

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

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 2216/January 14, 2015

ADMINISTRATIVE PROCEEDING  
File No. 3-16037

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In the Matter of

	:	ORDER ON MOTIONS
EDGAR R. PAGE and	:	IN LIMINE
PAGEONE FINANCIAL INC.	:	

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The Division of Enforcement moves to preclude the testimony of Respondents' expert Professor Steve Thel. Respondents are ordered to file their opposition, supported by any exhibits,<sup>1</sup> to that motion by January 20, 2015, but must email a courtesy copy of the opposition to both [alj@sec.gov](mailto:alj@sec.gov) and the Division no later than 9:00 a.m. EST on that day. In lieu of a written reply, the Division will have the opportunity to reply orally at the prehearing conference scheduled for the afternoon; Respondents will have an opportunity to argue their opposition to the motion during the prehearing conference.

The Division also moves, with Motion in Limine No. 3, to preclude evidence of transactions it submits are not at issue in this case, specifically, thirty-one "documents concerning unsuccessful efforts in late 2008 by UGOC and E. Page to obtain financing from a Swiss firm called HOPE Finance S.A." The Division contends:

such evidence is irrelevant and cannot be probative of any of these issues in this case because the HOPE transaction had been considered, and rejected, well before any investment in the Funds by a PageOne client and, thus, had no connection to those investments or the recommendation that led to those investments.

The Amended Order Instituting Proceedings does not mention HOPE. Nor does it allege that Respondents committed any unlawful action before 2009. Respondents' prehearing brief indicates that there is no record of any negotiations with HOPE after December 8, 2008, and that HOPE was not considered for a partnership role by late January 2009. In light of that timeline, it does not appear that evidence relating to HOPE is relevant. However, administrative law judges "should be inclusive in making evidentiary determinations" and when in doubt, evidence should be admitted, *City of Anaheim*, Securities Exchange Act of 1934 Release No. 42140, 1999 SEC

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<sup>1</sup> Respondents should not submit a supplemental letter by Professor Thel regarding the issues raised in the Division's motion without leave of the hearing officer. No such supplementation is required. Any such request should be filed no later than January 15, 2015.

LEXIS 2421, at \* 4 & n.7 (Nov. 16, 1999); and as alternative to preclusion of evidence relating to HOPE, the Division asks that I “require Respondents to provide . . . an offer of proof as to why such evidence is relevant.”

The Division’s Motion in Limine No. 3 is DENIED as premature, but I GRANT the Division’s alternative request and ORDER Respondents to file by January 20, 2015, an explanation as to why the HOPE documents are relevant.<sup>2</sup>

The Division also moves, in its Motion in Limine No. 4, to preclude Respondents from offering any evidence or argument that the Division failed to comply with Section 929U of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 15 U.S.C. § 78d-5 (Section 929U). Section 929U is not a statute of limitations providing any substantive rights to Respondents, or imposing any consequences on the Division if the deadline goes unmet. *See Montford & Co.*, Investment Advisers Act of 1940 Release No. 3829, 2014 SEC LEXIS 1529, \*30-50 (May 2, 2014) (citing *United States v. James Daniel Good Real Prop.*, 510 U.S. 43, 63-65 (1993); *Brock v. Pierce Cnty.*, 476 U.S. 253 (1986)); *see also SEC v. NIR Grp., LLC*, No. 11-cv-4723, 2013 U.S. Dist. LEXIS 47522, at \*12-13 (E.D.N.Y. Mar. 24, 2013); *SEC v. Levin*, No. 12-cv-21917, 2013 U.S. Dist. LEXIS 20027, at \*34-35 (S.D. Fla. Feb. 14, 2013). Therefore, the Division’s Motion in Limine No. 4 is GRANTED.

Respondents move to exclude portions of the proffered testimony of the Division’s expert, Professor Arthur B. Laby, arguing that those portions are immaterial and irrelevant. Respondents’ motion is DENIED in that I will not exclude portions of Professor Laby’s report, as they appear relevant to the issues in this case. *See Scott G. Monson*, Investment Company Act of 1940 Release No. 28323, 2008 WL 2574441, at \*6 n.27 (June 30, 2008) (administrative law judges “have broad discretion in determining whether to admit or exclude . . . expert testimony”) (internal citations omitted); 17 C.F.R. §§ 201.111(c), .320. Respondents will have a full and fair opportunity to test Professor Laby’s opinions when he testifies. Following the hearing, Respondents will be entitled to raise these arguments about the accuracy and reliability of his testimony again in their post-hearing briefs.

I will not substitute the testimony of any expert for my own independent conclusions of law. The parties are encouraged to limit expert witness testimony regarding what the law is, and in their post-hearing filings should not cite expert opinions to prove what the law is. Instead, the parties will have ample opportunities to establish and argue the law in their post-hearing filings. As a general rule, however, I will not strike particular portions of any report where an expert discusses his understanding of the law, because even though that portion does not dictate my finding of what the law is, an expert’s understanding of the applicable law may be an assumption that is pertinent to his or her analysis, and may therefore reasonably appear in a report.

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Jason S. Patil  
Administrative Law Judge

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<sup>2</sup> Again, Respondents must email a courtesy copy of this filing to both [alj@sec.gov](mailto:alj@sec.gov) and the Division no later than 9:00 a.m. EST on that day.