

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 3060/August 20, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16649

In the Matter of

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

ORDER ON SUBPOENA

On August 3, 2015, Respondents submitted a request for the issuance of a subpoena to the Commission requiring the production of certain documents. Specifically, Respondents request:

1. All documents sufficient to identify all guidance, no-action letters, releases, and decisions by the Commission or SEC ALJs that the Commission or Enforcement Division contend (i) support the allegation in the Order Instituting Proceedings that either Respondent is a broker or dealer under Section 15(a) of the Exchange Act or (ii) gave Respondents notice that either Respondent is a broker or dealer under Section 15(a) of the Exchange Act.
2. All documents the Enforcement Division intends to rely upon in the final hearing in this matter to support the allegation that either Respondent is a broker or dealer under Section 15(a) of the Exchange Act.
3. All documents the Enforcement Division intends to rely upon in the final hearing in this matter to support the allegation that Ironridge Global Partners, LLC, is liable under Section 20(b) of the Exchange Act.

Subpoena at 3.

The Division of Enforcement opposes Respondents' request. The Division argues that the all three requests constitute contention interrogatories for which no provision is made under

the Commission's Rules of Practice.¹ Opp. at 3-6. According to the Division, "Respondents are not entitled to a disclosure of the Division's legal theories and supporting authority in advance of the briefing." *Id.* at 4.

The Division also represents that any documents it possesses that are responsive to the first request are "contained in action memoranda, internal staff memoranda and correspondence, and the like, which are privileged and attorney work product protected by Rule 230(b)(1)(i) and (ii)." Opp. at 4-5. Finally, the Division argues that in the second and third requests, Respondents are attempting to circumvent the scheduling order by forcing the Division to reveal its exhibit list prematurely. *Id.* at 6.

In response, Respondents assert that the Division's allegation that they violated Section 15(a) is so novel that it violates the Due Process Clause. Response at 7. According to Respondents, "the Division is attempting to establish that Global IV is a dealer based on new theories and 'factors' that have no support in existing guidance or caselaw." *Id.* They also clarify that their subpoena "request seeks either an admission that there is no such guidance or that the guidance the Division relies upon does not support its theory." *Id.* at 8; *see id.* at 10 (stating that "the primary goal is to obtain an admission from the Division that there is *no* public guidance or authority that supports the Division's theory"). They therefore "seek only guidance and case law, nothing more or less than the reason this proceeding is being brought." *Id.* at 11.

Respondents' request for a subpoena directed to the Commission was explicitly made "[p]ursuant to Rule 232." Request at 1. Rule 232(a) concerns, *inter alia*, "subpoenas requiring the production of documentary or other tangible evidence." 17 C.F.R. § 201.232(a). By its terms, Rule 232(a) does not provide for the issuance of subpoenas to obtain admissions, guidance, case law, or the reason the action was brought. *See id.*; *cf. optionsXpress, Inc.*, Securities Act of 1933 Release No. 9466, 2013 WL 5635987, at *7 (Oct. 16, 2013) ("*Brady* does not 'require that attorney opinions on legal issues must be made available to the other side.')" (citations omitted). In other words, Respondents cannot get what they want through a subpoena *duces tecum*.

Respondents nonetheless argue that if, as the Division alleges, their subpoenas constitute contention interrogatories, that fact supports granting their request. Response at 8. Respondents assert that the Federal Rules of Civil Procedure authorize contention interrogatories, *see* Fed. R. Civ. P. 33(a)(2), and "[c]ourts . . . routinely allow them." Response at 8. Although the Federal Rules of Civil Procedure can provide useful guidance in Commission proceedings—especially when a particular Commission rule is modeled after a federal rule—the federal rules do not apply in Commission proceedings. *Robert M. Ryerson*, Securities Exchange Act of 1934 Release No. 57839, 2008 SEC LEXIS 1153, at *16 (May 20, 2008). This fact is of particular relevance here because the Commission's Rules of Practice intentionally do not provide for interrogatories. *See* Rules of Practice, Securities Act Release No. 33163, 1993 WL 468594, at *47 (Nov. 5, 1993).

¹ A contention interrogatory "seek[s] to clarify the basis for or scope of an adversary's legal claims." *Starcher v. Corr. Med. Sys., Inc.*, 144 F.3d 418, 421 n.2 (6th Cir. 1998); *see* Fed. R. Civ. P. 33(a)(2).

As a result, the fact that contention interrogatories can be quite useful in helping a party (*and a judge*) understand a complaining party's theory, is of minimal relevance herein.

To the extent Respondents attempt to present due process notice concerns, *see* Response at 10 (“Respondents, and particularly Partners LLC, have no earthly idea why they find themselves the subject of an enforcement proceeding.”), their own arguments show that they have a solid understanding of what the Division thinks they did and what statutory provisions the Division believes they violated. For example, in their response, Respondents explain that the Division's theories evolved during its investigation. *See id.* at 3-4. They explain that the Division eventually told their counsel that “that Global IV's purported status as an underwriter was the ‘linchpin’ in the allegation that Global IV is a dealer that must register under Exchange Act 15(a).” *Id.* at 4. The Division also told Respondents why it believed Global IV was a dealer. *Id.* at 4-5. Furthermore, the Division represents that during the investigation, its staff discussed its supporting legal authority with Respondents. *Opp.* at 3 n.3.

As they state multiple times in their briefing, Respondents' argument essentially is that no legal theory supports a finding of a securities violation based on the Division's allegations. *See* Response at 7-10. A subpoena is not the appropriate method to advance this argument. To the extent Respondents disagree with the decision to bring this action and believe the facts and legal theories are lacking, the remedy is to litigate the proceeding to a final decision. *See Kevin Hall, CPA, Exchange Act Release No. 61162, 2009 SEC LEXIS 4165, at *68, *81 (Dec. 14, 2009); Kevin Hall, CPA, Exchange Act Release No. 55987, 2007 SEC LEXIS 1406, at *4 (June 29, 2007).* Indeed, the proper way to make this argument before the hearing is to move for summary disposition. *See* 17 C.F.R. § 201.250 (providing that a motion for summary disposition may be granted “if there is no genuine issue with regard to any material fact and the party making the motion is entitled to a summary disposition as a matter of law.”).²

Respondents also assert that the Division “buried its evidence in a document dump” of 43,000 documents, and should be required to specifically explain which documents among those disclosed support its theory. Response at 12. They are mistaken. *See John Thomas Capital Mgmt. Grp. LLC, Securities Act Release No. 9492, 2013 SEC LEXIS 3860, at *23-24 (Dec. 6, 2013).* Similarly, although Respondents say reviewing PDF versions of the evidence is “difficult,” *id.*, they do not actually claim that the evidence cannot be searched using available software designed for such purpose or that the scanned documents cannot be rendered into a searchable format. *See* Prehearing Tr. 15 (Division's assertions that documents could be searched).

² As set out in the scheduling order, motions for summary disposition are due on September 28, 2015. *See Ironridge Global Partners, Admin. Proc. Rulings Release No. 2987, 2015 SEC LEXIS 3075 (July 28, 2015).* Any party, however, may file such a motion earlier and any opposition will be due fourteen days after such a motion is filed.

For the foregoing reasons, Respondents' request for a subpoena *duces tecum* directed to the Commission is DENIED.

James E. Grimes
Administrative Law Judge