Act.

Finally, Respondents claim that Global IV was exempt from registration because it was a foreign dealer located outside the United States. However, Global IV did not qualify as a foreign dealer because its associated persons conducted virtually all of their activities in the U.S., and in any event, the foreign broker dealer exemption in Rule 15a-6(a)(1) only applies to unsolicited transactions. Global IV openly solicited all of the transactions with issuers in question.[1] Rule 15a-6(a)(4)(i) applies only to transactions effected with or for registered broker-dealers, and thus does not include transactions effected with the issuers in this case.

Because the conduct alleged closely tracks the definition and judicial interpretation of dealer under the Exchange Act, and includes factors previously identified by the Commission as creating a duty to register as a dealer, the Division's claims are both legally and factually sufficient to proceed to hearing. Respondents' motion for summary disposition should be denied.

II. FACTS

A. Background on Ironridge

Ironridge was formed in February 2011 for the purpose of investing in "small cap" companies and proceeded to market itself as a source of innovative financing solutions for microcaps. See Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("OIP"), ¶¶ 1-2; 10. John C. Kirkland, an Ironridge principal and a securities lawyer who functioned as Ironridge's general counsel, designed a business model whereby Ironridge would use Section 3(a)(10) of the Securities Act to obtain large volumes of discounted, unrestricted shares of microcap companies in exchange for satisfying debts owed by those companies. Section 3(a)(10) of the Securities Act provides, in

---

[1] Respondents also argue that Ironridge is not liable under Section 20(b) of the Exchange Act because there was no underlying violation, Ironridge lacked control over Global IV, and Ironridge did not act knowingly. These arguments lack merit and do not support Respondents' motion for summary disposition.

pertinent part, that any security which is issued in exchange for one or more bona fide claims, where the terms and conditions are approved after a fairness hearing by an authorized court or other authority, is exempt from Securities Act registration. OIP, ¶¶ 7-10.

Under Kirkland's model, Ironridge made serial use of Section 3(a)(10) by purchasing selected debts of the issuers from its creditors, then filing what were essentially collusive lawsuits to settle the newly acquired claims against the issuers through the latters' issuance of shares to Global IV.[2] OIP, ¶¶ 1; 7-9. Kirkland branded his model as the "Liability for Equity (LIFE) program," and publicly promoted the "innovative financing structure" in business and finance publications. OIP, ¶ 1; 8; 10. Consistent with how he pitched the transactions to issuers, Kirkland stated in one press interview that the LIFE program "substantially reduces the transactional costs and time necessary to complete a financing. No registration statement is required, and there are no registration rights." See Declaration of Matthew F. McNamara ("McNamara Decl."), ¶4, Exhibit A. Ironridge paid commissions for third-party referrals as a percentage of claims successfully settled with referred issuers through the Section 3(a)(10) transactions. OIP, ¶ 12. Kirkland has acknowledged the novelty of Global IV's financing structure, but neither Kirkland, nor any other principal of the Respondents, sought a no-action letter from the Division of Trading and Markets regarding the possibility that their business plan might require registration as a dealer. McNamara Decl., ¶ 14.

Ironridge formed Global IV, a British Virgin Islands business company with its principal place of business in the British Virgin Islands, as a wholly owned subsidiary. The purpose of

---

[2] Although the OIP does not allege that Respondents' use of the Section 3(a)(10) exemption was improper, but instead focuses on violations of Sections 15(a) and 20(b) of the Securities Act, this should not be construed as approval of Respondents' use of the 3(a)(10) exemption. See Procedures Relating to the Commencement of Enforcement Proceedings and Termination of Staff Investigations, Securities Act. Rel. No. 5310, p. 3 (Sept. 27, 1972).

Global IV was to facilitate the LIFE program by executing Ironridge's transactions. Ironridge's principals' intent in setting up Global IV was to qualify for the foreign broker-dealer exemption. McNamara Decl., ¶ 5, Exhibit B at 24:17–25:3; ¶ 8, Exhibit E at 48:4–49:6.

B. Ironridge's Solicitation of Issuers on Behalf of Global IV and Provision of Incidental Investment Advice

During the relevant time, Ironridge's principals (on behalf of Global IV) directly solicited issuers by contacting potential candidates, touting their LIFE program on the Internet and in the media, and paying referral commissions to various third parties. OIP, ¶ 10-12. In connection with their solicitation of issuers, Ironridge's principals provided specific investment advice as to the relative advantages of using Section 3(a)(10) as a financing mechanism. OIP, ¶ 13. In particular, Ironridge's principals assessed whether issuers lacked a shelf registration statement or were not current in their filings, factors that weighed in favor of using Section 3(a)(10). McNamara Decl., ¶ 7, Exhibit D at 55:19–23. Ironridge's principals also advised issuers as to which specific creditor claims should be satisfied through a Section 3(a)(10) exchange. OIP, ¶ 15. They prepared the legal documents, walked through the mechanics of the transactions, and would even help identify local counsel for the issuers if necessary. OIP, ¶ 14. Finally, they explained to issuers the advantages of using Section 3(a)(10) transactions over other methods of financing, i.e. utilizing Section 3(a)(10) could save issuers both time and money. OIP, ¶ 13. As Kirkland testified, "[a] registration might take three to six months, typically. It might cost [up to] $500,000. A typical 3(a)(10) transaction takes two to four weeks. It costs $20,000 in legal fees." McNamara Decl., ¶ 5, Exhibit B at 47:14-24.

C. Global IV's Buying and Selling Activity

Between April 2011 and March 26, 2014, Ironridge provided Section 3(a)(10) financing in 33 separate transactions with 28 issuers. OIP, ¶ 24. After an agreement was reached, Global IV

received securities directly from the issuer, not on the open market.[3] OIP, ¶¶ 35-37. Respondents began selling the shares almost immediately after they were cleared for trading – on average, within *four days* of clearance. OIP, ¶ 26. These shares were sold in the open market. OIP, ¶ 33.

In the settlement agreement for each of Respondents' Section 3(a)(10) transactions, the number of shares that Respondents received from the relevant issuer was determined by a formula that protected Respondents from any subsequent drop in share price by allowing Respondents to demand that additional shares be issued if the price declined after court approval of the settlement. OIP ¶¶ 22-23. As a result, while some transactions were complete as of the time of the initial issuance of shares, in other instances, Ironridge later directed issuers to issue additional shares to Global IV pursuant to the price protection formulas. OIP, ¶¶ 36-38. Some percentage of those additional shares was also sold in the open market. Had they registered as a dealer, Respondents would not have been able to insulate themselves from market fluctuation by leaving open the amount of their compensation. See FINRA Rule 5110(f)(2)(I) (effective between Dec. 15, 2010 and May 14, 2014) (proscribing "[t]he receipt by the underwriter and related persons of any item of compensation for which a value cannot be determined at the time of the offering").

With respect to the completed transactions (i.e., those in which no additional shares were issued pursuant to the price protection formulas), Global IV only maintained *de minimis* positions. For instance, in one of the 3(a)(10) transactions, Global IV received 28,203,044 shares, and within one month from the time it began selling, held only 2,000 shares. In another transaction, Global IV received 2,147,588 shares, and within two months of commencing sale, held only 1,000 shares. In another, Global IV received 9,179,018 shares, and within three months again held only 1,000

---

[3] In connection with the settlement process, Global IV typically informed the state court overseeing the exchanges that it intended to sell the stock it received. McNamara Decl., ¶ 11, Exhibit H, at p. 7.

shares. Even in its first transaction, Global IV received 2,576,775 shares, began selling the day after the state court's entry of the 3(a)(10) order, and within five months only held 100 shares. A table summarizing Respondents selling activity in the 33 transactions shows that Respondents' general practice was to retain a *de miminis* position in completed transactions. McNamara Decl., ¶ 12, Exhibit I.

In connection with underlying claims totaling approximately $35 million, Global IV received and then sold approximately 5.5 billion shares of the issuers' stock for total proceeds of approximately $56 million, thereby realizing a profit of approximately $22 million over three years. OIP, ¶¶ 1; 24. As a result of Global IV's Section 3(a)(10) transactions, the public float of shares for many of the issuers increased significantly, generally by as much as 25-50%. OIP, ¶ 25. Global IV's sales activity frequently represented a significant percentage of the average daily volume for the issuers' stocks and often resulted in massive dilution of the outstanding shares. OIP, ¶¶ 28-30. Global IV's sales activity also typically drove down the stock price. OIP, ¶ 35.

III. SUMMARY DISPOSITION STANDARD

Motions for summary disposition are governed by Rule 250. See 17 C.F.R. § 201.250. Under Rule 250(b), the hearing officer may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law. When determining such a motion, the facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323. Because the Division's factual allegations have not been modified by uncontested affidavits or otherwise, the facts set forth in the OIP must be deemed true for purposes of Respondents' motion.

In addition, as reflected in the Comment to Rule 250, summary disposition is rarely appropriate:

> Enforcement or disciplinary proceedings in which a motion for disposition prior to hearing would be appropriate are likely to be less common. Typically, enforcement and disciplinary proceedings that reach litigation involve genuine disagreement between the parties as to the material facts. Where a genuine issue as to material facts clearly exists as to an issue, it would be inappropriate for a party to seek leave to file a motion for summary disposition or for a hearing officer to grant the motion.

17 C.F.R. § 201.250 (July 2003).

Moreover, when considering a motion for summary disposition challenging the Division's legal theory, ALJs have rejected the notion that such a challenge can be resolved prior to hearing because it "requires a complete evidentiary record." Orlando Joseph Jett, et al., 61 S.E.C. Docket 2517, 1996 WL 281717 at *1-2 (May 17, 1996), citing Gregory J. Melson, 55 S.E.C. Docket 2588, 1994 WL 29474 at *1 (Jan. 21, 1994) and Carl L. Shipley, 45 S.E.C. Docket 589, 1974 WL 161761 at *2, n.4 (1974); see also Montford & Co., et al., 102 S.E.C. Docket 1599, 2011 WL 5434023 at *3 (Nov. 9, 2011) ("Generally speaking, once the Commission exercises its prosecutorial discretion to institute a proceeding, 'the appropriate remedy for any challenge to that exercise of discretion is to litigate the proceeding to a final decision.'") (Citations omitted.)

IV. ARGUMENT AND CITATION TO AUTHORITY

A. Dealer Registration under Section 15(a)(1) of the Exchange Act

Section 15(a)(1) of the Exchange Act makes it unlawful for, *inter alia*, an unregistered dealer to effect a transaction in any security. 15 U.S.C. § 78o(a)(1). Section 3(a)(5) of the Exchange Act defines a dealer as "any person engaged in the business of buying and selling securities for such person's own account."[4] 15 U.S.C. § 78c(a)(5). A key factor in determining

[4] In addition to selling securities, Respondents' Section 3(a)(10) exchanges also involved buying them. Buy and sell are both defined broadly to "include any contract to buy, purchase, or

dealer status is the regularity with which the person engages in buying and selling securities. The definition of dealer "connotes a certain regularity of participation in purchasing and selling activities rather than a few isolated transactions," and the Commission has said "[T]he primary indicia . . . is that the level of participation in purchasing and selling securities involves more than a few isolated transactions," although the activity need not "be a person's principal business or principal source of income." Gordon Wesley Sodorff, Jr., 50 S.E.C. 1249, 1992 WL 224082 at *4-5 (1992); Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 47364 (Mar. 26, 2003).

Interpreting the statutory definition of dealer, the Commission has stated that activities that may cause a person to be a dealer include: (1) purchasing or selling securities as principal from or to customers; (2) carrying a dealer inventory in securities; (3) participating in a selling group or underwriting with respect to securities; or (4) providing incidental investment advice in connection with selling securities. OTC Derivatives Dealers, Exchange Act Release No. 40594, Section II.A.1., n. 61 (Nov. 3, 1998) ("OTC Derivatives Release"); Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 46745 (Oct. 30, 2002) ("Bank Dealer Exemption Release").

---

otherwise acquire" and "any contract to sell or otherwise dispose of." 15 U.S.C. §§ 78c(a)(13) & (14). As courts recognize, the definitions were meant to emphasize the breadth of the definitions. Vine v. Beneficial Finance Co., 374 F.2d 627, 634 (2d Cir. 1967).

B. Global IV's Failure to Register as a Dealer Violated Section Section 15(a)

Under the facts alleged in the OIP, Global IV violated Section 15(a) of the Exchange Act by failing to register as a dealer while engaging in the following conduct:

(1) Buying securities as a principal directly from issuers through the Section 3(a)(10) settlement agreements. After an agreement was reached, Global IV received securities directly from the issuer, not through the open market (OIP, ¶¶ 35-37);

(2) Reselling the securities in the open market, which Respondents concede they did – en masse – for all but a *de minimis* number of the shares received. (OIP, ¶ 33) Global IV sold approximately 5.5 billion shares, realizing a profit of approximately $22 million, typically starting within four days of receipt of the shares. (OIP, ¶¶ 1; 24; 26) Despite Respondents' contention that they are long-term investors, Global IV only maintained *de minimis* positions in the shares of microcap companies with which they completed transactions, and the 3(a)(10) process both diluted share value and drove prices down (OIP, ¶¶ 23; 25; 28-30; 35);

(3) Serving as an underwriter by, among other conduct:

(i) openly promoting its business as a finance company (OIP, ¶¶ 1-2; 8; 10);

(ii) advertising its business as a financing company through press releases, a website, and attendance at microcap conferences (OIP, ¶ 10-12);

(iii) soliciting issuers through the use of commission-based referral agents (OIP, ¶ 12);

(iv) repeatedly engaging in stock distributions that dramatically increased the public float of shares for many of the issuers. Indeed, pursuant to the price protection formulas contained in the settlement agreements, Global IV was entitled to receive additional shares at a discount if the share price declined after court approval of the exchanges, which in

some instances resulted in additional distributions and even greater dilution (OIP, ¶ 23; 25); and

(4) Providing incidental investment advice to the issuers involved. This played out in several ways. After making contact with an issuer, Global IV (through Ironridge) evaluated the needs of the issuer before structuring the transaction. (OIP, ¶ 13) Global IV provided any needed explanations as to the legal framework and financial structure of the deal. It gave advice to the issuer on the best use of proceeds under a Section 3(a)(10) transaction. (OIP, ¶ 15) Global IV also provided all of the legal documents required to complete the transaction, and, if necessary, helped issuers find local counsel. (OIP, ¶ 14)

Through this process, Global IV participated in the distribution of over 5.5 billion shares with proceeds of over $56 million. (OIP, ¶¶ 1; 24) As a result, Global IV was "engaged in the business" of buying and selling securities and should have registered as a dealer as required by Section 15(a)(1).

C. Respondents' "Existing Factors" Argument Fails Because it Ignores the Statutory Definition of Dealer and Interpreting Releases

As set forth above, Section 3(a)(5)(A) of the Exchange Act defines a dealer using very general language: "any person engaged in the business of buying and selling securities . . . for such person's own account through a broker or otherwise." 15 U.S.C. § 78c(a)(5)(A). In a release proposing rules for the potential registration of banks as dealers, the Commission explained the initial analysis this way, making clear that it was the same analysis "whether bank or non-bank:"

> The question of whether a bank acts as a "dealer" that must register with the Commission therefore turns upon a two-stage analysis. The first stage focuses on two factual questions: (1) whether the bank is "buying and selling securities" for its own account; and (2) whether the bank is "engaged in the business" of that activity "as part of a regular business."

Bank Dealer Exemptions Release, Section II. The Commission stated in a separate release that activities that may cause a person to be a "dealer" include, among other things: (1) "purchasing or selling securities as principal from or to customers;" (2) "carrying a dealer inventory in securities;" (3) "participating in a selling group or underwriting with respect to securities;" and (4) "providing incidental investment advice with respect to securities." See OTC Derivatives Release, Section II.A.1., n. 61. Emphasizing the role that underwriting plays in the analysis, the Commission has also instructed that "[a] person generally may satisfy the definition, and therefore be acting as a dealer . . . by conducting various activities [including] underwriting . . . ."[5] Bank Dealer Exemptions Release, Section II.B.

In addition, the Eleventh Circuit recently upheld a district court decision granting summary judgment based (in part) on the definition of dealer under the Exchange Act.[6] SEC v. Big Apple Consulting, USA, Inc. et al., 783 F.3d 786, 809-10 (11th Cir. 2015). Affirming the district court's finding that the entities were dealers, the appellate court wrote "the centerpiece to [the definition of dealer] is the word 'business,'" and found that where a company's business model is based entirely on the purchase and sale of securities, that fact constitutes conclusive proof that the company is a dealer:

> While evidence of merely *some* profits from buying and selling securities may alone be inconclusive proof, the defendants' *entire* business model was predicated on the purchase and sale of securities. [The defendants] depended on acquiring

---

[5] Section 3(a)(20) of the Exchange Act provides that the term "underwriter" has "the same meaning as in the Investment Advisers Act of 1940." In turn, Section 202(a)(20) of the Advisers Act broadly defines the term "underwriter" in relevant part as "any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any securities[.]"

[6] As noted in the opinion, the Eleventh Circuit found that the Securities Act definition of dealer applied, but found that the district court's use of the Exchange Act was immaterial because the definitions are virtually identical. Big Apple, 783 F.3d at 809, n.11.

> client stock to support operations and earn a profit... As further evidence of their dealer status, [the defendants] purchased [an issuer's] stocks at deep discounts pursuant to its contractual agreement with [the issuer] and then sold those stocks for profit.

Big Apple, 783 F.3d at 809-10 (emphasis in original); see also SEC v. Offill, Case No. 3:07-CV-1643-D, 2012 WL 246061 at *8-9 (Jan. 26, 2012) (granting summary judgment on a Section 15(a)(1) claim for failure to register and holding that the defendant "bought and sold securities as part of his regular business, making him a dealer under 15 U.S.C. § 78c(a)(5)").

In their motion, Respondents ignore both the text of the statute and the interpreting releases and cases, and instead rely on an Internet summary guide on broker-dealer registration posted by the Division of Trading and Markets in April 2008.[7] Respondents' Motion, pp. 14-15. Their failure to cite to actual legal authority is telling, in light of the extensive disclaimer language included in the guide:

> We wish to stress that we have published this guide as an introduction to the federal securities laws that apply to brokers and dealers. It only highlights and summarizes certain provisions, and does not relieve anyone from complying with all applicable regulatory requirements. **You should not rely on this guide without referring to the actual statutes, rules, regulations, and interpretations.**

Guide to Broker-Dealer Registration, Division of Trading and Markets (April 2008) (found at: www.sec.gov/divisions/marketreg/bdguide.htm) (emphasis added) ("TM Guide").

Nevertheless, the summary guide cited by Respondents demonstrates that Respondents are not entitled to summary disposition. Under the section entitled "Who is a 'dealer,'" the Division of

---

[7] Respondents also argue that Global IV was a self-interested investor, not a "service provider," and that this distinction supports their position that Global IV was not a dealer. Respondents' Motion, p. 14. Respondents are confusing "broker" (which was the issue in Bronner v. Goldman, 361 F.2d 759, 762 (1st Cir. 1966), cited by Respondents) with "dealer," the definition of which expressly says that the trading is for the dealer's "own account." There is no self-interest distinction between a dealer and a trader.

Trading and Markets states that an affirmative answer to *any* of the following questions indicates that the entity may need to register as a dealer:

> Here are some of the questions you should ask to determine whether you are acting as a dealer:
>
> • Do you advertise or otherwise let others know that you are in the business of buying and selling securities?
> • Do you do business with the public (either retail or institutional)?
> • Do you make a market in, or quote prices for both purchases and sales of, one or more securities?
> • **Do you participate in a "selling group" or otherwise underwrite securities?**
> • Do you provide services to investors, such as handling money and securities, extending credit, or giving investment advice?
> • Do you write derivatives contracts that are securities?
>
> **A "yes" answer to any of these questions indicates that you may need to register as a dealer.**

TM Guide, Section 2.2 (emphasis added).[8] As the OIP (and Respondents' motion) reflect, the Division alleges that Global IV's conduct constituted underwriting.

D. Respondents' Due Process Argument Fails Because There was Sufficient Notice that Global IV was a Dealer

Respondents claim that the Division's allegations violate due process because they attempt to "impermissibly use an ALJ to create new rules" and invent "new factors" pertaining to the dealer analysis that were not previously announced to the public. Respondents' Motion, pp. 13-14. Respondents contend that that the Court should not consider any Division arguments regarding factors that are "not part of established guidance." Id.

That the Commission may not have made the same precise allegations in prior enforcement proceedings does not mean that this case violates Respondents' due process rights. The Commission is not required to proscribe conduct through regulation before authorizing disciplinary

---

[8] As Respondents' Motion reflects, the TM Guide is publicly available on the Internet, and the information excerpted above has appeared unchanged since the beginning of the relevant period. McNamara Decl., ¶ 13.

proceedings. E.F. Hutton & Co., Inc., Exchange Act Rel. No. 25887 (Jul. 6, 1988) ("The choice made between proceeding by general rule or by individual, ad hoc litigation is one that lies primarily in the informed discretion of the administrative agency."); J.H. Goddard & Co., Inc., et al, Exchange Act Rel. No. 7321, (May 22, 1964) ("[N]ot only are the allegations in the order for proceedings consistent with the interpretation that has been given the rule in previous decisions, but this Commission as an administrative agency may properly proceed by adjudication, rather than by further rule-making, to apply a rule to particular factual situations, whether or not such situations have previously been held to be within the rule"); SEC v. Chenery Corp., 332 U.S. 194, 202-03 (1947) (agency may proceed through rulemaking or adjudication).[9] Thus, "an agency "is not precluded from announcing new principles in an adjudicative proceeding." NLRB v. Bell Aerospace Co., 416 U.S. 267, 294 (1974). Such cases only present due process concerns if they "could not reasonably have been foreseen." Nicholson v. Brown, 599 F.2d 639, 649 (5th Cir.1979).

The relevant statutory provisions and guidance during the relevant time provided adequate notice to Respondents that Global IV was required to register as a dealer. As set forth at length above, Respondents were on notice with respect to: (1) the definition of dealer set forth in Section 3(a)(5)(A) of the Exchange Act; (2) the Commission's guidance in releases such as the Bank Dealer Exemptions Release and the OTC Derivatives Dealers Release; and (3) judicial interpretations of dealer such as Offill, 2012 WL 246061. Moreover, as previously noted, even under the TM Guide cited by Respondents, at least one of the factors – underwriting activity –

---

[9] Respondent sole citation in support of their argument, Upton v. SEC, 75 F.3d 92 (2d. Cir. 1996), is inapposite. As stated in Wheat, First Securities, Inc., et al., Rel. No. ID-155, 1999 WL 1210860 at *20-21 (Dec. 17, 1999), the "every-dog-gets-its-first-bite defense" at issue in Upton is limited to the facts of that case, which involved complex accounting calculations.

applies to Global IV. And the other guidance on which Respondents rely shows that underwriting, by itself, could require registration as a dealer. Respondents' Motion, p. 15, citing Bank Dealer Exemptions Release. That release lists in the **disjunctive** several activities that may qualify as a dealer, including "underwriting."[10]

Respondents contend that the staff's no-action letter in Acqua Wellington North American Equities Fund, Ltd., SEC No-Action Letter, 2001 WL 1230266 (Oct. 11, 2011) ("Acqua") supports their due process claim, arguing that the letter shows that "alleging that an entity is an underwriter is legally insufficient, alone, to make it a dealer." Respondents' Motion, pp. 2, 19. This assertion fails for several reasons.

First, no-action letters are necessarily limited to the facts represented, and the facts in Acqua are markedly different from the facts at issue here. In Acqua, the staff issued the no-action response "based solely upon the representations [Acqua] made" and specified that it was "limited strictly to the facts and compliance with the conditions described in [Acqua's] letter." 2001 WL 1230266 at *1. In its no-action request, Acqua enumerated 20 conditions that limited its activity. Of relevance here, Acqua stated that:

(1) it would not pay a finder's fee to any party;

(2) it would not solicit companies;

(3) unaffiliated broker-dealers would represent the companies in all transactions;

(4) it would not advertise;

---

[10] Respondents' failure to seek guidance through the no-action letter process further weakens their due process claim. Village of Hoffman Estates v. Flipside, Hoffman Estates Inc., 455 U.S. 489, 498 (1982) (in evaluating whether there is fair notice of the conduct proscribed by a statute or regulation, the Court considers whether "the regulated enterprise [has] the ability to clarify the meaning of the regulation by its own inquiry, or by resort to an administrative process").

(5) it would limit its compensation to comply with NASD Rule 2710 (now FINRA Rule 5110);

(6) it would not transact with companies with less than $100 million in market cap; and

(7) it would not provide investment advice.

2001 WL 1230266 at *7.

Respondents conduct differed dramatically. For example, Ironridge and Global IV:

(1) paid finders' fees as part of the transactions (McNamara Decl., ¶5, Exhibit B at 147:23; ¶6, Exhibit C at 53:22-23; ¶7, Exhibit D at 58:10; ¶8, Exhibit E at 13:25–114);

(2) solicited companies directly (McNamara Decl., ¶6, Exhibit C at 53:15–16; ¶7, Exhibit D at 56:13–17);

(3) did not always deal with companies represented by an unaffiliated broker-dealer (Respondents' Motion pg. 5; "an issuer – often represented by a registered broker-dealer . . . .");

(4) advertised a referral program as well as its LIFE program on its on their website, in brochures, and in publications;

(5) made no effort to evaluate whether their compensation violated FINRA Rule 5110(c)(2)(a), which proscribes "unfair and unreasonable" underwriting compensation, but instead typically received stock at significant discounts which allowed them to reap considerable profits;

(6) transacted almost exclusively with companies that had market caps below $100 million; and

(7) provided the companies with investment advice related to the selection of debts, the merits of their "innovative financing structure," and provided feedback regarding press releases.

Moreover, the no-action letter does not say that Acqua was exempt from registration as a dealer because it met only the underwriter criteria. Accordingly, irrespective of the substance of the Acqua no-action letter, Respondents cannot reasonably claim that they relied on the letter in deciding whether their activities required registration as a dealer.

E. Global IV's Status as an Underwriter is Legally Sufficient to Find Global IV was a Dealer Under Both the Securities and Exchange Act Definitions

Recognizing that Global IV's underwriting activity is highly relevant to its qualification as a dealer, Ironridge argues that Global IV was not an underwriter, and that even if it had been, that fact would be legally insufficient to find Global IV was a dealer. Respondents' Motion, pp. 17-19. Specifically, Ironridge argues that, in order for Global IV to qualify as an underwriter, it must engage in a "distribution," which in turn requires "special selling efforts" that involve "greater than normal sales compensation arrangements pertaining to the distribution of a security, delivering a sales document, such as a prospectus or market letters, and conducting road shows." Id. Respondents further argue that the Division cannot rely on the definition of underwriter found in the Securities Act because Global IV's 3(a)(10) transactions were exempt from registration under the Securities Act.

1. Respondents' Use of the Reg M Definition of "Distribution" is Improper

As an initial matter, the Court should note that Respondents' argument is based on the very narrow definition of "distribution" found in Regulation M. Respondents' Motion, p. 17, n.10 (citing 17 C.F.R. §242.100(b)(iii)). As specifically highlighted in the regulation, the definitions apply "for *purposes* of Regulation M." 17 C.F.R. §242.100(b) (emphasis added). Thus, that definition applies only for purposes of Regulation M and is not applicable here. Respondents' attempt to cherry-pick the Regulation M definition of distribution is improper because it is inconsistent with the history surrounding the Commission's adoption of that definition. Regulation M, and its predecessor, Rule 10b-6, were only intended to cover "offerings of such a nature or magnitude as to require restrictions upon open market purchases by participants in order to prevent manipulative practices." Bruns, Nordeman & Co., Exchange Act Rel. No. 6540, 1961 WL 61057

at *6 (June 8, 1964). This is further reinforced by Congressional action, which added the current definition of underwriter to the Exchange Act in 1964, well after the Commission had adopted the narrower definition utilized for Rule 10b-6. Pub. L. 88-467, 78 Stat. 565, 565 (Aug. 20, 1964). Congressional adoption of the broad definition of underwriter contained in the other securities acts demonstrates that outside the context of Regulation M, the narrow definition of distribution cited by Respondents does not apply.

2. Under the Applicable Definition of Distribution, the Division's Allegation that Respondents Sold Shares within Days Demonstrates Intent to Distribute

In addition, Respondents' assertion that the Division improperly relies on the Securities Act definition of underwriter and authority interpreting that definition ignores the fact that the primary federal securities laws share a virtually identical definition of the term underwriter, all of which include "any person who has purchased from an issuer **with a view to . . . the distribution** of any security." See 15 U.S.C. §77b(a)(11) (Securities Act); 15 U.S.C. §78c(a)(20) (Exchange Act);[11] 15 U.S.C. §80b-2(a)(20) (Investment Advisers Act of 1940); 15 U.S.C. §80a-2(a)(40) (Investment Company Act of 1940) (emphasis added). As courts interpreting that language have repeatedly stated, whether a purchase from an issuer is made with a view to a "distribution" turns on the intent at the time of the purchase.[12] Big Apple, 783 F.3d at 807; 809, n.11; Berckeley Inv. Group, Ltd. v. Colkitt, 455 F.3d 195, 213 (3d Cir. 2006); see also Ackerberg v. Johnson, 892 F.2d 1328, 1336 (8th Cir. 1989).

---

[11] The Exchange Act definition of underwriter incorporates 15 U.S.C. §80b-2(a)(20) by reference.

[12] In interpreting this language, courts have focused on distinguishing between a "distribution of securities and trading in securities." Ackerberg, 892 F.2d at 1335 (citing to L.Loss & J. Seligman, 2 Securities Regulation 627 (3d Ed. 1989) (quoting H.R. Rep. No. 85, 73d Cong., 1st Sess. 15 (1933))).

To determine that intent, courts have consistently looked to the length of time between acquisition and resale. Big Apple, 783 F.3d at 807; Berckeley Inv. Group, 455 F.3d at 213; Ackerberg, 892 F.2d at 1336. The threshold used by courts has typically been a *two-year* holding period. Id. Under this analysis, the allegation in the OIP that Respondents' typical holding period was measured in days is more than sufficient to demonstrate that Respondents' investment intent was to distribute the 3(a)(10) transaction shares. Additional proof that Respondents acquired the shares with a view toward distribution comes from the papers they filed with the approving state court in connection with each 3(a)(10) transaction. Each of those papers stated that Respondents intended to sell the shares acquired.

3. Global IV was a Dealer Even if the Sales of the 3(a)(10) Shares were Exempt from Registration

Respondents also appear to suggest that the broker-dealer registration requirements under Section 15(a) of the Exchange Act do not apply to Global IV because the shares it received through the 3(a)(10) transactions are exempt under the Securities Act. Respondents Motion p. 18. However, an examination of the Exchange Act demonstrates that is not the case. While Section 15(a) does make an exception from dealer registration for transactions involving "exempted securities," the definition of "exempted securities" in Section 3(a)(12) of the Exchange Act does not include securities issued in a Section 3(a)(10) Securities Act transaction. See 15 U.S.C. §78c(a)(12). Accordingly, the reference to exempted securities within Section 15(a) of the Exchange Act, and the definition of that term in Section 3(a)(12), show Congress' intended to apply the broker-dealer registration requirements in the Exchange Act to persons involved in 3(a)(10) transactions, even though the shares received are exempt from registration under the Securities Act. The summary guide cited by Respondents buttresses this conclusion. It states that

"[a] security sold in a transaction that is exempt from registration under the Securities Act of 1933 is not necessarily an 'exempted security' under the Exchange Act." TM Guide, Section II.D.4.

F. Respondents' Claims that Global IV Lacks the Attributes of an Underwriter Fail

Respondents argue that Global IV could not have been an underwriter because it lacked certain attributes allegedly essential to underwriters. Respondents' Motion, pp. 19-21. Specifically, Respondents argue that Global IV's strategy involved sufficient delays in stock sales such that Global IV faced market risk, something which they contend underwriters never do. Id., pp. 19-20. Respondents also contend that the magnitude of Global IV's trading was so restrained as to be nothing more than "ordinary trading." Id., pp. 20-21. Finally, Respondents claim that Global IV does not assist in capital-raising and other activities that they contend are essential to being an underwriter. Id., p. 21.

While the Division will address each of these arguments in turn, it notes that none of them bear on the statutory definition of the term underwriter, which encompasses "any person who has purchased from an issuer with a view to ... the distribution of any security." See 15 U.S.C. §77b(a)(11); 15 U.S.C. §78c(a)(20); 15 U.S.C. §80b-2(a)(20); 15 U.S.C. §80a-2(a)(40). Nor do they confront the fact that a "distribution" turns on the intent to sell at the time of the purchase, and that Respondents in this case clearly intended to resell, as evidenced by the fact that they typically began selling within four days of being cleared to trade. Big Apple, 783 F.3d at 807; Berckeley Inv. Group, 455 F.3d at 213; Ackerberg, 892 F.2d at 1336.

1. Global IV's Strategy Does Not Set It Apart from Underwriters

Ironridge's attempt to characterize its strategy as a "buy-and-hold" model, relying on mid- and long-term stock appreciation to make money, is contrary to the facts and the allegations in the OIP. Ironridge's business model is built around using the Section 3(a)(10) registration exemption

to obtain a large volume of discounted shares from directly solicited issuers and then immediately begin to sell them until only a *de miminis* number of shares remain. As stated, Global IV sold approximately 5.5 billion shares, realizing a profit of approximately $22 million, typically starting within four days of receipt of the shares. The process typically happened so rapidly that it both diluted share value and drove prices down. Global IV's strategy of obtaining discounted shares that were unregistered largely eliminated market risk by ensuring that the shares could be sold quickly at a profit. What market risk that remained was negated by the price protection formulas contained in the settlement agreements that entitled Global IV to receive additional shares at a discount if the share price declined after court approval. And as a matter of gauging intent, Global IV's near-immediate selling activity demonstrates that it obtained the shares with a view to distribute.

Moreover, Respondents have no authority supporting the notion that a particular investment strategy is key to underwriter status. In fact, the only case cited by Respondents in support of this argument – Ackerberg – actually supports the Division's view that the definition of underwriter is broad and turns in large measure on the intent to resell in a time frame short of two years:

> The congressional intent in defining "underwriter" was to cover all persons who might operate as conduits for the transfer of securities to the public. T. Hazen, The Law of Securities Regulation § 4.24, at 141 (1985) (quoting H.R.Rep. No. 85, 73d Cong., 1st Sess. 13-14 (1933)). Thus, 'underwriter' is generally defined in close connection with the definition and meaning of "distribution." See Eugene England, 663 F.2d at 989 ("An underwriter is one who has purchased stock from the issuer with an intent to resell to the public.") . . . Many courts have accepted a two-year rule of thumb to determine whether the securities have come to rest [such that resale was not intended]. See United States v. Sherwood, 175 F.Supp. 480, 483 (S.D.N.Y.1959).

Ackerberg, 892 F.2d at 1335-37.

2. The Magnitude of Global IV's Trading Exceeded the Bounds of "Ordinary Trading"

Respondents argue that the magnitude of Global IV's acquisitions and sales transactions were so restrained as to result in "ordinary trading" as contemplated by their cherry-picked, Regulation M definition of distribution. Respondents' Motion, pp. 20-21. As previously stated, that definition does not apply in this context. Even if it did, however, Respondents' claim that Global IV's trading activity fell within the boundaries of "ordinary trading" is unsupportable. The OIP alleges that Respondents received and then sold approximately 5.5 billion shares of common stock between 2011 and 2014. The claim is further belied by a whole host of circumstances, not the least of which is that Respondents' sales frequently comprised a significant percentage of the daily trading volume of the shares. OIP, ¶¶ 28-30.

G. Global IV's Provision of Investment Advice is Relevant to its Status as a Dealer

In their Motion, Respondents claim that the Division is relying on newly-invented factors to prove that Global IV was a dealer, and because the factors are allegedly new, applying those factors to Respondents would violate due process. In particular, Respondents assert that it is improper for the Division to claim that the investment advice Global IV provided to the issuers involved in the 3(a)(10) transactions supports the conclusion that Global IV was a dealer. Respondents also argue that the Division's assertion that the number of shares Global IV received and sold is and/or whether Global IV engaged in "financing" are not factors of which Respondents had sufficient notice to sustain liability.

These factors are not new. With respect to the investment advice Global IV gave to issuers, Respondents point out that one of the non-exhaustive factors in the TM Guide indicates an entity may be a dealer if it provides services such as investment advice to *investors*, and argue that the issuers involved are not investors. That distinction fails for at least two reasons. First, the factors

listed in the TM Guide are not exhaustive. As stated above, the TM Guide states on its face that it "highlights and summarizes certain provisions" and admonishes readers that "[y]ou should not rely on this guide without referring to the actual statutes, rules, regulations, and interpretations." TM Guide, Section IX. Second, the Commission has given its own guidance on this point and did not include any such limitation. In the OTC Derivatives Release, the Commission stated that an entity may be a dealer if it "provid[es] incidental investment advice **with respect to securities.**" OTC Derivatives Dealers, Section II.A.1., n. 61 (emphasis added).

Respondents also contend that Global IV does not provide advice to issuers because they are adverse to the issuers in court when the 3(a)(10) agreements are approved, and because the settlement agreements contain boilerplate language indicating that Global IV has not provided advice to the issuers. Respondents' argument is form over substance. As set forth in the OIP, the Section 3(a)(10) process between Respondents and the issuers is highly cooperative. OIP, ¶¶ 11-23. In reality, the proceedings are not adversarial in nature, as they merely involve prearranged settlements designed to take advantage of a registration exemption. Id.

Finally, Respondents' contention that the number of shares Global IV received is not a factor for purposes of the dealer analysis is incorrect. Because Global IV received millions of shares in exchange for assuming and satisfying substantial debts of the issuer (totaling approximately $35 million), the number of shares (and the value exchanged for them) shows that Respondents intended to distribute those shares in order to recoup their investment and function as a company. Big Apple, 783 F.3d at 808 ("It is difficult to fathom how Big Apple could operate by receiving stock *not* with a 'view toward' distribution in order to maintain its own operating costs;" emphasis in original).

H. Global IV is Not Exempt from Registration as a Foreign Broker-Dealer

Respondents argue that, even if Global IV were a dealer for purposes of Section 15(a), it would be exempt from registration (and therefore not liable) because it qualifies as a foreign broker-dealer under Exchange Act Rule 15a-6. 17 C.F.R. § 240.15a-6. Rule 15a-6(a)(1) provides an exemption for a foreign broker-dealer that effects transactions in securities with or for persons that have not been solicited by the foreign broker-dealer. Rule 15a-6(a)(4) provides an exemption for a foreign broker-dealer that "[e]ffects transactions in securities with or for, or induces or attempts to induce the purchase or sale of any security by" a registered broker-dealer, various international development banks, certain foreign persons temporarily present in the United States, agencies or branches of U.S. persons permanently located outside the United States, and U.S. citizens resident outside the United States. In support of this argument, Respondents assert that Global IV meets the criteria set forth in the Rule.

Respondents' factual assertions, however, are contrary to the OIP. For example, Respondents claim that they "rarely, if ever, solicited any of the issuers . . . ." Respondents' Motion, p. 26. But the OIP alleges that Ironridge (on behalf of Global IV) solicited United States issuers to enter into Section 3(a)(10) transactions with Global IV. OIP, ¶ 10-12. In fact, during the relevant time, Ironridge's principals (on behalf of Global IV and at times while acting as directors of Global IV) directly solicited issuers in the United States by contacting potential candidates, touting their LIFE program on the Internet and in the media, and paying referral commissions to various third parties. These activities in the United States belie the assertion that Global IV engaged in unsolicited transactions in accordance with the Rule 15a-6(a)(1) exemption. Alternatively, Respondents also argue that all of Global IV's securities trades were effectuated with registered broker-dealers under the Rule 15a-6(a)(4) exemption. However, Global IV does

not fall within the scope of the exemption because its acquisition of domestic issuers' shares through the Section 3(a)(10) exchanges was not effectuated by registered broker-dealers.

Simply put, Global IV's business activities do not meet the requirements of the foreign broker-dealer exemptions contained in Rule 15a-6.

I. The OIP Adequately States a Claim Under Section 20(b) of the Exchange Act

Section 20(b) of the Exchange Act makes it "unlawful for any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of this title or any rule or regulation thereunder through or by means of any other person." On its face, Section 20(b) is directed at persons who use another individual or entity – in effect, a surrogate – to violate the law. It is a form of primary liability. Unlike the control person and aiding and abetting provisions of Sections 20(a) and 20(e), Section 20(b) does not premise liability on the existence of an underlying violation by someone else. Section 20(b) makes one person liable – the actor with the requisite state of mind to commit a substantive violation – for the joint actions of two, rather than holding two persons liable based on a substantive violation committed by one (as do Sections 20(a) and 20(e)). Accordingly, to defeat Respondents' motion for summary disposition with respect to the Division's claims under Section 20(b), the Division need only allege that Ironridge (i) acted through or used Global IV to execute at least some of the actions forming the basis of the substantive violation, and (ii) acted with the state of mind necessary to establish the substantive violation. The Division has done this, and the language of the statute requires nothing more.

Ironridge argues that the Division cannot prove that it acted "through or by means of" Global IV as required by Section 20(b) because the statute requires a control relationship, and Ironridge did not in fact control Global IV. This argument fails because Section 20(b) does not require the existence of a control relationship. SEC v. Strebinger, et al., Civil Action No. 14-CV-

3533-LMM, 2015 WL 4307398 at *11-12 (June 11, 2015) ("The Court does not read Section 20(b) to contain a 'control' limitation on liability"). The Commission has observed that: "Although Section 20 is entitled 'Liability of Controlling Persons,' paragraph (b) is not limited to situations involving persons in control relationships." Short Sales in Connection With a Public Offering, Exchange Act Rel. No. 26028, 1988 WL 1000034, at *7 n.22 (Aug. 25, 1988) (emphasis supplied).

In addition, imposing a "control person" requirement on a Section 20(b) claim is contrary to both the plain statutory language and its legislative history. See S. Rep. No. 792, 73d Cong., 2d Sess. at 22, 1934 WL 1289 (Leg. Hist.) (1934) ("Subsection (b) makes it unlawful for any person to do through any other person for the purpose of avoiding a provision of the act, anything that he is forbidden to do himself."); H. R. Rep. No. 1383, 73 Cong., 2d Sess. at 26, 1934 WL 1290 (Leg. Hist.) (1934) ("Subsection (b) makes it unlawful for any person to do, through any other person, anything that he is forbidden to do himself.") The word "control" is absent from Section 20(b), and Section 20(b) applies to a violator's actions through or by means of "any other person."

In any event, even if Section 20(b) required a control relationship, Ironridge clearly controlled Global IV. Effectively, Global IV's "Articles of Association" provide that Ironridge, as the sole shareholder in Global IV, could exercise complete control over Global IV's operations through the appointment and removal of a slate of "Directors" who act on behalf of that company. Since November 2012, when Kirkland, O'Neil and Kreger resigned as Directors, the acting Directors of Global IV have been employees of a foreign financial services company where Global IV held a bank and prime brokerage account. McNamara Decl. ¶ 5, Exhibit B at 25:4-3; 28:11-22. In testimony, Kirkland conceded that Ironridge "ultimately makes the decision" on Global IV's investment activity. McNamara Decl. ¶ 5, Exhibit B at 122:23-123:12. Ironridge even views itself as synonymous with Global IV. On its website, Ironridge lists the issuers in 3(a)(10) transactions

as part of its own portfolio, and in multiple press releases Ironridge has identified itself as providing the financing, while directing communications to Kirkland. McNamara Decl., ¶ 15.

Respondents also cite to SEC v. Coffey, 493 F.2d 1304 (6th Cir. 1974) and related cases, in support of their argument that Section 20(b) applies only to control person liability. Respondents' Motion, pp. 26-30. The Coffey court based its holding on its conclusion that the Commission was not a "person" under Section 20(a) and that Section 20(a) and 20(b) were parallel provisions. 493 F.2d at 1318. The validity of Coffey's holding has been called into question by subsequent legislation. In 1975, the Exchange Act was amended to include governmental agencies as a "person" and the Dodd Frank Act amended Section 20(a) to specifically provide for controlling person liability to the Commission. See Securities Reform Act, Pub. L. No. 94-29, 89 Stat. 97, Section 3 (1975); Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376, Section 929P(c) (2010). Given the amendments to the statute, and in particular to Section 20(a), an interpretation of Section 20(b) to require a defendant to exercise control over the third party would make Section 20(b) redundant of 20(a).

Moreover, such an interpretation conflicts with the Supreme Court's analysis of Section 20(b) in Dirks v. SEC, 463 U.S. 646, 659 (1983). In Dirks, the Court was asked to consider whether Dirks had violated Rule 10b-5 by providing material non-public information he gained during an investigation to individuals who traded based on that information. In concluding that Dirks had not violated the federal securities law because he did not have a duty to the company, the Court referenced Section 20(b), noting that insider trading laws are intended to preclude insiders not only from using their inside knowledge to their advantage, but also from giving inside information to an outsider to obtain that advantage. A reasonable interpretation of the Court's dicta in Dirks leads to the conclusion that Section 20(b) is applicable to the conduct alleged in the

complaint. There was no argument that any insider "controlled" Dirks, yet the Court found it appropriate to analogize to Section 20(b), and thus, it is reasonable to conclude that Section 20(b) does not contain any "control" requirement.

In addition, Ironridge argues that there is no associated primary violation of the Exchange Act. Respondents' Motion, pp. 29-30. However, Section 20(b) is a means of establishing primary liability. It is not a form of secondary liability, like aiding and abetting or causing, which is dependent on the commission of an underlying violation by another party. Here, Ironridge committed primary violations of Sections 15(a) and 20(b) by its operation of Global IV as an unregistered dealer.

Finally, Ironridge argues that the Division cannot show that Ironridge "knowingly" participated in Global IV's violation because, as Respondents have argued elsewhere, they allegedly lacked notice that their conduct could result in a Section 15(a) violation. As stated above, however, multiple legal sources put Respondents on notice of the requirement that Global IV should register as a dealer. Accordingly, Respondents' argument that the Division could not possibly show that Ironridge acted "knowingly" fails.

V. CONCLUSION

For the reasons stated herein, Respondents' motion for summary disposition should be denied.

Dated: October 13, 2015

Respectfully submitted,

Robert K. Gordon
W. Shawn Murnahan
Kyle A. Bradley
Attorneys for the Division of Enforcement

Securities and Exchange Commission
Atlanta Regional Office
950 East Paces Ferry Road NE, Suite 900
Atlanta, GA 30326
Telephone: (404) 842-7669
Fax: (703) 813-9364

CERTIFICATE OF SERVICE

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

Brent J. Fields
Office of the Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Honorable James E. Grimes
Administrative Law Judge
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Stephen E. Hudson
Hillary D. Rightler
Kilpatrick Townsend & Stockton, LLP
1100 Peachtree Street
Suite 2800
Atlanta, GA 30309

W. Shawn Murnahan