

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

ADMINISTRATIVE PROCEEDINGS RULINGS

Release No. 4448/December 14, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-16649

In the Matter of

IRONRIDGE GLOBAL PARTNERS, LLC,
IRONRIDGE GLOBAL IV, LTD.

ORDER GRANTING IN PART
DIVISION'S MOTION IN LIMINE
REGARDING INVESTIGATION
AND DUE PROCESS EVIDENCE

The Securities and Exchange Commission issued an order instituting proceedings (OIP) in this matter on June 23, 2015. Respondents are charged with violating Section 15(a) and 20(b) of the Securities Exchange Act of 1934 through Respondent Ironridge Global IV, Ltd.'s operation as an unregistered dealer. OIP at 2-3, 6. A hearing is currently scheduled for February 21, 2017, in Washington, D.C.

Under consideration are the Division of Enforcement's November 16, 2015, motion in limine (Div. Mot.) regarding investigation and due process evidence and Respondents' November 10, 2016, opposition (Opp'n). The Division specifically seeks to preclude Respondents from: (1) calling two Division attorneys, Matthew McNamara and Kyle Bradley, as witnesses regarding the Division's investigation; (2) offering certain documentary evidence related to the Division's investigation; and (3) offering "any evidence" related to Respondents' claims that Commission administrative proceedings violate due process. Attached to the Division's motion are several of Respondents' exhibits (cited as RX) that the Division seeks to exclude.

Staff Investigation Evidence. The Division's first two requests relate to Respondents' defense that the Division is relying on "novel" and "shifting" theories of liability because the Division itself did not believe that Respondents' business required registration under Section 15(a) when it began its investigation, and as a result, Respondents did not have fair notice that the conduct alleged in the OIP was unlawful as required by due process. Opp'n at 1-5.

As the administrative law judge previously assigned to this case noted:

In deciding whether Global IV is a dealer, I will rely on precedent and authoritative guidance from the Commission. If Global IV falls within the ambit of applicable precedent and guidance, I will find that it is a dealer and Respondents' notice arguments will

therefore fail. If Global IV does not fall with the ambit of applicable precedent and guidance, I will find that it is not a dealer and Respondents' notice arguments will be moot.

Ironridge Global Partners, LLC, Admin. Proc. Rulings Release No. 3298, 2015 SEC LEXIS 4590, at *28 (ALJ Nov. 5, 2015). The testimony of Division attorneys McNamara and Bradley regarding the investigation – and their subjective views of the evidence and legal principles – are simply irrelevant to Respondents' due process-based notice claims. What is relevant to Respondents' due process-based notice defense is “precedent and authoritative guidance from the Commission” that was available to Respondents, and whether that guidance indicated that conduct like Ironridge Global IV's would require registration as a dealer.¹

Therefore, I GRANT the Division's motion to exclude the testimony of McNamara and Bradley. The Division also seeks to exclude several of Respondents' exhibits related to their due process-based notice defense.² The Division asserts that this evidence is irrelevant to the central question of whether Respondents violated the federal securities laws. Div. Mot. at 3. However, as it remains to be seen how Respondents intend to use these exhibits, a ruling at this stage would be premature. Respondents suggest that certain exhibits will demonstrate their cooperation during the investigation. Opp'n at 5 n.1. None of the Respondents' exhibits that the Division moves to exclude are covered by any privilege. Nor do the exhibits create a risk of prejudice to the Division, because I will disregard them if they are not relevant. Also, unlike the testimony of two live witnesses, such exhibits do not pose a risk of taking up significant time at the hearing, regardless of relevance. Therefore, at this stage of the proceeding, I DENY the Division's motion to exclude documentary evidence regarding the Division's investigation.

Due Process Evidence. The Division also moves to preclude Respondents from raising at hearing their due process argument based on systemic bias and from offering evidence in support of that argument. Div. Mot. at 5-6. Specifically, the Division seeks to exclude several of Respondents' exhibits related to the issue.³ The Division also seeks to exclude testimony in

¹ The Division suggests that the testimony of attorneys McNamara and Bradley would be protected under the attorney-client privilege, work product doctrine, and deliberative process privilege. Div. Mot. at 3-5. I need not reach this issue as their testimony would be irrelevant for the reasons discussed.

² The exhibits referenced by the Division consist of: the Commission's order of investigation (RX 1); and correspondence between Respondents (or their former counsel) and the Division, and an email attachment consisting of a state-court hearing transcript (RX 44-50).

³ The exhibits referenced by the Division consist of: a hearing transcript in *Tilton v. SEC*, No. 15-cv-2472 (S.D.N.Y.) (RX 42); a Commission opposition brief in *Hill v. SEC*, No. 15-cv-1801 (N.D. Ga.) (RX 43); remarks of Commissioner Michael Piwowar at an SEC Speaks conference (RX 57); a June 17, 2014, Law360 article regarding remarks of the Commission's General Counsel Anne Small about rules applicable to administrative proceedings (RX 58); remarks of Chair Mary Jo White at a global exchange and brokerage conference (RX 59); a May 6, 2015, *Wall Street Journal* article (RX 60); a November 5, 2014, Reuters article (RX 61); and a November 10, 2015, Bloomberg Business article (RX 62).

support of Respondents' due process defense, but Respondents have not identified any other witnesses on the subject.

In support, the Division references an October 15, 2015, ruling by the administrative law judge previously assigned to this proceeding. *See Ironridge Global Partners, LLC*, Admin. Proc. Rulings Release No. 3228, 2015 SEC LEXIS 4239. The prior judge denied Respondents' request for a subpoena directed to the Commission seeking documents and communications related to allegations made by a former Commission administrative law judge, as reported by the *Wall Street Journal* on May 6, 2015. *Id.* at *13-14. The prior judge determined:

The Commission addressed concerns raised by the *Wall Street Journal* article in *Timbervest, LLC*, Investment Advisers Act of 1940 Release No. 4197, 2015 SEC LEXIS 3854, at *87 (Sept. 17, 2015), and concluded that attempts to tie the conversation alleged in the *Wall Street Journal* article to a specific administrative law judge were insufficient to warrant further factual development. If that is the case for the challenge respondents in *Timbervest* raised against one administrative law judge, it must also be the case where Respondents specifically disclaim any argument that I am biased and instead raise a systemic claim.

Id. at *14 (internal citations altered; italics added).

Neither *Timbervest* nor the prior judge's ruling, however, foreclose Respondents from offering documentary evidence on the subject at the hearing that they already have in their possession or of which official notice may be taken. Moreover, Respondents' constitutional claims are not based only on the allegations raised in the *Wall Street Journal* article, and the exhibits they seek to offer (and which the Division seeks to preclude) do not relate only to their systemic bias claim. Opp'n at 6-8. To the extent the Division believes Respondents' claims are without merit, such arguments are better presented in post-hearing briefs.

I will therefore DENY this aspect of the Division's motion.

SO ORDERED.

Cameron Elliot
Administrative Law Judge