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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3306/November 10, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16649

In the Matter of IRONRIDGE GLOBAL PARTNERS, LLC, IRONRIDGE GLOBAL IV, LTD.	THIRD ORDER ON SUBPOENAS

Respondents Ironridge Global Partners, LLC, and Ironridge Global IV, Ltd. have renewed a request for subpoenas seeking notes from interviews conducted by the Division of Enforcement. Because Respondents have failed to carry their burden to overcome the attorney work product privilege, Respondents' renewed request is DENIED.

Discussion

In September, Respondents asked that I issue the Division a subpoena for various categories of documents. Among the documents sought were:

> all portions of notes and summaries from interviews of witness[es] conducted during the investigation of Respondents to the extent those portions relate to the facts and circumstances of this case, *the portions do not reflect attorney-opinion work product*, and the notes or summaries are not about examinations for which the Division has produced transcripts.

Subpoena Request at 3 (emphasis added). The Division opposed this request, stating that it called for documents protected by the attorney work product privilege. Opp. at 2-4. In reply, Respondents contended that the factual parts of the interview notes are merely ordinary work product, not attorney-opinion work product, and are thus discoverable on a showing of substantial need. Reply at 7-8.

I partially resolved this dispute, finding that "Respondents may be entitled to production of the documents at issue if they demonstrate 'a substantial need for the materials and an undue hardship.'" *Ironridge Glob. Partners, LLC*, Admin. Proc. Rulings Release No. 3228, 2015 SEC LEXIS 4239, at *8 (Oct. 15, 2015) (quoting *Dir., Office of Thrift Supervision v. Vinson & Elkins, LLP*, 124 F.3d 1304, 1307 (D.C. Cir. 1997)). I ordered the Division to tell Respondents who the

Division interviewed during the investigation. *Id.* I also permitted Respondents to "renew their request for interview notes . . . to the extent those notes 'do not reflect attorney-opinion work product.'" *Id.*

After the Division gave Respondents a list of the people it interviewed, Respondents renewed their request with respect to three individuals who "were principals of issuers with which Global IV completed § 3(a)(10) exchanges." Renewed Request at 4. Respondents assert that they have a substantial need for interview notes for the issuers' principals because the notes "are likely relevant to the Division's assertion that Global IV gave 'investment advice.'" *Id.* The also assert "the notes are likely relevant to Global IV's selling practices, which are central to the Division's theory." *Id.*

Respondents argue that denying their request would cause them substantial hardship because they have no other way "to obtain 'substantially equivalent' information elsewhere." Renewed Request at 4. Noting that they cannot depose the issuers' principals, Respondents assert that without the notes, they do not know how the principals will testify. *Id.* at 4-5. Respondents assert that one of the principals has passed away, one has proved unreachable, and one has refused a request for an interview. *Id.* at 5.

By the terms of Respondents' request, they seek only those portions of interview notes that "do not reflect attorney-opinion work product." Subpoena Request at 3. I have already held that the notes Respondents seek are attorney work product. *Ironridge Glob. Partners*, 2015 SEC LEXIS 4239, at *6. In order to obtain the limited portion of the notes they seek, therefore, Respondents must demonstrate "a substantial need for the materials and an undue hardship." *Dir., Office of Thrift Supervision, LLP*, 124 F.3d at 1307.

Respondents have not carried their burden. Saying that the issuers' principals' statements are relevant to whether Global IV gave investment advice or to its selling practices does not show, by itself, that Respondents have a "substantial need" for the interview notes. Respondents necessarily already know how they conducted their business. They also know whether Global IV or Global Partners' principals gave investment advice and what Global IV's selling practices were. They therefore already possess information about the facts addressed in the Division's interview notes.

Given what Respondents and their principals already know about Respondents' business practices, it may be that Respondents are looking for impeachment or corroboration. It is possible to obtain attorney work product in the form of interview notes when the notes are sought for purposes of impeachment. *See* 8 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2025 (3d ed. 2015). To obtain notes sought for impeachment, however, a litigant must present a solid reason to believe that the interview notes will actually contain impeachment material. *Id.*; *see Suggs v. Whitaker*, 152 F.R.D. 501, 507-08 (M.D.N.C. 1993); *see also Sandra T.E. v. S. Berwyn Sch. Dist. 100*, 600 F.3d 612, 622-23 (7th Cir. 2010). But Respondents have presented nothing to suggest that the Division's interview notes contain impeachment material.

The case for seeking corroborative evidence is weaker. "[B]y definition, a party seeking corroborative evidence has already found a way to get the same information." *Dir., Office of Thrift Supervision*, 124 F.3d at 1308. It is therefore the case that "a 'party . . . does not demonstrate substantial need when it merely seeks corroborative evidence.'" *Schipp v. Gen. Motors Corp.*, 457 F. Supp. 2d 917, 923 (E.D. Ark. 2006) (citation omitted).

For the foregoing reasons, Respondents' renewed subpoena request is DENIED.

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James E. Grimes
Administrative Law Judge