

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4449/December 14, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-16649

In the Matter of

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

ORDER DENYING RESPONDENTS'
COMBINED MOTIONS IN LIMINE
AND DENYING THE DIVISION'S
MOTION IN LIMINE REGARDING
REBUTTAL EXPERTS

The Securities and Exchange Commission issued an order instituting proceedings (OIP) in this matter on June 23, 2015. A hearing is currently scheduled for February 21, 2017, in Washington, D.C.

Respondents moved in limine to exclude certain evidence from the upcoming hearing (Combined Motion). The Division of Enforcement filed an opposition (Div. Opp'n). Respondents filed a reply, which I have considered even though its filing was not permitted by the prehearing scheduling order. The Division moved in limine to exclude expert evidence from some of Respondents' proposed rebuttal experts (Div. Motion). Respondents filed an opposition.

The OIP alleges that Respondents acted as unregistered dealers, either directly or as control persons. *See* OIP at 6. In summary, the combined motion seeks to bar evidence regarding: (1) "dealer-identifying factors" other than those listed in the OIP; (2) dealer-identifying factors other than those listed in *Guide to Broker-Dealer Registration*, "Who is a Dealer" (April 2008) (Who is a Dealer), available at <https://www.sec.gov/divisions/marketreg/bdguide.htm#II> (last accessed Dec. 14, 2016); and (3) stock dilution, FINRA regulations, and the bank accounts of Ironridge Global IV, Ltd. (Global IV). Combined Mot. at 3-10.

As to the first category, "the limited function of an OIP is to provide notice of *what* violations of the securities laws are alleged; it need not detail *how* the Division ultimately will try to prove them." *Timbervest, LLC*, Investment Advisers Act of 1940 Release No. 4197, 2015 SEC LEXIS 3854, at *75 (Sept. 17, 2015). There is no basis for limiting the proof to just the OIP's factual allegations, and the cases cited by Respondents do not hold otherwise. *See* Combined Mot. at 4.

As to the second category, the parties will be given an opportunity to brief the standard for determining dealer status after the hearing, and I will not limit the proof to just the dealer-identifying factors contained in "Who is a Dealer." Notably, Judge Grimes' order denying Respondents' motion for summary disposition contains a discussion of dealer-identifying factors.

See Ironridge Global Partners, LLC, Admin. Proc. Rulings Release No. 3298, 2015 SEC LEXIS 4590, at *21-28 (ALJ Nov. 5, 2015). And I recently issued an initial decision addressing a very similar set of dealer-identifying factors under the Securities Act of 1933. *See BioElectronics Corp.*, Initial Decision Release No. 1089, 2016 SEC LEXIS 4597, at *124-30 (ALJ Dec. 13, 2016).

As to the third category, Respondents contend that stock dilution and Global IV's bank records are irrelevant. *See Combined Mot.* at 8-10. The Division correctly notes that stock dilution is potentially relevant to Respondents' motive and to show that Respondents acted as underwriters, and Global IV's bank records may demonstrate, among other things, payment of finder's fees (which may tend to show dealer status) and control of Global IV by Ironridge Global Partners, LLC. *See Div. Opp'n* at 7-9. Respondents may, of course, offer evidence tending to refute the Division's contentions. As for FINRA-related evidence, Respondents filed a notice that they were withdrawing "the request to exclude evidence on FINRA regulations," and then omitted mention of the issue in their reply. The portion of the Combined Motion addressing this topic is therefore moot.

As for the Division's motion in limine, Respondents filed four rebuttal expert reports, from Ralph V. De Martino, Lee A. Pickard, and James R. Burns, all attorneys, and David Juran, who earned a Ph.D. and teaches at graduate business schools. I previously found that Burns' initial expert report was not "helpful in resolving the disputed issues in this proceeding." *See Ironridge Global Partners, LLC*, Admin. Proc. Rulings Release No. 4409, 2016 SEC LEXIS 4475, at *1 (ALJ Dec. 2, 2016). The rebuttal expert reports of De Martino and Pickard are similarly unhelpful, as well as duplicative, and I do not intend to rely on them. Because they are already in the case record, however, there is no need to exclude them, as the Division requests. *See Div. Mot.* at 1.

The Division also requests that Respondents' rebuttal expert evidence come exclusively from Burns. *See Div. Mot.* at 1, 5. This request is rejected, for two reasons. First, Burns' rebuttal expert report is as unhelpful as his initial report, as well as duplicative of De Martino's and Pickard's, and I do not intend to rely on it. Second, Juran's rebuttal expert report is potentially helpful and I may consider it in resolving the disputed issues in this proceeding. In particular, Juran's report elucidates several statistical concepts that may come up during the examination of the Division's expert. *E.g.*, Juran Report at 9, 12-13 (discussing formulation of hypotheses and evaluation of statistical significance). Therefore, I will permit rebuttal expert evidence from Juran only, and Juran should be made available for examination at the hearing. Burns, De Martino, and Pickard, however, will not be allowed to testify.

Respondents' Combined Motions in Limine and the Division's Motion in Limine to Exclude Proposed Expert Reports of Respondents' Designated Rebuttal Expert Witnesses and to Preclude Testimony From the Same are therefore DENIED.

Cameron Elliot
Administrative Law Judge