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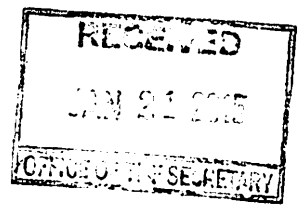

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16037

In the Matter of **EDGAR R. PAGE and PAGEONE FINANCIAL, INC.,** **Respondents.**	**RESPONDENTS' OFFER OF PROOF IN OPPOSITION TO THE DIVISION OF ENFORCEMENT'S MOTION *IN LIMINE* NO. 3 TO PRECLUDE IRRELEVANT EVIDENCE OF TRANSACTIONS NOT AT ISSUE IN THIS CASE**

The Division of Enforcement (the "Staff") moves to preclude Respondents from offering evidence regarding a transaction contemplated in late 2008 between the Respondents, The United Group of Companies ("United"), and HOPE Finance, S.A. ("HOPE"), a Swiss alternative asset manager (the "HOPE Transaction"), arguing that the HOPE Transaction "cannot be probative of any of the[] issues in this case."[1]

The key issue in this case is whether Respondents made inadequate disclosures to their clients. A key factual question underlying any inadequate disclosure allegation is what is alleged to have been inadequately disclosed: here, the financial relationship between Respondents and United.

A crucial and strenuously disputed aspect of the Staff's theory of that relationship is the Staff's allegation that Respondents agreed to raise $20 million for several private funds administered by United (the "United funds") as a condition precedent to the closing of the proposed sale of PageOne stock to an affiliate of United (the "Proposed Transaction"). The Staff

[1] Staff's Motion *in Limine* No. 3 to Preclude Irrelevant Evidence of Transactions Not at Issue in this Case (hereinafter, "Staff Motion No. 3") at 1.

supports this allegation with reference to an unrelated document that was born out of the abandonment of the HOPE Transaction, and which can be misconstrued unless viewed in the context that the HOPE Transaction provides.[2] When viewed in this important context, however, it is clear that the document upon which the Staff relies is in no way connected with the Proposed Transaction in this case, and is accordingly irrelevant[3] to the relationship whose nondisclosure is the very crux of the Staff's allegations. Therefore, the HOPE Transaction provides relevant context that demonstrates how, in pursuing its allegations, the Staff has mischaracterized the facts regarding the financial relationship between Respondents and United.

Respondents wish to assure the Court that the proof we offer regarding the HOPE Transaction will be limited to facts bearing upon the origin, purpose, and eventual abandonment of the commitment that is embodied in the letter the Staff erroneously attempts to use to buttress their unsupported $20 million fundraising condition allegation.

ARGUMENT

Respondents agree with the Staff that the Amended Order Instituting Proceedings does not mention HOPE, and that Respondents are not alleged to have committed any unlawful action before 2009. Respondents disagree with the Staff, however, when the Staff says that the

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[2] Resp. Ex. 203 (Dec. 15, 2008 letter committing PageOne to purchasing $18.3 million of United fund units for their clients); Staff Brief at 5–6 (citing to Dec. 15, 2008 $18.3 million commitment letter to support $20 million fundraising condition allegation).

[3] Respondents made no objection to the Staff's inclusion in evidence of the December 15, 2008 letter — which is in fact irrelevant to the Proposed Transaction — because, in the context of a bench trial, irrelevant background documents pose no risk of confusing a jury and do not therefore implicate the concerns underlying the general ban on such irrelevant evidence. *See Harris v. Rivera*, 45 U.S. 339, 346 (1981) ("In bench trials, judges routinely hear inadmissible evidence that they are presumed to ignore when making decisions"). Since the Staff has included the letter in evidence, however, it is unjust for the Staff to now object to Respondents' testimony explaining the letter's insignificance, which includes the documents relevant to the HOPE Transaction. The Court should not exclude such relevant background evidence lest it consider the Staff's evidence without the explanatory context Respondents wish to provide for their defense.

"documents concerning the discussion with HOPE Finance cannot be relevant to the issue of whether Respondents adequately disclosed to their advisory clients the arrangement they reached with [United] after the discussions with HOPE Finance had ended."[4] This is because the later "arrangement [Respondents] reached with [United]" — which was a preliminary proposal that nowhere mentions any fundraising condition[5] — is alleged by the Staff to include a $20 million fundraising condition that the Staff attempts to support[6] by reference to a December 15, 2008 letter[7] in which PageOne commits to acquire $18.3 million[8] of United fund units, the negotiations for which were set in motion days earlier, on the exact same day that the HOPE Transaction was abandoned.[9] The evidence will show that this letter — which 1) was born out of the HOPE Transaction's abandonment, 2) nowhere mentions any sale or purchase of PageOne

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[4] Staff Motion No. 3 at 2 (emphasis supplied).
[5] *See* Resp. Ex. 15 (Apr. 14, 2010 final, executed version of the Proposal Letter).
[6] Staff Brief at 5–6 (citing to Dec. 15, 2008 $18.3 million commitment letter to support $20 million fundraising condition allegation).
[7] Resp. Ex. 203.
[8] The Staff's argument that the $18.3 million fundraising commitment was "later increased to $20 million," Staff Brief at 5, is an allegation that finds no support in the evidence. Indeed, the Staff do not cite to any evidence to buttress this factual assertion, because they cannot. *See* Staff Brief at 5. Indeed, the fact that Mr. Uccellini repeatedly proposed language conditioning the closing of the Proposed Transaction on a desired $20 million fundraising condition in his draft transactional documents — which Mr. Page repeatedly struck from his own drafts — demonstrates that there was no understanding that any fundraising condition existed as of March 2009, and thus that the December 15, 2008 commitment both 1) had been abandoned at that time and 2) had no relevance to the Proposed Transaction. *See, e.g.*, Resp. Ex. 16 (Mar. 1, 2009 Uccellini "first pass" draft Memorandum of Understanding, Stock Purchase Agreement, and Employment Agreements, proposing a $20 million fundraising condition and nowhere refencing the previously made $18.3 million fundraising commitment); Resp. Ex. 18 (July 2009 Page draft Memorandum of Understanding striking $20 million fundraising condition).
[9] *Compare* Resp. Ex. 78 (2:50PM Dec. 8, 2008 HOPE proposal rejected by Respondents and United), *with* Resp. Ex. 201 (5:54PM Dec. 8, 2008 email noting that PageOne Financial . . . is agreeable to acquiring" $18.3 million in United fund shares).

stock[10] and 3) is never mentioned in any of the Proposed Transaction negotiation documents[11] — was wholly unrelated to the Proposed Transaction.

Instead, as described in Respondents' Prehearing Brief, the evidence demonstrates that Respondents agreed to invest in the United funds on behalf of Respondents' clients in order to avail Respondents' clients of the lucrative returns the investments offered in an uncertain market.[12] The United funds, in turn, were seeking to meet a deadline to match a $50 million debt commitment by TIAA-CREF to complete construction of three student housing projects which was set to expire days after the HOPE Transaction fell apart.[13] It was this very financing which the HOPE Transaction was envisioned to provide.[14] Therefore, the HOPE Transaction — the abandonment of which took place mere *hours* before Respondents first expressed a willingness to invest their clients' assets in the United funds[15] — provides an important context in which to view Respondents' December 15, 2008 commitment, and is crucially relevant to the factual

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[10] *See generally* Resp. Ex. 203 (Dec. 15, 2008 commitment letter nowhere mentioning purchase or sale of PageOne stock).

[11] *See, e.g.*, Resp. Ex. 4 (Jan. 21, 2009 Proposed Transaction draft business plan nowhere mentioning any PageOne fundraising commitment, but mentioning anticipated $18.3 million HOPE investment); Resp. Ex. 16 (Mar. 1, 2009 "first pass" draft Memorandum of Understanding, Stock Purchase Agreement, and Employment Agreements (from Uccellini to Page), proposing a later-stricken $20 million fundraising condition and nowhere referencing the previously made $18.3 million fundraising commitment); Resp. Ex. 15 (Apr. 14, 2010 final, executed version of the Proposal Letter that does not mention/contemplate any fundraising commitment whatsoever, either past or present).

[12] *See, e.g.*, Resp. Ex. 207 (private placement memorandum for DCG/UGOC Income Fund, contemplating a 9% annual return).

[13] Resp. Ex. 201 (Mineaux email stressing time crunch, noting that $18.3 million needed "TO BE FUNDED BY THIS THURSDAY 12/11/08!").

[14] Resp. Ex. 58 (Dec. 3, 2008 email from HOPE noting "willing[ness] to commit to acquire 100 Preferred Class A Shares . . . of [United] for $18,300,000").

[15] *Compare* Resp. Ex. 78 (2:50PM Dec. 8, 2008 HOPE proposal rejected by Respondents and United), *with* Resp. Ex. 201 (5:54PM Dec. 8, 2008 email from John Mineaux, outside counsel to United, noting that PageOne Financial . . . is agreeable to acquiring" $18.3 million in United fund shares).

dispute underlying these proceedings: what the "arrangement [Respondents] reached with [United]" actually was that the Staff alleges to have been inadequately disclosed.

Furthermore, without the context provided by an understanding of the HOPE Transaction negotiations, it is not possible to make sense out of many aspects of the early draft Proposed Transaction business plans developed by United, which make reference to HOPE and the $18.3 million investment sought from HOPE to match the TIAA-CREF debt commitment.[16] Indeed, despite there being no evidence that HOPE was being considered as a partner after December 8, 2008, HOPE was added to the business plans *after* the first draft Proposed Transaction business plan was circulated on January 2, 2009.[17] HOPE and its contemplated role in the Proposed Transaction therefore are clearly relevant to the question of what Respondents' agreement was with United that the Staff alleges was inadequately disclosed.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Staff's Motion *in Limine* be denied.

[16] *See, e.g.*, Resp. Ex. 3 (Jan. 2, 2009 email in which United Senior Vice President Bryan Harrison circulates "the business plan we developed in December [2008]" for the HOPE Transaction (noting $18.3 million sought to match $50 million TIAA-CREF debt commitment)); Resp. Ex. 4 (Jan. 21, 2009 Proposed Transaction draft business plan contemplating "PageOne/HOPE business alliance" and noting that $18.3 million was a "Proposed Investment by HOPE Finance, S.A.").

[17] *Id.*

Dated: January 20, 2015
New York, New York

Respectfully submitted,

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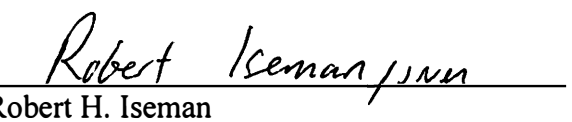

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I also certify that on this 20th day of January, 2015, I caused a true and correct facsimile of the foregoing to be delivered to the Secretary, in order to ensure delivery before the expiration of the prescribed filing deadline.

Respectfully submitted,

Dated: January 20, 2015
New York, New York

Richard Marshall pwm

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