ADMINISTRATIVE PROCEEDING
FILE NO. 3-16354
UNITED STATES OF AMERICA

HARD COPY

Before the

SECURITIES AND EXCHANGE COMMISSION

In the Matter of
David B. Havanich, Jr.,
Carmine A. DellaSala,
Matthew D. Welch,
Richard Hampton Scurlock, III,
RTAG Inc. d/b/a Retirement
Tax Advisory Group,
Jose F. Carrio,
Karasik & Associates, LLP
Michael J. Salovay

Respondents,
_____/

RESPONDENTS RICHARD H. SCURLOCK, III, and RTAG Inc.'s PREHEARING MEMORANDUM

Andre F. Regard
Regard Law Group, PLLC
269 W. Main Street, Suite 600
Lexington, KY 40507-1759
aregard@regardlaw.com
(859)-281-1318 Telephone
(859)-281-1319 Fax
For Respondents Richard H. Scurlock, III and RTAG, Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **Page**

STATUTES AND REGULATIONS

Introduction

The Division's action against RTAG, Inc. and Scurlock (hereinafter both referred to as "Scurlock") is frivolous and without merit. Scurlock is not accused of any fraud or deceit. There is no claim of participating in a Ponzi scheme or misusing client's assets. The case challenges the underlying duties of an Investment Advisor, specifically when they are involved in a private placement offering. In this instance investors lost money so someone has to be blamed. In this case Scurlock has not deviated from the duties of an investment advisor. Scurlock was a registered investment advisor properly performing his statutory duties. The Division is overreaching in this case. The Division is attempting to use Scurlock as an example to continue to incorrectly insist, in the face of contrary caselaw and the actual statutes, that transaction based compensation alone makes a person a broker. The Investment Advisors Act of 1940 clearly allows an investment advisor to receive transaction based compensation, as Scurlock did in this instance. In addition, if the Division was able to prove that Scurlock actually violated his duties as an investment advisor and was in fact a broker, the Finder's Fee exception is applicable in this particular situation. The Commission should find that Scurlock was not acting outside of his scope as an investment adivisor.

Statement of the Facts

1. RTAG, Inc. is a registered Kentucky investment advisor. Richard Scurlock is the owner and president of RTAG, and is therefore an associated person of RTAG.[1]
2. RTAG and Scurlock are regulated by the Kentucky Department of Financial Institutions.
3. The DEG bonds are securities.
4. Scurlock did receive transaction based compensation on the sale of the DEG bonds.[2]

[1] Answer of Scurlock ¶3
[2] Scurlock Affidavit ¶11 and 15

5. Scurlock did disclose the compensation to his clients.[3]

6. Scurlock did conduct due diligence related to the DEG bonds.[4]

7. Scurlock did recommend the bonds to clients for purchase.[5]

8. Scurlock did not advertise the DEG bonds.[6]

9. Scurlock did not negotiate the price of the DEG bonds.[7]

10. The Kentucky Department of Financial Institutions advised Scurlock on how to proceed in this matter and Scurlock complied with its advice.[8]

Controlling Law

A. Background

RTAG and Scurlock are registered investment advisors with the Commonwealth of Kentucky.[9] An investment advisor is a person or a firm who is paid to advise others as to the value of a security or as to the advisability of investing in, purchasing, or selling securities.[10] This is exactly what Scurlock did in this case. Scurlock, acting as an investment advisor, researched the DEG bonds and advised his clients as to the availability and suitability of the DEG bonds for them to purchase. The extensive interplay between the Exchange Act of 1934 (the "Exchange Act") and the Investment Advisor Act of 1940 (the "IAA") contemplate the exact type of activity that happened here. Scurlock conducted due diligence on the DEG Bonds because he had a fiduciary duty to do so prior to making any recommendations as to their value and the advisability of investing in or purchasing them. As part of that due diligence he did talk to DEG officials. That was his job. He did assist clients in completing paperwork, just as he

[3] Id.
[4] Id at ¶4
[5] Id at ¶11
[6] Id at ¶27 and 28
[7] Id at ¶29 and 30
[8] Scurlock Affidavit ¶9 and 10
[9] See Scurlock Affidavit ¶ 17, Exhibit 1; Answer of Scurlock ¶3
[10] Investment Advisors Act of 1940, Section 202(a)(11)

does when clients purchase publically traded securities and mutual funds. Scurlock and RTAG did receive transaction based compensation, which is specifically allowed under the IAA[11]. None of this makes Scurlock liable for acting as a broker in this instance however. Furthermore, Scurlock had discussions with the Kentucky Department of Financial Institutions about his recommendations of the DEG Bonds and they told him to have an agreement in place and to disclose the compensation to his clients. Scurlock complied with both of these requirements.

B. Scurlock's activities are appropriate for a Registered Investment Advisor

The IAA defines an "Investment adviser" as "any person who, *for compensation*, engages in the business of *advising others*, either directly or through publications or writings, as to the value of securities or as to the *advisability of investing in, purchasing, or selling securities*, ..."[12] As previously discussed, in this case that is exactly what Scurlock did. Acting in a fiduciary duty, Scurlock did due diligence on the DEG bonds and DEG, he reviewed the offering materials, he meet with clients and advised some of them that the DEG Bond may be suitable for them, and he was paid for those services. Scurlock was not a broker. He did not negotiate the price of the DEG bonds and he did not affect the actual purchase and sale, which was done through direct paperwork between DEG and the client.

C. Compensation based on commissions or fees is acceptable for an Investment Advisor

The IAA Standard of Conduct specifically states: "*The receipt of compensation based on commission or fees shall not, in and of itself, be considered a violation of such standard applied to a broker, dealer, or investment adviser.*"[13] Furthermore, the IAA Sec. 205 (dealing with Investment Advisory Contracts) does not state any bar to commissions or fees. Additionally Sec.

[11] Investment Advisors Act of 1940, Section 211(g)(16)
[12] Investment Advisors Act, Section 202(11)
[13] Investment Advisor Act of 1940, Section 211(g)(16)

206 (Prohibited Acts) does not bar transaction based compensation. The Division is taking a position that is directly contrary to the applicable statutes and regulations. Therefore, Scurlock should not be held liable in this case.

D. Scurlock did not act as a Broker

1. The determination of whether a finder is required to register as a broker or dealer is fact intensive and based on a consideration of a variety of factors.

i. The Kramer Decision and Cases Relied on Therein

There are not many cases that address the issues of whether a finder or similar advisor or consultant will be treated as a broker-dealer under Section 15 of the Securities Exchange Act. One of the more recent seminal cases is *SEC v. Kramer*[14]. In that case, the Commission argued that Kramer acted as an unregistered broker when he solicited customers to purchase Skyway securities. The court first pointed out that Section 15(a)(1) of the Exchange Act provides that it is unlawful for any broker or dealer to make use of the mails, or any means or instrumentality of interstate commerce, to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security unless the broker or dealer is registered as such.[15]

"Broker" is defined in the Act as "any person engaged in the business of effecting transactions in securities for the accounts of others."[16] Because the Exchange Act does not define "effecting transactions" or "engag[ing] in the business," a variety of factors have been applied to

[14] 778 F. Supp. 2d 1320 (M.D. Fla. 2011)
[15] *Id.* at 1333 (citing *15 U.S.C. § 78o (2015)).*
[16] *Id.* (quoting *15 U.S.C. § 78c).*

determine whether a person qualifies as a broker under Section 15(a).[17] The most frequently cited factors were identified in *SEC v. Hansen,*[18] *These factors* include

> whether a person (1) works as an employee of the issuer, (2) receives a commission rather than a salary, (3) sells or earlier sold the securities of another issuer, (4) participates in negotiations between the issuer and an investor, (5) provides either advice or a valuation as to the merit of an investment, and (6) actively (rather than passively) finds investors. [19]

The *Kramer* court further pointed out, however, that "[t]he factors articulated in *Hansen* . . . [a]re not designed to be exclusive."[20] *Moreover,* some factors are deemed more indicative of broker conduct than others, such as the "regularity of participation in securities transactions at key points in the chain of distribution."[21]

Granted, some courts, such as Nebraska federal district court in *Cornhusker Energy Lexington, LLC v. Prospect St. Ventures,* 2006 WL 2620985 (D. Neb. Sept. 12, 2006), describe "transaction-based compensation" as "one of the hallmarks of being a broker-dealer."[22] In other words, transaction-based compensation is the hallmark of a salesperson. *Id.* However, as previously

---

[17] Id. at 1334 (citing *DeHuff v. Digital Ally, Inc., 2009 U.S. Dist. LEXIS 116328, 2009 WL 4908581, *3 (S.D. Miss. Dec. 11, 2009)).*

[18] *Fed. Sec. L. Rep. (CCH) P91, 426, 1984 U.S. Dist. LEXIS 17835, 1984 WL 2413 (S.D.N.Y. Apr. 6, 1984). Id. (citing Hansen, 1984 WL 2413 at *10).*

[19] *Kramer*, 778 F. Supp. 2d at 1334 (citing *Hansen*, 1984 WL 2413 at *10; *Cornhusker Energy Lexington, LLC v. Prospect St. Ventures,* 2006 U.S. Dist. LEXIS 68959, 2006 WL 2620985 (D. Neb. Sept. 12, 2006) (identifying as evidence of broker activity a person's "analyzing the financial needs of an issuer," "recommending or designing financing methods," discussing "details of securities transactions," and recommending an investment); *S.E.C. v. Martino, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003), aff'd and remanded,* 94 Fed. App. 871, 2004 U.S. App. LEXIS 7956 (2d Cir. Apr. 22, 2004); *S.E.C. v. Margolin, 1992 U.S. Dist. LEXIS 14872, 1992 WL 279735 (S.D.N.Y. Sept. 30, 1992)* (finding evidence of "brokerage activity" based on the defendant's "receiving transaction-based compensation, advertising for clients, and possessing client funds and securities")).

[20] Id. (quoting *S.E.C. v. Benger*, 697 F. Supp. 2d 932, 945 (N.D. Ill. 2010)).

[21] Id. In *SEC v. Bravata*, 2009 U.S. Dist. LEXIS 64609, 2009 WL 2245649 (E.D. Mich. July 27, 2009), for instance, the court described "[t]he most important factor in determining whether an individual or entity is a broker" as the "regularity of participation in securities transactions at key points in the chain of distribution." Kramer, 778 F. Supp. 2d at 1334

[22] *Kramer*, 778 F. Supp. 2d at 1334 (explaining that "[t]he underlying concern has been that transaction-based compensation represents a potential incentive for abusive sales practices that registration is intended to regulate and prevent.").

discussed, the IIA specifically allows for commissions to be paid to investment advisors.[23] The Division in this instance cannot use allowable compensation to hang Scurlock.

The *Hansen* case—long considered the seminal decision on this issue and still perhaps the most often cited—is noteworthy here because the defendant promoted and sold to the public fractional, undivided interests in various oil wells and received a fifteen percent commission for each interest that he sold.[24] The evidence in *Hansen* established that the defendant:

> (1) prepared letters that "extolled the virtues" of the investment;
>
> (2) advertised in newspapers;
>
> (3) sponsored seminars and social events;
>
> (4) distributed gifts, bumper stickers, and "other promotional items";
>
> (5) participated in a financial symposium called "The Money Show" at the New York Coliseum; and
>
> (6) hired employees and provided prepared scripts for the employees' telephone calls to prospective investors.[25]

The defendant in *Hansen* engaged in these promotional activities despite a permanent injunction against violating the anti-fraud provisions of the securities laws (obtained by the SEC over fifteen years earlier), the defendant's earlier and unsuccessful application for broker registration, and an explicit prohibition by several states against the defendant's engaging in the sale of securities without registering as a broker.[26] Citing the lack of "extensive judicial interpretation," the *Hansen* court concluded that the defendant violated Section 15(a) because he (1) worked as a consultant rather than an employee of the issuer; (2) received a commission based on his sale of each oil well

---

[23] Investment Advisors Act of 1940, Section 211(g)(16)
[24] *See Kramer*, 778 F. Supp. 2d at 1335 (discussing *Hansen*).
[25] *Id*
[26] *Id.*

interest; (3) actively and aggressively sought investors; (4) provided frequent and extensive advice on the merit of the investment; (5) sold the securities of another issuer in the past; and (6) sought and failed to obtain broker registration because of securities law violations.[27]

The instant case is totally different. In this case Scurlock is a register investment advisor. **This is the single most important fact**. He does not work for DEG. He does not solicit and aggressively seek investors, he has never been involved in prior sales of private placements, he was not previously barred.

In another key decision cited by the *Kramer* court, *SEC v. Corporate Relations Group, Inc.*[28], the Commission alleged that a "stock promotion firm" violated Section 15(a) because it "published investment-related material ranging from one-page faxes to the monthly full-color magazine, Money World," and agreed, for a fee, to (1) promote a security in one of the firm's publications, (2) forward an investor inquiry about the security to a registered broker, and (3) direct the firm's "broker relations executives" ("BREs") to contact the registered broker and encourage the broker to sell the security. [29]According to two former BREs, the BREs in *Corporate Relations* also counseled inquiring investors to purchase a security featured in the firm's publications. If a BRE submitted proof that the investor purchased the security from a broker, the BRE received a commission from the firm based on the sale. The court held that the stock promotion firm (not the individual BREs) acted as an unregistered broker in violation of Section 15(a), because the firm "actively sought investors, . . . recommended securities to investors through registered [brokers], and . . . [paid] transaction-based compensation for stock sales."[30] This case does not control the actions of Scurlock because, as an

---

[27] *Id.*
[28] 2003 U.S. Dist. LEXIS 24925, 2003 WL 25570113 (M.D. Fla. Mar. 28, 2003)
[29] *Id.*
[30] *Id.*

investment advisor, he is allowed to recommend securities and get transaction-based compensation. Furthermore, Scurlock did not actively seek investors.

In yet another case discussed by the *Kramer* court, *S.E.C. v. M & A West, Inc.*[31], by contrast, the court granted summary judgment in favor of the defendant on the SEC's Section 15(a) claim, where the facts established that the defendant facilitated and participated in reverse mergers. *Id.* at 1335-36. Specifically, the defendant worked with the shareholders of a private company to (1) identify "suitable public shell companies," (2) prepare documents for the reverse merger, and (3) coordinate the parties to the reverse merger. Upon successful completion of a reverse merger, the defendant received compensation in cash and securities. The court rejected the Commission's argument that the defendant's conduct amounted to broker activity, finding that the Commission's factual recitation shed no light on why the defendant's activities—which were commonly associated with paralegals (who draft documents), lawyers (who draft documents and orchestrate transactions), businesspersons (who identify potential merger partners), and opportunists (who like to take a small cut of a big transaction), none of whom is commonly regarded as a broker—added up to the defendant's being a broker in the *M & A West* case. Of particular note were the facts that no assets were entrusted to the defendant, and that there was no evidence that the defendant was authorized to transact business "for the account of others"; that is, although the defendant was in the business of facilitating securities transactions among other persons, the Commission cited no authority for the proposition that this equated to "effecting transactions in securities for the account of others."[32]

This case is important because Scurlock, as an investment advisor, did perform the jobs that he is normally associated with, such as conducting due diligence, evaluating the bond, advising

[31] 2005 U.S. Dist. LEXIS 22452, 2005 WL 1514101 (N.D. Cal. June 20, 2005
[32] *Id.* at 1336

clients about the bond, and being compensated on a commission basis. Therefore, Scurlock is not a broker, he is an investment advisor.

2. The Finder's Fee exception

Following the decision in *M & A West*, a series of later cases identified a limited "finder's exception" to the broker-dealer registration requirement that permits a person or entity to "'perform a narrow scope of activities without triggering the b[r]oker/dealer registration requirements.'" [33] A "'finder' may perform a narrow scope of activities without triggering broker/dealer registration requirements."[34] To the extent that this Court may believe that Scurlock was acting outside of his scope then the Finder's Fee exception applies.

"Merely bringing together the parties to transactions, even those involving the purchase and sale of securities, is not enough" to trigger the broker registration requirement under Section 15(a).[35] Instead, the evidence must demonstrate involvement at "key points in the chain of distribution," like participating in the negotiation, analyzing the issuer's financial needs, discussing the details of the transaction, and recommending an investment.[36] Even when the "finder" receives a fee "in proportion to the amount of the sale"—i.e., a percentage of the total payment rather than a flat fee—the SEC (in a series of "no-action" letters) has found that there was no need for registration.[37]

Despite the number of cases reviewed by the *Kramer* court, the court still observed that the distinction between a finder and a broker remained largely unexplored at the time of its 2011

---

[33] *Id.*

[34] *DeHuff v. Digital Ally, Inc.*, 2009 U.S. Dist. LEXIS 116328, *12-13 (S.D. Miss. Dec. 11, 2009); "The distinction drawn between the broker and the finder or middleman is that the latter 'bring[s] the parties together with no involvement on [his] part in negotiating the price or any of the other terms of the transaction."

[35] *Id.*

[36] *Id.* (quoting *Cornhusker Energy Lexington, LLC v. Prospect St. Ventures*, 2006 WL 2620985 (D. Neb. Sept. 12, 2006)

[37] *Id.* (citing David A. Lipton, 15 Broker-Dealer Regulation § 1:18 (further explaining, however, that payment of a flat fee "does not *insure* that the payment will be regarded as non[-]commission compensation") (emphasis added).

decision.[38] Both the case law and the Commission's informal "no-action" letters were (and indeed still are) highly dependent on the facts of a particular arrangement.[39] Turning to the facts in that case, the Commission argued that Kramer's conduct qualified as broker activity subject to Section 15(a) because Kramer:

> (1) received transaction-based compensation,
>
> (2) actively solicited investors (by distributing promotional material and directing people to Skyway's [the issuer's] web site),
>
> (3) advised investors about Skyway (by telling people that Skyway was a good company and suggesting that people read Skyway's press releases),
>
> (4) used a "network" of associates to promote Skyway,
>
> (5) demonstrated a regularity of participation (through the money that Kramer earned and the two years over which the conduct occurred),
>
> (6) promoted the shares of other issuers, and
>
> (7) earned commissions rather than a salary as a Skyway employee.[40]

In response, Kramer countered that he (1) never *sold* a share of stock; (2) never "engaged in the business of effecting securities transactions for the accounts of others"; (3) merely talked about investments the same way that people talk about sports or politics; (4) talked to only some of his relatives and close friends about Skyway; (5) acted as a finder by introducing an investor to Skyway; and (6) reported purchases of Skyway shares to Baker because Baker requested the information, and because Baker agreed to pay Kramer (with Baker's Skyway shares) for collecting the information.[41]

---

[38] *See id.*
[39] *See id.* at 1336-37
[40] *Id.* at 1337.
[41] *Id.* at 1337-38

The court agreed that the evidence showed that Kramer had told a small but close group about Skyway and opined that Skyway seemed like a good investment.[42] According to the Commission, the nature of Kramer's relationship with each person was irrelevant to the broker analysis under Section 15(a). However, the court explained, the broker analysis under Section 15(a) (as developed in *Hansen*, *Martino*, and other cases) permits examination of a wide array of factors. The nature of a person's relationship with another, although not determinative, may support either the absence or the presence of broker activity. Ultimately, the court sided with the defendant in *Kramer* and determined that the Commission failed to show by a preponderance of the evidence that Kramer "engaged in the business of effecting transactions in securities for the accounts of others."[43]

In this case, Scurlock while acting appropriately as an investment advisor, similar to Kramer, was not engaged in the business of effecting transactions in securities for the accounts of others.

a. Post-Kramer Decisions

The *Kramer* decision is noteworthy for its rejection of "the SEC's transaction-based compensation approach as well as the SEC's attempt to impose on the courts its own no-action letters as interpretative guidance on the broker-dealer registration requirements."[44] In the last few years, the inquiry has remained fact-intensive, and courts continue to apply essentially the same tests as set out in earlier precedent. In *SEC v. Offill*,[45] for instance, the court noted that "[t]he distinction drawn between the broker and the finder or middleman is that the latter bring[s] the parties together with no involvement on [his] part in negotiating the price or any of the other terms of the transaction."[46] The court further noted "A finder, however, will be performing the functions of

---

[42] *Id.* at 1339.
[43] *Id.* at 1341.
[44] *See generally* Ernest E. Badway & Daniel A. Schnapp, *Is the Tide Turning Against the SEC in Favor of Finders?* (Am. Bar Ass'n Securities Litig. Sec. Nov. 17, 2011).
[45] Fed. Sec. L. Rep. (CCH) P96,723, 2012 U.S. Dist. LEXIS 9369, 2012 WL 246061 (N.D. Tex. Jan. 26, 2012)
[46] *Id* at 2012 WL 246061 at *31 (quoting *Salamon v. Teleplus Enters.*, 2008 WL 2277094 at *13).

a broker-dealer, triggering registration requirements, if activities include: analyzing the financial needs of an issuer, recommending or designing financing methods, involvement in negotiations, discussion of details of securities transactions, making investment recommendations, and prior involvement in the sale of securities."[47] As previously discussed, Scurlock performs many of these acts as an investment advisor. **Scurlock did not analyze the financial needs of DEG, recommend or design financing methods for DEG, or was involved in negotiations related to the DEG Bonds.**

Courts, in considering whether a violation of the broker registration requirements had occurred, also observed that some courts have considered the meaning of the term "broker" by looking to whether a person regularly participates in securities transactions at key points in the distribution scheme.[48] In other words, some courts have held that regularity of participation "is the primary indicia of being 'engaged in the business'" for the purposes of the broker definition.[49]

The *Landegger* court did not focus on that element alone, however, and found the *Hansen* factors useful in determining whether a person's activities give rise to broker status.[50] The court did note that the factors of transaction-based compensation and regularity of participation should be afforded heightened weight in the calculus. These two factors must not be weighted so heavily so as to subsume the others in the analysis; that is, they "should not swallow what is ultimately a fact-intensive definition—and one as to which the SEC Commission has been unwilling to create the

---

[47] *Id.* (quoting *Cornhusker, 2006 WL 2620985 at *6)*; *see also Couldock & Bohan, Inc. v. Societe Generale Sec. Corp.*, 93 F. Supp. 2d 220, 229 *(D. Conn. 2000)* (holding that the plaintiff was a dealer because it was "not merely matching buyers and sellers, but rather was placing itself squarely in the middle of each transaction in order to reap the profits from . . . the price difference between the buy and sell sides of the transactions, for its own account")).

[48] *Landegger v. Cohen*, 2013 U.S. Dist. LEXIS 140634, 2013 WL 5444052 (D. Colo. Sept. 30, 2013), 2013 WL 5444052 at *13

[49] *Id.* at *17

[50] *Id.* at *19.

necessary guidance in order to provide clarity."[51] This is good guidance and should be applied here find Scurlock not in violation of any law.

Conclusion

The Division wants the ALJ to dismiss all prior precedent on these issues by casually stating that the ALJ is not bound by Court decisions.[52] While this may carry some weight with the Commission, ultimately the judicial precedent will control. In this case it is clear the Division fails to make the case that Scurlock is a broker. Scurlock is an investment advisor. He did not negotiate the purchase price of the DEG bonds. Scurlock merely told his clients what was available, his recommendation on the suitability of the bond, and assisted his clients with the same ministerial functions that investment advisors do every day for clients.

Respectfully submitted,

Andre F. Regard
Regard Law Group, PLLC
269 W. Main Street, Suite 600
Lexington, KY 40507-1759
aregard@regardlaw.com
(859)-281-1318 Telephone
(859)-281-1319 Fax

[51] *Id.*
[52] *Commission Motion* for Partial Summary Disposition at 8.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served in the manner provided upon the following persons on this 12th day of June, 2015:

The Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-9303
Facsimile: (202) 777-1031
Email: foelakc@sec.gov
VIA FACSIMILE TRANSMISSION AND NON-FACSIMILE ORIGINAL WITH MANUAL SIGNATURE CONTEMPORANEOUSLY
VIA US MAIL

Shelly-Ann A. Springer-Charles, Esq.
Senior Counsel
Andrew Schiff, Esq.
Eric R. Busto, Esq.
Regional Director
Securities and Exchange Commission
801 Brickwell Avenue, Suite 1800
Miami, Florida 33131
Email: springers@sec.gov
Email: bustoe@sec.gov
Email: schiffa@sec.gov
VIA EMAIL

Cornelius J. Carmody, Esq.
P.O. Box 302
Monkton, MD 21111-0302
Email: parktonlaw@aol.com
Counsel for Respondents Carrio, Karasik & Associates, LLP Jose F. Carrio, Dennis K. Karasik
VIA EMAIL

Mr. Michael J. Salovay
[redacted]
Pittsburgh, PA [redacted]
VIA US MAIL

Carl F. Schoeppl, Esq.
Schoeppl & Burke, P.A.
4651 North Federal Highway
Boca Raton, Florida 33431-5133
Email: carl@schoepplburke.com
Counsel for David B. Havanich, Jr., Carmine A. DellaSala, and Matthew D. Welch
VIA EMAIL

Andre F. Regard

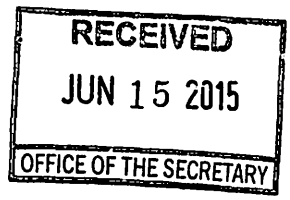
REGARD LAW GROUP, PLLC
ATTORNEYS AT LAW

269 WEST MAIN STREET
SUITE 600
LEXINGTON KY 40507-1759

859-281-1318
FAX 859-281-1319
HARD COPY www.regardlaw.com

June 12, 2015

Via Facsimile No. (703)-813-9793 & (202)-777-1031 on 6/12/2015
And United States Mail



The Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549-9303

Re: File No. 3-16354
In the Matter of: David B. Havanich, Jr., Carmine A. DellaSala, Matthew D. Welch, Richard Hampton Scurlock, III, RTAG Inc. d/b/a Retirement Tax Advisory Group, Jose F. Carrio, Dennis K. Karasik, Carrio, Karasik & Associates, LLP, and Michael J. Salovay

Dear Judge Foelak,

Please find the attached Pretrial Memorandum of Defendants Richard H. Scurlock and RTAG, Inc. A copy of this document was sent via fax for filing and the original plus three copies were concurrently sent via US Mail in connection with the above-captioned matter on June 12, 2015.

Thank you for your attention to this matter. Please contact me with any questions or should you require further information.

Sincerely,

Andre F. Regard

AFR/mt