

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2213/January 13, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16037

In the Matter of

	:	ORDER REGARDING
EDGAR R. PAGE and	:	RESPONDENTS' RELIANCE ON
PAGEONE FINANCIAL INC.	:	ADVICE DEFENSES

On January 12, 2015, the Division of Enforcement moved to preclude Respondents from offering evidence or argument in support of their defense that they relied on the advice of counsel and other experts.

The request is DENIED as premature, without prejudice to the Division's raising this issue at the prehearing conference scheduled for January 20, 2015.

In the event that Respondents wish to proceed with the advice of counsel defense (Defense), in advance of that prehearing conference, Respondents shall:

1. Produce to the Division all documents reflecting that, with regard to the allegedly unlawful conduct in this case, Respondents or a Respondent: (1) made a complete disclosure of the relevant facts of the intended conduct to counsel; (2) sought advice on the legality of the intended conduct; (3) received advice that the intended conduct was legal; and (4) relied in good faith on counsel's advice. *Rodney R. Schoemann*, Securities Act of 1933 (Securities Act) Release No. 9076, 2009 WL 3413043, at *12 & n.41 (Oct. 23, 2009) (citing *Zacharias v. SEC*, 569 F.3d 458, 467 (D.C. Cir. 2009)), *aff'd*, 398 F. App'x 603 (D.C. Cir. 2010) (per curiam). Any waiver of attorney-client privilege by Respondents, who hold the privilege, will be limited to the Defense, and not construed as a broader waiver of privilege.¹ To the extent that unrelated attorney-client communications appear in the same documents pertinent to the Defense, those other communications may be redacted in the version produced to the Division. However, the redacted and unredacted versions of any such documents shall be provided to this office for *in camera* review.

¹ I do not order Respondents to make such a limited waiver of attorney-client privilege, but, as a practical matter, if they choose to proceed with the Defense, they should proceed in this way.

2. Provide written notification to the counsel, whose documents and testimony are relevant to the Defense, of Respondents' limited waiver of privilege with respect to the Defense in this proceeding.
3. Disclose to the Division the identity and contact information of such counsel. Any subpoenas by the parties for documents or witnesses arising from the preceding should issue no later than January 21, 2015.²

The Division's request to preclude Respondents' evidence regarding its interactions with National Regulatory Services (NRS) is DENIED, without prejudice to the Division arguing this issue in its closing argument or post-hearing brief. While I acknowledge that the Division's cited authorities represent cases where scienter was established despite the defendants' assertions that they relied on compliance professionals' advice, those authorities do not support the blanket exclusion of all such evidence, nor do they stand for the proposition that such evidence may never be relevant to the issue of scienter. Respondents will be afforded the opportunity to present evidence at the hearing regarding NRS. That evidence, as further addressed by the parties' closing arguments and post-hearing submissions, will serve as the basis for the determination regarding whether, and to what extent, Respondents' engagement and reliance on NRS is relevant to the issue of scienter.

Jason S. Patil
Administrative Law Judge

² Although this is only one day after the prehearing conference, I have every confidence that the parties can draft much of the pertinent documentation in advance. Also, the Division's apparent request to obtain testimony of counsel prior to the hearing is DENIED as discovery in the form of depositions is not contemplated by the Commission's Rules of Practice governing administrative proceedings. *See* Div. Mot. in Limine No. 2 at 6; *Steven E. Muth*, Securities Act Release No. 8622, 2005 WL 2428336, at *12 (Oct. 3, 2005).