

ADMINISTRATIVE PROCEEDING
G File No. 3-16463

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In the Matter of

AEGIS CAPITAL, LLC
CIRCLE ONE WEALTH
MANAGEMENT, LLC
DIANE W. LAMM
STRATEGIC CONSULTING
ADVISORS, LLC and
DAVID I. OSUNKWO

Respondents.

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EXPEDITED MOTION FOR PRE-HEARING CONFERENCE,
POSTPONEMENT AND/OR EXTENSION OF TIME
BY RESPONDENTS STRATEGIC CONSULTING ADVISORS, LLC
AND DAVID OSUNKWO

Respondents Strategic Consulting Advisors, LLC ("SC Consulting") and David Osunkwo ("Osunkwo") ("Respondents") hereby move pursuant to Rules of Practice 230, 161, and 221 for: (1) an Expedited Pre-Hearing Conference to address the existing scheduling order ("Scheduling Order") and (2) a Postponement or Extension of the existing schedule of up to 60 days to evaluate investigative documents just made available for inspection by the Division to Respondents. In support of its motion, Respondents state as follows:

1. Based on the allegations in the Order Instituting Proceedings and based on discussions with the Division, the Division contends that Osunkwo purportedly acted without requisite authorization from Aegis Capital / Capital L / Circle One Management to file the 2011 combined Circle One ADV at issue in this proceeding. More narrowly, Respondents understand that it is the Division's position it intends to proffer the testimony of Aegis Capital / Capital L and Circle One Principal, Director and Chief Investment Officer, who retained Osunkwo and SC Consulting to file the ADV, that nonetheless he did not expressly authorize the specific ADV at issue prior to its filing.

2. Pursuant to Rule of Practice 230(a), since the inception of this proceeding, the Division has had an obligation to "make available for inspection and copying by any party documents obtained by the Division prior to the institution of proceeding in connection with the investigation leading to the Division's recommendation to institute proceedings" including but not limited to **"documents turned over in response to any such subpoenas or other written requests"** and **"any other documents obtained from persons not employed by the Commission."** See Rule 230(a)(1)(iii) and (v) (emphasis added). For purposes of this rule, documents includes "data compilations, including data stored by computer, from which information can be obtained."

3. During the investigation of this proceeding, prior to the institution of proceedings, Respondents understand the Division received a data compilation containing emails and other electronic documents from the successor entity to Capital L group, under the auspices of Alan Boyer ("Boyer") who bought Capital L and/or Aegis from its former owners and succeeded to its electronic data bases. Until June 2016, this electronic data

compilation had not been produced to Respondents. The Division has produced other information to Respondents including investigative testimony and related exhibits, **but there is no other electronic data store from which Respondents could inspect and analyze emails from Aegis Capital/Capital L and/or Circle One management and its principals which are crucial to the issues in this matter and the Division's claims.**

4. Respondents understand that Mr. Boyer produced such electronic data store of information in a password protected and/or encrypted hard drive (the "Drive") to the Division, which until just prior to the filing of this motion, remained encrypted. The issues regarding the completion of the production of the investigative file and the Drive were unknown and unforeseeable at the time the Scheduling Order was entered.

5. Respondents, at the direction of the Division, sent a drive at their cost and expense to the Division to obtain a copy of the Drive in or about March 2016. Since then, Respondents made repeated requests upon the Division for the Drive, which the Division had indicated it was having difficulty accessing.

6. On June 17, Respondents received its copy of the Drive from the Division, with the caveat that it still did not have access to the Drive so as to resolve the encryption problem but was working on it. Respondents tried accessing the Drive, but was unable to inspect that information as it is entitled to under Rule 230.

7. On today Friday, June 24, the Division sent Respondents the passwords it has to allow accessing only those limited files on the Drive that it has decrypted as of today.

Also there are other files and data which still remain encrypted and to which the Respondents do not have access.

8. Pursuant to the Scheduling Order in this matter, the parties are to file and exchange witness lists as well as pre-marked copy of exhibits.

9. While the Respondents are making every effort to review those limited accessible files in this newly-produced information (which still remains largely encrypted and un-accessible), the Drive contains approximately 165 gigabytes of information which under common industry standards represents potentially approximately 1,650,000 documents that Respondents must search through. In other words, it is voluminous and Respondents need time to upload, de-duplicate, process, and meaningfully inspect this significant portion of the investigative file that has just been made available to Respondents. And Respondents cannot under the existing schedule complete its review and inspection of this voluminous information and Drive to identify their trial exhibits in 3 days while also adhering to the rest of the pre-hearing calendar schedule to complete its trial preparation under the Scheduling Order.

10. Without this information, the record produced to date by the Division and Respondents contains limited records of Aegis Capital and Capital L regarding the disputed issues discussed above.

11. Particularly in light of the Division's intention to proffer witnesses to testify about facts between 5 and 6 years ago as to specific roles and authority granted, it is imperative

that Respondents have time to review and evaluate the investigative record fully before (i) having to identify trial exhibits and (ii) attempting to cross examine witnesses about facts with limited documentary information on the existing record.

12. While Respondents assume the Division has acted in good faith to provide the information to Respondents at the earliest opportunity due to circumstances beyond the Division's control, nonetheless the timing on the eve of designating witnesses and trial exhibits does not allow Respondents any meaningful time to inspect this newly produced investigative information within the letter or the spirit of Rule 230 let alone the Scheduling Order.

13. On this basis, therefore, Respondents are requesting an extension of time, revision to the trial schedule and a pre-hearing conference to discuss these matters at the Hearing Officer's earliest convenience.

14. In further support of this motion, pursuant to Rule 161(b), regarding the relevant considerations for determining whether to extend time limits or grant postponements, adjournments and extensions, Respondents further state as follows:

a. The length of the proceeding to date – not including the stay of the proceeding at the request of the Department of Justice, U.S. Attorney's Office for the Eastern District of New York and the Division (to which Respondents objected), this proceeding is still within the 300 day period for completion.

b. The number of postponements, adjournments or extensions already granted – Respondents have requested NO previous extensions, although the Division joined with and agreed to the request of the U.S. Attorney's Office for the Eastern District of New York to a previous stay, which Respondents objected to and attempted to sever from. In sum, Respondents have not requested any previous extensions and is seeking only a limited extension or postponement of 60 days to

review the materials provided and prepare for hearing, given the volume of information and that Respondents are pro se given the departure of its previous counsel through no fault of their own.

c. The stage of the proceedings at the time of the Request – The issues regarding the completion of the production of the investigative file and the Drive were unknown and unforeseeable at the time the Scheduling Order was entered. Respondents acknowledge that this comes less than 1 month before trial, but Respondents only just received the remainder of the investigative file in the form of the Drive from the Division 1 month before trial due to circumstances beyond its control.

d. The Hearing Officer's ability to complete the proceeding in the time specified by the Commission – Again disregarding the 1 year interruption to these proceedings, a 60 day postponement would result in a hearing in September – which by Respondents' calculations would still provide time under the 300-day period for the hearing officer to issue its opinion and/or valid grounds exist for a request to the Commission for a brief extension to the 300 day period owing to circumstances beyond the parties' control.

e. Any other such matters as justice may require – Where, as here, the entire investigative file has only just now been made available for inspection and review by Respondents, justice (and more importantly) due process and fundamental fairness require that Respondents be given meaningful opportunity to review such newly-provided information. This is particularly crucial here where there are critical fact issues that likely will need documentary information to refresh witness recollections and cross examine witnesses. As stated above, the Division's position that Osunkwo acted independently and without knowledge and authorization of management are crucial issues in dispute. And the extent of the electronic data repository Drive of Aegis Capital/Capital L and Circle One, which has NOT been available to Respondents to date, needs to be examined as part of the factual inquiry and to test the credibility of witnesses, refresh witnesses, impeach witnesses and allow Respondents to prepare their defense. Justice and Rule 230 require the Division to produce the investigative record at the inception of this proceeding, not on the eve of designating trial exhibits. Correspondingly, Respondents having just received this information must be given the opportunity to inspect it under Rule 230 especially where the Drive is the only electronic repository of Aegis Capital/Capital L and Circle One corporate and management records and communications that will be needed to evaluate the Division's claims and witnesses.

15. On June 23, we requested the Division's agreement to an extension on these grounds. On June 24, the Division refused to agree, necessitating the filing of the instant motion.

Dated: June 24, 2016

Respectfully submitted,

D. Osunkwo

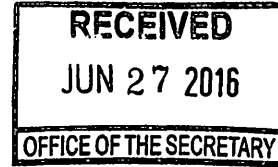
(By S. Wisfall - Authorized) (SW)

David I. Osunkwo

S. Wisfall (Principal)

Strategic Consulting Advisors, LLC

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CERTIFICATE OF SERVICE

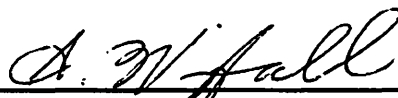
I, Sidney Wigfall, certify that on the 24th day of June2016, I caused true and correct copies of the attached Expedited Motion for Pre-Hearing Conference, Postponement and/or Extension of Time by Respondents Strategic Consulting Advisors, LLC and David Osunkwo to be filed and served on the following as follows:

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(Original and three copies by Email and Overnight Delivery)

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Sidney Wigfall