

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4290/October 21, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17398

In the Matter of

DELANEY EQUITY GROUP LLC,
DAVID C. DELANEY, and
IAN C. KASS

ORDER ON SUBPOENA

On October 4, 2016, Respondents Delaney Equity Group LLC and David C. Delaney (Delaney Respondents) moved for the issuance of a subpoena for documents from the Securities and Exchange Commission, which I construe as a subpoena to the Commission's Division of Corporation Finance only. Delaney Respondents seek "relevant documents . . . regarding the review and comment process surrounding each Form S-1 of the Registered Companies" (Motion at 3) that the Commission "identified in this and other proceedings as allegedly being controlled by" select individuals (*Id.* at 1 n.1) on whom Respondents allegedly failed to conduct "extensive due diligence to discover [their] alleged fraud" (*Id.* at 2) concerning twelve registered companies. Because those individuals allegedly registered additional companies in like schemes, "the subpoena seeks documents related to 32 companies" rather than just the twelve identified in the order instituting proceedings (OIP). *Id.* at 1 n.1.

On October 7, 2016, the Divisions of Corporation Finance and Enforcement (Divisions) opposed the motion, contending that the subpoena seeks "documents that are either privileged or publicly available." *Opp.* at 1. The Divisions also aver that the request is overly broad. *Id.* at 10-11. Delaney Respondents replied on October 13, 2016. Based on the allegations of the OIP, Respondents make a convincing case that their requests are not overbroad. *See Reply* at 12-15.

To the extent that requested documents are publicly available on the EDGAR system or otherwise, they need not be produced. However, both the Divisions and Delaney Respondents appear to acknowledge that not all of the relevant documents are available on EDGAR. *See Opp.* at 5 (Registrations statements and comment letters for two of the companies are not on EDGAR); *Reply* at 3-4. All non-privileged, non-public documents responsive to the subpoena shall be produced to Respondents by November 4, 2016.

To the extent that requested documents are allegedly privileged, in whole or in part, the Division of Enforcement shall produce a privilege log with sufficiently particularized document descriptions to Respondents by November 18, 2016. If the deliberative process privilege is

invoked, the log should be accompanied by an appropriate declaration supporting the privilege, which clearly delineates the declarant's delegated authority to invoke it. If a responsive document is only partly protected by an asserted privilege, a redacted version of that document shall be produced on the same day as the privilege log, with an accompanying entry on the log relating to the redacted material.

To the extent that Respondents wish to challenge assertions of privilege, they must do so with particularity, in a filing by December 5, 2016, and, if necessary to resolve the dispute, I will order in camera review of specific documents in order to rule on those challenges of privilege.

Delaney Respondents' motion for a subpoena is GRANTED as modified by this order, and the subpoena, signed and issued in conjunction with this order, is subject to its terms.

Jason S. Patil
Administrative Law Judge