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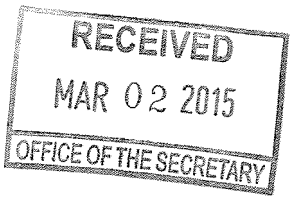
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
NEW YORK REGIONAL OFFICE
200 VESEY STREET, SUITE 400
NEW YORK, NY 10281-1022

DIVISION OF
ENFORCEMENT

JORGE G. TENREIRO
[redacted]

February 27, 2015



VIA OVERNIGHT DELIVERY AND FACSIMILE

Office of the Secretary
Securities and Exchange Commission
100 F Street N.E.
Mail Stop 1090-Room 10915
Washington, D.C. 20549
Fax: 202-772-9324

Re: In the Matter of John Briner, Esq., et al, AP File No. 3-16339

Dear Mr. Fields:

We represent the Division of Enforcement in the above-referenced administrative proceeding. Enclosed are three copies of the Division's opposition to the motions to sever filed by Respondents M&K CPAS PLLC, Jon Ridenour, Matthew Manis, and Diane Dalmy. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Jorge G. Tenreiro

cc (by e-mail): Office of Administrative Law Judges
Jack Kaufman, Esq.
Jason Sunshine, Esq.
John Courtade, Esq.
Sean Prosser, Esq.
Joan McKown, Esq.
Rebecca M. Thornhill, Esq.
Howard J. Rosenburg, Esq.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16339

In the Matter of	
JOHN BRINER, ESQ., et al.	

Division of Enforcement's Opposition to Motions to Sever of Respondents M&K CPAS, LLC, Jon Ridenour, Matthew Manis, and Diane Dalmy

The SEC Division of Enforcement ("Division") respectfully submits this opposition to the motions to sever of respondents M&K CPAS, LLC, Jon Ridenour, Matthew Manis (the "M&K Respondents"), and Diane Dalmy. Respondents effectively ask the Commission to order three separate hearings in this case: one for the M&K Respondents and Respondent Ben Ortego; one for Dalmy; and one for the remaining respondents—De Joya Griffith, LLC, Arthur De Joya, Jason Griffith, Chris Whetman, Philip Zhang (the "De Joya Respondents"). The Commission should deny these motions because all claims in this case arise out of a common set of facts, proof of which will involve a significant number of both identical and closely-related witnesses, documents, and legal and accounting issues. Thus, severance of the Division's case into three trials would be inefficient and unnecessarily costly and time consuming for the Division, the witnesses, and the Law Judge. Moreover, neither the M&K Respondents nor Dalmy can claim prejudice arising from the single trial currently scheduled for May 26, 2015. Respondents' sole tangible complaint is their trial costs, which they simply seek to transfer to the SEC—by unnecessarily creating three separate hearings involving significant overlapping evidence.

I. Background

At the heart of this case is a single fraudulent scheme by respondent John Briner—to create twenty virtually identical public shell companies by filing twenty virtually identical Form S-1 registration statements with virtually identical false and misleading statements, accompanied by virtually identical false and misleading audit and legal opinions. The M&K Respondents and Respondent Ortego provided the false and misleading audit reports for eleven of the twenty registration statements, and the De Joya Respondents provided false and misleading audit reports for the remaining nine registration statements. Respondent Dalmy, an attorney, provided virtually identical false and misleading attorney opinion letters for eighteen of the Form S-1 registration statements at issue.

All of these claims involve proof of a common facts and much overlapping evidence, including virtually identical false and misleading statements:

- Between September 2011 and May 2013, Briner created twenty virtually identical shell companies (the "Issuers") with the help of ten individuals he recruited to act as purported officers (eight of whom were the named officers for two or more of the twenty issuers);

- The Issuers all purported to engage in the same business (gold and mineral exploration), and all falsely purported to have acquired certain mineral claims in British Columbia from a single entity that Briner controlled;

- For each Issuer, Briner fabricated two sham transactions—each officer's purported purchase of Issuer stock, and each Issuer's purported purchase of mineral claims;

- Briner recruited the M&K Respondents, the De Joya Respondents, and Ortego ("the Auditor Respondents") to audit the financial statements of each Issuer for use in their respective Form S-1 registration statements, and Briner hired Dalmy to provide virtually identical opinion letters in support eighteen of the twenty registration statements;

- Each Issuer filed a nearly identical Form S-1 registration statement with the Commission, each containing the same false and misleading statements, each appended with a virtually identical false and misleading audit opinion letter issued

by the Auditor Respondents, and eighteen of them appended with a false or misleading attorney opinion letter issued by Dalmy;

- the registration forms contained the following, identical, false and misleading statements:
    - that a single officer controlled and governed each Issuer (in fact, Briner or his principals did);
    - that each Issuer owned 100% of the rights to a particular mineral claim (in fact, Briner or entities he controlled did);
    - that each issuer was capitalized with its officer's purchase of stock for $30,000 in cash (no such payment occurred);
- for eighteen of the Issuers, Dalmy provided legal opinions stating that she has "made such investigation and examined such records" to support her opinion, which was in each case that "the shares of Common Stock held by the Selling Shareholder are validly issued, fully paid and non-assessable." (Dalmy conducted no such investigation); and
- the Auditor Respondents conducted their audit in accordance with the standards of the Public Company Accounting Oversight Board ("PCAOB") (in fact, the Auditor Respondents' audits were so deficient as to amount to no audit at all).

II. Argument

SEC Rule of Practice 201(b) authorizes the Commission to sever a proceeding "with respect to one of more parties," provided the movant establishes either that a "settlement offer is pending before the Commission or otherwise show[s] good cause." The M&K Respondents and Dalmy apparently claim that "good cause" for severance exists on the alleged grounds that (1) few, and insignificant, overlapping evidentiary issues exist among the M&K Respondents and Ortego, the De Joya Respondents and Dalmy; and (2) the M&K Respondents and Dalmy will be "prejudiced" absent severance. Contrary to these arguments, significant overlapping evidentiary issues exist, and a single hearing will not prejudice anyone.

To prove the falsity of the statements in the twenty Form S-1 registration statements, the Division will rely upon evidence—particularly testimony of a number of the Issuers' CEOs—

that overlaps significantly across all Respondents. Most of those witnesses acted as CEO for more than one Issuer, and most acted as CEO for at least one Issuer audited by the M&K Respondents and one audited by the De Joya Respondents. Thus, if the trial were severed, the Division would have to call each CEO twice, to testify to essentially the same facts. For example, each CEO would have to testify twice that, contrary to the registration statements, he did not control any Issuer, did not purchase any Issuer stock, and did not cause any Issuer to purchase any mineral interest. Furthermore, in support of the Commission's claim that the Issuer audits were deficient, the officers would have to testify twice (at two trials) that they did not communicate with any accounting firm regarding the audits.

If the Accounting Respondents' claims were separated into two trials, the Division would also have to offer overlapping expert accounting testimony, regarding certain accounting standards and their application to the S-1 Registration statements and the related audits at issue. Indeed, the Division alleges that the audits at issue were deficient in many of the same ways: (1) both the M&K and De Joya Respondents' client acceptance and continuance policies and procedures failed to detect that Briner controlled the Issuers and did not sufficiently question or investigate the Issuers' management; (ii) both the M&K and De Joya Respondents failed to obtain a sufficient understanding of Issuers, as both relied almost entirely on the virtually-identical S-1 registration statements themselves; (iii) both the M&K and De Joya Respondents claimed to confirm the Issuers' cash reserves solely with information created and supplied by Briner (which they failed to independently verify); (iv) both the M&K and De Joya Respondents disregarded the fact that Briner's services to the Issuers were not properly accounted for in the Issuers' financial statements; and (v) certain of the Auditor Respondents did not investigate the Issuers' failures to account for auditing fees it had paid the Auditor Respondents. Finally, the

Division alleges that, as a result of the above conduct, the Auditor Respondents violated the same auditing standards: PCAOB Auditing Standard Nos. 7, 12, 13, 14, and 15; PCAOB QC Section 20; and PCAOB AU Section 230, 330, and 334.

Proof of the accounting issues against all of the Accounting Respondents thus requires testimony from a single expert witness regarding: (1) the general procedures by which accountants engage Issuers and audit their financial statements; (2) steps accountants must take in verifying information received from issuers; and (3) analysis of the numerous accounting standards and their application to the Auditor Respondents' similar conduct. If the hearing were severed, the Division's expert witness would have to prepare two separate expert reports and be subject twice to cross-examination twice, regarding both identical and closely-related accounting issues.[1]

Given the significant overlap of both factual and accounting issues, severing this case into two or more trials would be unnecessarily burdensome on the Division, witnesses, and the Law Judge. For example, separate trials would create unnecessary duplicative travel. The hearing in this case is scheduled for May 26, 2015, in Denver, Colorado, to which all of the attorneys and witnesses are expected to travel from various parts of the United States and Canada. If the hearing is severed, the Law Judge, the Division's counsel, and its witnesses likely will have to travel at least twice to Colorado—or possibly to other locations more convenient for the particular parties and witnesses involved.[2]

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[1] The Law Judge in this proceeding has ordered the parties to offer the experts' written reports in lieu of direct testimony, followed by standard oral cross-examination and re-direct testimony.

[2] The M&K Respondents reside in Texas, the De Joya Respondents in Nevada, and Dalmy in Denver.

The M&K Respondents and Dalmy, by contrast, fail to identify any concrete prejudice to themselves if the trial proceeds as scheduled. The M&K Respondents assert, without basis, that a single hearing might cause the Division's expert to lump together all of the Accountant Respondents. To the contrary, the Division anticipates that its expert report—in addition to discussing those principles common to all of the Auditor Respondents—will detail separately the particular shortcomings of each individual Auditor Respondent. In any event, the trial in this case is not by jury, and the Law Judge should have no difficulty determining which evidence applies to which Auditor Respondent. A claim of "guilt-by-association," perhaps plausible at a jury trial, is misplaced at a bench trial before a sophisticated Law Judge.

The M&K Respondents also incorrectly minimize the extent to which the Division would have to present duplicate evidence. They claim that the allegations against Briner will be uncontested, but any such potential stipulation has not yet been established, either by Briner or the M&K Respondents. Briner has not filed an Answer in this proceeding, and the Law Judge has ordered Briner to show cause by March 2 why Briner should not be held in default. Nonetheless, Briner currently remains a respondent in this action, and furthermore, the Division has received no fact stipulations from any Respondent. Severing the hearing based upon potential future events—Briner's potential future default or potential future fact stipulations—would be premature at this stage. Moreover, even if the Court enters a default judgment against Briner, and even if the M&K Respondents and Dalmy stipulate to facts concerning Briner, the Division would still need to offer CEO testimony to explain other matters and expert testimony common to all of the Auditor Respondents (as noted above).

The M&K Respondents and Dalmy also complain about the expense associated with a single trial. The M&K Respondents do not want "their attorneys and experts" to sit through half

of a trial that supposedly does not apply to them. As explained above, the common issues apply to all claims in this case. Even assuming that half of the trial did not apply to the M&K Respondents (which is not true), this concern is counterbalanced by the Division's and Law Judge's own duplicative expense and efforts in having to conduct at least two trials.

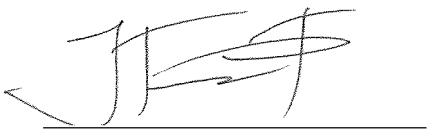
Respondent Dalmy, by contrast, states that she will make herself available for the trial if necessary and, alternatively, requests that she be excused from those portions of the trial that do not pertain to her. As the Division does not oppose such a request, Dalmy's claim of prejudice is moot.

The M&K Respondents' and Dalmy's additional reasons for severing this case into three separate proceedings likewise lack merit. That there have been scheduling conflicts in this case is of no moment—the Law Judge's current Scheduling Order resolves those conflicts. Moreover, scheduling conflicts—including vacations and professional commitments—are common, particularly in a case with multiple respondents. The proper solution is to find a workable trial schedule, as the Law Judge has, not to sever the trial at the expense of the Division, the Court, and the witnesses.

III. Conclusion

For the foregoing reasons, the Division respectfully requests that the Commission deny the M&K Respondents' and Dalmy's motion to sever.

Respectfully submitted,



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Dated: February 27, 2015