

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 790/August 9, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15168

In the Matter of :

JOHN J. AESOPH, CPA, and :

DARREN M. BENNETT, CPA :

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THIRD PROTECTIVE ORDER

WHEREAS, Commission Rule of Practice 230(b)(2) requires the Division of Enforcement (“the Division”) to produce to the respondents all documents, including attorney work product and privileged documents, that contain material exculpatory evidence under the doctrine of *Brady v. Maryland*, 373 U.S. 83, 87, (1963).

WHEREAS the Division represents that, pursuant to Rule of Practice 230(b)(2), it has produced to respondents confidential staff notes that are protected work product and may be subject to the law enforcement privilege or other applicable privileges (hereafter “the Staff’s Notes”);

WHEREAS pursuant to Commission Rule of Practice 322(a), a party in an enforcement proceeding brought under Commission Rule of Practice 102(e), 17 C.F.R. § 201.102(e), may file

a motion requesting a protective order to limit the disclosure of documents or testimony that contain confidential information, and the Division has filed such a motion here; and

WHEREAS the harm from the further disclosure of the Staff's Notes, beyond the limits set in this Order, would outweigh the benefits of public disclosure.

IT IS THEREFORE ORDERED THAT the Staff's Notes, which are designated by bates prefix "SEC_Brady," shall be used by the respondents, their counsel and their agents solely for the purposes of this action and for no other purpose;

IT IS FURTHER ORDERED THAT under no circumstance, other than those specifically provided for in this Order or in a subsequent Order of the Administrative Law Judge, shall the respondents, their counsel, or their agents disclose any part of the Staff's Notes, or permit the same to be disclosed, to any persons other than the following:

- a. The Administrative Law Judge presiding in this matter;
- b. Counsel who have appeared of record for a respondent in this action and employees of or consultants to such counsel, and employees and partners in the Office of General Counsel for KPMG LLP;
- c. Persons who are not regular employees or partners of either KPMG or counsel but are especially retained by counsel for the respondents to assist in the preparation of this matter for trial, including but not limited to consulting or testifying experts, if such persons have a need to use some or all of the Staff's Notes; and
- d. Any person whose testimony will be given in this matter, except that such a person may only be shown the Staff's Notes during his or her testimony and in preparation therefore, and only to the extent necessary for such preparation or

testimony. This provision includes witness interviews conducted to determine whether to call a particular individual to testify.

IT IS FURTHER ORDERED THAT each person specified above who is given access to the Staff's Notes shall keep such material secure and confidential, and refrain from disclosing it except as specifically provided for by the terms of this Order. Counsel will request that each such person read a copy of this Order in his or her presence and agree to treat the Staff's Notes in a manner consistent with the terms of this Order.

IT IS FURTHER ORDERED THAT should any party use the Staff's Notes as an exhibit in connection with a pleading or a hearing in this matter, the exhibit shall have attached to it a statement bearing the following cautionary language:

CONFIDENTIAL INFORMATION

This document is protected from public disclosure and is subject to a Protective Order entered by the Administrative Law Judge on August 9, 2013, In the Matter of John Aesoph, CPA and Darren Bennett, CPA, Administrative Proceeding File No. 3-15168.

IT IS FURTHER ORDERED THAT in the event any of the Staff's Notes are used in any manner in this proceeding, the notes shall not lose their confidential status through such use.

IT IS FURTHER ORDERED THAT the release of the Staff's Notes to the respondents in this matter shall not be deemed a waiver of any applicable privilege or work product protection.

IT IS FURTHER ORDERED THAT any of the Staff's Notes made part of the record in this proceeding may be examined on appeal.

IT IS FURTHER ORDERED THAT at the conclusion of this matter, including any appeals, the Staff's Notes and any copies thereof in the custody or control of any respondent, his counsel, or his agents shall be either destroyed by the respective respondent or returned to the

Division for destruction. Counsel for respondents shall notify counsel for the Division of compliance with this paragraph not more than 90 days after the final conclusion of this Matter.

Entered this 9th day of August, 2013

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge