UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16554

In the Matter of

GRAY FINANCIAL GROUP, INC., LAURENCE O. GRAY, and ROBERT C. HUBBARD, IV,

Respondents.

RESPONDENTS' OPPOSITION TO MOTION TO QUASH OR MODIFY DOCUMENT SUBPOENA ISSUED TO SEWARD & KISSEL, LLP, ROBERT VAN GROVER AND ALEXANDRA SEGAL

Respondents Gray Financial Group, Inc., Laurence O. Gray, and Robert C. Hubbard, IV (collectively "Gray"), pursuant to Commission Rules of Practice 154 and 232, hereby submit this Opposition to the Motion to Quash or Modify Document Subpoena submitted by their former and trusted legal counsel, Seward & Kissel LLP, Robert Van Grover, and Alexandra Segal (where appropriate collectively "Seward & Kissel"). As set forth herein, the instant motion by Seward & Kissel has no basis in law or fact and instead is improperly attempting to restrict the legitimate discovery of documents that are in the exclusive possession, custody or control of Seward & Kissel and are uniquely relevant to Gray's "reliance on counsel" defense. Perhaps even more importantly, the Honorable Leigh Martin May, United States District Court Judge for the Northern District of Georgia, just last week gave considerable support to Gray's reliance on counsel defense in an Order issued in the pending legal malpractice case brought by Gray against Seward & Kissel. *See* Order on Plaintiff's Motion to Dismiss, *Gray Financial Group, Inc. et al. v. Seward & Kissel LLP*, Civ. Action No. 1:16-CV-1956-LMM (N.D. Ga. Dec. 1, 2016)

("Order"), attached hereto as **Exhibit 1.** If there was ever any doubt about the overwhelming strength of that defense, those doubts have now been alleviated by Judge May.

Further, with respect to the specific Subpoena at issue, the documents sought pertain directly to Gray's relationship with the law firm and its lawyers, which forms the basis of the reliance on counsel defense. The SEC's enforcement staff recognized there was no basis to contest the Subpoena and did not oppose the issuance of same. Even more to the point, Seward & Kissel admits that it has in its possession, custody and control many of the documents relevant to this proceeding and that those are ready to be produced, and yet, Seward & Kissel has refused as of now to produce them. These would include documents such as emails, notes of communications, meetings, and/or teleconferences with Gray Financial, and internal correspondence regarding the fund at issue. In this regard, Seward & Kissel is ignoring the requests of its clients and, worse yet, refusing to comply with the Court's Subpoena. For each of these reasons, and the reasons further set forth herein, Seward & Kissel's motion should be denied.

FACTUAL BACKGROUND

Seward & Kissel is a New York based law firm that holds itself out as having an unmatched depth of knowledge and experience in representing investment advisors and other securities industry clients located throughout the U.S. and abroad. More specifically, Seward & Kissel purports to be "one of the most experienced and extensive legal practices covering the private investment fund industry and is consistently ranked as an industry leader in numerous reports and surveys." Seward & Kissel Private Fund Practice Description, http://www.sewkis.com/services/xprServiceDetailSymSewardKissel.aspx?xpST=ServiceDetail&service=21, a copy of which is attached hereto as **Exhibit 2**. Seward & Kissel describes this

practice as "a key practice area of the Firm with over 45 attorneys and 15 paralegals specializing in the investment management area serving clients throughout the U.S. and overseas." *Id.* Seward & Kissel commits to "help our clients achieve practical business solutions within a complex legal and regulatory framework." *Id.* Seward & Kissel further describes the services offered to include "[f]und structuring, regulatory and ongoing compliance matters, including advice relating to: Securities Act of 1933; Securities Exchange Act of 1934; ... Investment Advisers Act of 1940; ... and other applicable laws." *Id.*

Mr. Van Grover is a senior partner for the law firm and is co-head of Seward & Kissel's Investment Management Group. Mr. Van Grover holds himself out as having specialized experience in the formation and representation of private funds, investment advisers, and broker-dealers, as well as experience advising clients on compliance and regulatory matters. Mr. Van Grover was the relationship partner for Gray Financial, and during the relevant time period, he was charged with supervising Ms. Segal, an associate attorney in the firm's Investment Management Group. Ms. Segal holds herself out as practicing in the areas of investment management, investment advisers, and private funds.

During all relevant times, Gray never had in-house legal counsel but instead relied on outside counsel to address legal issues and for legal services generally. Neither Larry Gray nor Bob Hubbard are lawyers, and in fact neither have any legal training whatsoever. Like Gray Financial, they too rely on outside legal counsel to address legal issues and for legal services generally. The law firm was aware that this was the case since Gray Financial did not have an in-house attorney employed with the firm, and Gray and its principals did not have experience in developing, constructing or marketing a fund of funds. Seward & Kissel purported to have all of this expertise, and much more, and Gray at all times relied on Seward & Kissel for this expertise.

Primarily but not exclusively through Mr. Van Grover and Ms. Segal, Seward & Kissel served as Gray's sole legal counsel regarding the fund at issue and specifically to ensure compliance with the New Georgia Pension Law (O.C.G.A. 44-20-87) at issue, among many other things. When Gray Financial, through an affiliate, first conceptualized an alternative investment fund-of-funds to be named GrayCo Alternative Partners I, LP ("Fund I"), which Gray Financial could offer to pension plans seeking access to alternative investments, it sought out and retained Seward & Kissel to handle all legal issues associated with the project and to assist with and advise on important business decisions. The project was successfully developed, clients outside of Georgia invested in Fund I, and Fund I was overall a success for all involved.

In fact, it is because the experience with Fund I had been successful that Gray turned once again to Seward & Kissel to create what would become known as GrayCo Alternative Partners II, LP ("Fund II") when the New Georgia Pension Law was passed into law and Gray Financial considered offering to its Georgia pension plans a fund-of-funds alternative investment.

The scope of legal services provided by Seward & Kissel to Gray is described in an engagement letter drafted and submitted by Seward & Kissel to Gray, dated July 15, 2011. Seward & Kissel's engagement letter was broad - indeed all-encompassing - and continuing. Seward & Kissel expressly described the broad scope of its engagement by Gray to include the following services:

> 1. Description of Engagement. We will represent you in connection with the organization of one or more private investment funds (each a "Fund"). We will prepare a Fund's private offering memorandum, subscription agreement and other organizational documents. We will coordinate initial state blue sky filings for a Fund. We will also provide legal advice in connection with the offering of interests and structuring and business advice in connection with the offering. On an ongoing basis, we will advise

> you on regulatory and other matters for which you request our assistance.

See Seward & Kissel Engagement Letter, attached hereto as **Exhibit 3**. The Engagement Letter accurately describes the expansive breadth of the services sought and expected to be delivered to Gray. In fact, given the breadth of the scope of engagement as written by Gray's Counsel, Judge May concluded that Larry Gray and Bob Hubbard individually were clients of Seward & Kissel. Judge May said:

> The Court finds that, as pled, Defendant was actually aware that senior officers in Gray Financial, and specifically [that Mr. Gray and Mr. Hubbard] would rely on its legal advice. [Mr. Gray and Mr. Hubbard] were the ones who actually used the legal advice given to the corporate Plaintiff, and the representation letter did not otherwise limit the scope of S&K's representation to just the corporate Plaintiff [Gray Financial]. In fact, the representation letter never explicitly defines who "You," i.e. the client, is under the agreement. Therefore, the Court finds Gray and Hubbard may bring malpractice claims at this procedural posture.

Order, p. 12.

Consistent with this engagement, Seward & Kissel prepared offering documents for Fund II which were used in the marketing and sale to the Georgia pension funds at issue and with the reasonable expectation that doing so complied with all applicable law, specifically including the New Georgia Pension Law. To this end, Gray Financial provided Seward & Kissel with all information that the attorneys requested and did so accurately; at no time did Gray Financial refuse to provide Seward & Kissel with information that was requested. Fund II -- the Georgia Fund -- was to be largely based on the same structure that Seward & Kissel had created for Fund I, except to the extent specific attention was needed to assure compliance with the New Georgia Pension Law as to which Seward & Kissel was to be solely responsible. In turn, Gray paid Seward & Kissel over $130,000 for legal work and advice offered.

In the Unopposed Subpoena, Gray is not seeking documents already in their possession as produced to Gray in this case by the SEC. In fact, the only documents received from Seward & Kissel in this matter are offering documents, billing statements, and emails pertaining to Fund II. *See* List of Documents Produced by Gray's Counsel, attached hereto as **Exhibit 4**.[1] Rather, the Unopposed Subpoena seeks those documents Seward & Kissel has not produced to date as requested.

LEGAL ARGUMENT

1. Gray is Presumptively Entitled to the Contents of its Client File in the Possession, Custody or Control of Their Lawyers.

Seward & Kissel bears the burden of producing Gray's entire client file. Under Georgia law, a client owns the documents in its legal file, and the client is presumptively entitled to the documents within the file. *Swift, Currie, McGhee & Hiers v. Henry*, 276 Ga. 571, 573-574 (2003). Ownership of documents within a client file extends to all documents created by an attorney during the course of the representation. *Swift, Currie, McGhee & Hiers* 276 Ga. At 573-574. This is consistent with New York law, which also affords the client a presumption of access to the attorney's entire file. *Sage Realty Corp. v. Proskauer Rose Goetz & Mendelsohn L.L.P.*, 91 N.Y.2d 30, 37, 689 N.E.2d 879, 882 (1997). Indeed, as the court noted in *Swift, Currie, McGhee & Hiers*:

> An attorney's fiduciary relationship with a client depends, in large measure, upon full, candid disclosure. That relationship would be impaired if attorneys withheld any and all documents from their clients without good cause, especially where the documents were created at the client's behest. See State Bar of Georgia, Formal Advisory Opinion No. 87-5 (September 26, 1988) (attorney may

[1] Gray Financial attempted to reach an agreement with the Commission on the list of documents produced to Gray Financial by the Commission — an issue which should be undisputed; however, the Commission did not respond to Gray Financial's communications regarding this issue, but has since filed its brief agreeing with Gray Financial on the point.

> not, to the prejudice of client, withhold client's papers as security for unpaid fees).

Id.

In light of Seward & Kissel's duty to produce Gray's client file, the law firm's motion should be denied. The fact that Seward & Kissel here contests production of Gray's client file – something the law says that Gray has an unfettered right to have – speaks volumes regarding the law firm's hostility toward Gray. Seward & Kissel has shown no legitimate reason why the contents of the client file should be withheld, and for this reason alone, the motion should be denied.

2. **The Documents Sought in the Unopposed Subpoena Directly Pertain to Gray's Reliance on Counsel Defense, and Seward & Kissel Should Not Be Allowed to Restrict Discovery to Which Gray is Entitled.**

The Unopposed Subpoena seeks documents pertaining to Gray's former attorneys' advice and counsel, which Gray relied upon in the creation, formation, and marketing of Fund II and otherwise. The documents are critical to Gray's reliance on counsel defense. Indeed, Gray's relationship with its former legal counsel, in general, is at the heart of its defense. Seward & Kissel would like to limit discovery to those documents pertaining to Fund II alone, but the firm fails to consider that it is the entire relationship between Gray and Seward & Kissel that bears upon Gray's reliance on counsel defense. Moreover, as Fund I served as the model for Fund II, it can hardly be stated that Seward & Kissel's efforts related to Fund I are unrelated.

Contrary to what the law firm states, Gray is not seeking documents already in their possession. For example, the Unopposed Subpoena seeks Gray's client file and documents pertaining to Fund I, many of which Gray is presumptively entitled to receive. Moreover, the SEC's Subpoena for documents from Seward & Kissel requested "All Documents Concerning professional services rendered by Seward & Kissel during 2012 regarding: (a) the GrayCo

Alternative Partners II, LP and/or (b) Ga. Code Ann. § 47-20-87," which is more narrow than the documents sought in the Unopposed Subpoena. *See* SEC Subpoena to Seward & Kissel, June 16, 2014, attached hereto as **Exhibit 5**.

Gray should be allowed to develop its case, using all of the documents sought in the Unopposed Subpoena, and to establish its own reliance on counsel defense. Seward & Kissel's repeated statements in the Motion to Quash or Modify that the law firm will provide "responsive documents pertinent to the claims or defenses raised in the Administrative Proceeding" are confounding. First, Seward & Kissel is not a party to the case and has no knowledge of the facts or the defenses raised by Gray in the Administrative Proceeding. Gray should be allowed to develop its own case using the documents requested, each of which is directly tied to Gray's reliance on counsel defense. Second, Seward & Kissel has not – and cannot – show any of the documents requested go beyond Gray's legitimate defense in this matter. Third, to the extent Seward & Kissel claims that Gray did not rely on Seward & Kissel for legal advice regarding Fund II because Gray retained local Georgia attorneys to advise the company regarding Fund II, the claims are simply not true.

Furthermore, Seward & Kissel's specific responses and objections to producing documents offer no legitimate reason for withholding responsive documents. Most of the responses indicate that Seward & Kissel will produce documents pertaining to Fund II, which is narrower than the scope of the requests and would not provide a full picture of the entire relationship between Seward & Kissel and Gray, or Gray's reliance on its counsel. In response to Item 3, which seeks documents related to research and analysis performed regarding Georgia Code § 47-20-87, Seward & Kissel maintains that "they have already produced documents relating to services performed in respect of GrayCo Alt. II," without affirming whether all

responsive documents have been produced. In response to item 9, which requests *all draft and final versions* of Fund II offering documents, Seward & Kissel alleges all versions have been produced, despite the fact that only one version has been produced to the SEC. *See* **Exhibit 4**. It is inconceivable that Seward & Kissel only drafted one version of the offering documents before sending them to Gray, and Gray is entitled to the earlier versions of the documents. Seward & Kissel's response to item 11, which seeks document retention policies and procedures, is insufficient because the firm fails to provide any information about how long documents are retained. Moreover, Seward & Kissel also refuses to produce documents responsive to items 13 (continuing legal education courses and seminars by all attorneys providing legal counsel to Gray Financial) and 14 (documents reflecting supervision of all legal services provided by Ms. Segal to Gray Financial). However, in light of Gray's reliance on counsel defense, and in light of Seward & Kissel's representations regarding its experience and legal services it would perform, these documents should be ordered produced. Again, Seward & Kissel's failure to be forthcoming with documents that should be readily available to it underscores the law firm's hostile nature toward Gray and Gray's critical need for the documents sought in the Unopposed Subpoena.

Finally, any suggestion that the discovery sought in the Unopposed Subpoena is anything less than legitimate lacks credibility. Gray does have a standing federal court malpractice case pending against Seward & Kissel – a case that has now been legitimized by Judge May. Seward & Kissel has produced no discovery in that case – none whatsoever. Broad discovery under Fed. R. Civ. P. 26 will begin in that case in less than 30 days and counsel will be discussing an appropriate discovery schedule there.[2] Indeed, as Seward & Kissel states, Gray will have its

[2] Gray has retained entirely different counsel for the present matter and the malpractice action against Seward & Kissel.

discovery in that matter in due time. But for purposes of this separate and distinct administrative proceeding and the defenses raised in this matter, Gray should be allowed the opportunity to develop its case, which is set for hearing just over two months from now.

3. **Seward & Kissel Should Be Ordered Immediately to Produce Responsive Documents, all of Which Directly Pertain to Gray's Reliance on Counsel Defense.**

Seward & Kissel's motion states that they are prepared to produce responsive documents, but they have failed to make any effort to produce the documents, in contravention of the executed Subpoena. Seward & Kissel's failure to produce responsive documents betrays their intention to delay and obstruct discovery in this matter. If Seward & Kissel have responsive documents, they should be compelled to produce them immediately.

Counsel for Gray reached out to Seward & Kissel's legal counsel on November 18, 2016, to provide an open dialog for discussing and resolving any concerns regarding the Subpoena. *See* Email from Terry Weiss to Mark Hyland, Nov. 18, 2016, attached hereto as **Exhibit 6**. Seward & Kissel did not bother to respond to this overture, but instead filed the frivolous motion to quash, just nine minutes before the deadline the court set for Seward & Kissel to produce all responsive documents. Seward & Kissel wrongfully argues that Gray manufactured a 10-day turnaround purely to disadvantage them, but yet Seward & Kissel apparently missed the fact that the Subpoena is expressly an Order of this Court. More importantly, the hearing in this case is quickly approaching and Gray needs these documents immediately in order to put on an appropriate defense. Seward & Kissel has known, or should have known, that discovery of these documents would be forthcoming. Further, in light of Seward & Kissel's repeated assertions that most responsive documents have already been produced in the SEC investigation, it can hardly be argued that the Unopposed Subpoena is

unduly burdensome. Seward & Kissel has or should have the documents sought in the Unopposed Subpoena readily available and should avoid further attempts to delay production of the documents.

Finally, Seward & Kissel's request for 30 days to comply with the Subpoena is unreasonable and unacceptable in light of the fact that the documents are readily accessible to the Seward & Kissel and a 30-day time frame would create an undue hardship for Gray given that the documents sought go directly to Gray's reliance on counsel defense. Moreover, with less than two months remaining until the hearing, a 30-day time frame for compliance would hardly give Gray an appropriate amount of time to review the documents and prepare its case.

CONCLUSION

In sum, the Unopposed Subpoena seeks documents Gray is legally entitled to and documents which are critical to Gray's reliance on counsel defense. Accordingly, Seward & Kissel's Motion to Quash or Modify should be denied, and the law firm should immediately produce the requested documents.

Respectfully submitted this 7th day of December, 2016.

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Attorneys for Respondents

CERTIFICATE OF SERVICE

The undersigned counsel for Respondents Gray Financial Group, Inc., Laurence O. Gray, and Robert C. Hubbard, IV hereby certifies that he has served a copy of the foregoing **OPPOSITION TO MOTION TO QUASH OR MODIFY SUBPOENA ISSUED TO SEWARD & KISSEL LLP, ROBERT VAN GROVER, AND ALEXANDRA SEGAL** by electronic mail and by United Parcel Service, addressed as follows:

Secretary Brent J. Fields
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-1090

Honorable Cameron Elliot
Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-1090

Kristin W. Murnahan
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950 East Paces Ferry Road, Suite 900
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This 7th day of December, 2016.

Terry R. Weiss
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Attorneys for Respondents

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GRAY FINANCIAL GROUP, INC., *et al.*,	:	
Plaintiffs,	:	
v.	:	
SEWARD & KISSEL LLP,	:	CIVIL ACTION NO. 1:16-CV-1956-LMM
Defendant.	:	

ORDER

This case comes before the Court on Defendant's Motion to Dismiss [6]. After a review of the record, a hearing, and due consideration, the Court enters the following Order:

I. Factual Background[1]

Plaintiff Gray Financial Group, Inc. ("Gray Financial") is a registered investment advisory firm. Plaintiffs Laurence O. Gray ("Gray") and Robert C. Hubbard, IV ("Hubbard"), during the relevant time period, have been advisory affiliates of Gray Financial, and Gray was an investment adviser representative of Gray Financial registered with the State of Georgia.

[1] Unless otherwise indicated, all facts are drawn from the Complaint in the light most favorable to Plaintiffs consistent with the Court's task on a Motion to Dismiss.

Defendant Seward & Kissel ("S&K") is a law firm—principally located in New York—which specializes in securities and investment management, including the regulation of investment advisors. S&K represented Gray Financial for years and worked with the individual Plaintiffs directly. S&K partner Robert B. Van Grover—the co-head of S&K's Investment Management Group—was the relationship partner for Gray Financial, and he was responsible for providing or supervising all work for Plaintiffs. Van Grover holds himself out as a private fund specialist and regularly advises clients on compliance and regulatory matters. Alexandra Segal is a S&K Associate who holds herself out as a specialist in investment management, investment advisers, and private funds.

S&K advised Plaintiffs on Georgia law for many years. S&K was aware of Gray and Hubbard's roles at Gray Financial, and it knew its advice would directly and personally impact the individual Plaintiffs' ability to engage in the investment business. S&K knew that Gray Financial and the individual Plaintiffs could be subject to adverse regulatory consequences if it did not ensure its work complied with applicable state and federal laws.

In early 2011, Plaintiffs decided to create a fund of funds which would be marketed to pension funds and other large retirement systems. Plaintiffs employed S&K to handle the legal issues associated with the development of private investment funds and to assist with and advise on important business decisions.

On July 15, 2011, Gray Financial and S&K executed an Engagement Letter covering S&K's role in creating Gray Financial's new funds. The Letter was written to John C. Robinson, Gray Financial's Senior Managing Director, and stated in relevant part:

> 1. Description of Engagement. We will represent **you** in connection with the organization of one or more private investment funds (each a "Fund"). We will prepare a Fund's private offering memorandum, subscription agreement and other organizational documents. We will coordinate initial state blue sky filings for a Fund. We will also provide legal advice in connection with the offering of interests and structuring and business advice in connection with the offering. On an ongoing basis, we will advise you on regulatory and other matters for which you request our assistance.

Dkt. No. [1-1] at 40 (emphasis added). "You" is never defined in the letter, but the signature block states that agreement is to be "accepted and agreed to by: Gray & Company." Id. at 41.

In October 2011, Plaintiffs created a fund of funds known as "GrayCo Alternative Partners I, LP," or "Fund I." S&K drafted the private placement memorandum and other offering documents associated with Fund I.

In April 2012, Georgia changed its law to—for the first time—allow Georgia public pension plans to invest in "alternative investments." O.C.G.A. § 47-20-87. Because its experience with Fund I had been successful, Plaintiffs again turned to S&K for the development of a new alternative-investment fund for Georgia-based pension and large retirement systems—GrayCo Alternative Partners II, LP ("Fund II"). The July 2011 engagement letter between the parties also governed S&K's Fund II work.

In June and July 2012, Hubbard told S&K that Gray Financial wanted Fund II to be similar to Fund I except that Fund II would allow Georgia-based public pension plans to invest in compliance with O.C.G.A. § 47-20-87. On June 8, 2012, Plaintiffs directed S&K to draft the necessary offering documents and evaluate all related legal issues impacting the project. Plaintiffs also requested S&K review the new Georgia law and ensure that Fund II complied with it. S&K Associate Segal informed Plaintiffs that she would have Van Grover review the law and other issues related to Fund II.

Plaintiffs did not hear anything further from Van Grover regarding Fund II's compliance with Georgia law. While Plaintiffs believed Van Grover was supervising the Fund II work, in reality Van Grover devoted little to no time to the Fund II work and left Segal unsupervised.

On June 28 and July 9, 2012, Hubbard followed up with Segal, looking for the Fund II offering materials. Plaintiffs told Segal they needed the offering materials as soon as possible for upcoming marketing meetings with prospective pension fund investors. On July 9, 2012, Segal sent a Confidential Private Offering Memorandum, a Limited Partnership Agreement, and a Subscription Agreement with Instructions and Schedules (collectively, "Offering Documents").[2] Despite knowing that Hubbard intended to market Fund II using the Offering Documents, Segal did not inform Plaintiffs that the documents could

[2] Although not stated in the Complaint, it appears undisputed by the parties that these Offering Documents were marked "draft."

not be relied on as provided. Segal also failed to give any advice as to what marketing Plaintiffs could or could not do with the Offering Documents. Likewise, although being copied on Segal's email to Plaintiffs, Van Grover did not provide any advice regarding Fund II's marketing or adequately review the Offering Documents.

Based on the documents provided, Gray Financial marketed Fund II, believing that S&K would have advised Plaintiffs if their marketing plans were not compliant with state or federal laws. Problems arose based upon Plaintiffs' failure to include certain required notices and disclosures. S&K's failure to include Georgia-specific notices and disclosures left Plaintiffs unprotected in the event the Securities and Exchange Commission ("SEC") deemed Fund II noncompliant with Georgia law.

S&K also continued to advise Plaintiffs on legal issues related to Fund II's development, including the necessary steps to verify Fund II investors for Anti-Laundering purposes and whether Fund II could hold specific investments based on Plaintiffs' existing investments. S&K knew that Gray Financial was using the Offering Documents but failed to advise Plaintiffs regarding what they should do (or not do) to be compliant with all applicable laws.

Plaintiffs ultimately retained a subsequent law firm to handle issues related to Fund II, but they did not direct the new law firm to revisit the opinions and advice previously provided by S&K because Plaintiffs thought they were legally compliant.

In August 2013, the SEC advised Plaintiffs that it was conducting a confidential and non-public investigation into whether Fund II complied with applicable law. On May 21, 2015, the SEC instituted administrative proceedings against Plaintiffs via an Order Instituting Proceedings ("OIP"). The SEC contends that Plaintiffs violated federal securities laws because Fund II did not comply with O.C.G.A. § 47-20-87, the Georgia Public Pension Investment Law. Plaintiffs allege that the SEC's charges caused much of Plaintiffs' business to be destroyed. On February 19, 2015, Plaintiffs filed suit against the SEC, claiming that the SEC administrative proceeding was unconstitutional. Gray Financial Grp., Inc. v. SEC, Civ. A. No. 1:15-cv-0492-LMM (N.D. Ga. 2015).

On June 13, 2016, Plaintiffs filed this lawsuit, bringing claims against Defendant for (1) professional negligence; (2) breach of fiduciary duty; (3) simple negligence; (4) attorney fees; and (5) punitive damages. Defendant has moved to dismiss all the claims against it. Dkt. No. [6].

II. Legal Standard

Federal Rule of Civil Procedure 8(a)(2) requires that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). While this pleading standard does not require "detailed factual allegations," the Supreme Court has held that "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)).

To withstand a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Id. (quoting Twombly, 550 U.S. at 570). A complaint is plausible on its face when the plaintiff pleads factual content necessary for the court to draw the reasonable inference that the defendant is liable for the conduct alleged. Id. (citing Twombly, 550 U.S. at 556).

At the motion to dismiss stage, "all well-pleaded facts are accepted as true, and the reasonable inferences therefrom are construed in the light most favorable to the plaintiff." FindWhat Inv'r Grp. v. FindWhat.com, 658 F.3d 1282, 1296 (11th Cir. 2011) (quoting Garfield v. NDC Health Corp., 466 F.3d 1255, 1261 (11th Cir. 2006)). However, this principle does not apply to legal conclusions set forth in the complaint. Iqbal, 556 U.S. at 678.

III. Discussion

A. Consideration of Matters Outside the Pleadings

Defendant attached three classes of documents to its Motion which it contends this Court should consider: (1) Plaintiffs' Complaint against the SEC in another case before this Court; (2) the SEC's OIP against Plaintiffs; and (3) email communications between Plaintiffs and Defendant during the timeframe of the alleged malpractice. Plaintiffs do not object to this Court considering their allegations in the SEC Complaint or the OIP, but Plaintiffs do object to the Court's consideration of the emails. Pl. Resp., Dkt. No. [9] at 10-12.

When the Court considers matters outside the pleadings in a Rule 12(b)(6) motion, that motion is generally converted into a motion for summary judgment governed by Rule 56. Fed. R. Civ. P. 12(d). However, "[c]ourts may consider evidence extrinsic to the pleadings on a Rule 12(b)(6) motion to dismiss if (1) the documents are referred to in the complaint; (2) the evidence is central to the plaintiff's claim; and (3) the evidence's authenticity is not in question." U.S. ex rel. Saldivar v. Fresenius Med. Care Holdings, Inc., 906 F. Supp. 2d 1264, 1271 (N.D. Ga. 2012) (citing SFM Holdings, Ltd. v. Banc of America Sec., L.L.C., 600 F.3d 1334, 1337 (11th Cir. 2010), Brooks v. Blue Cross & Blue Shield, Inc., 116 F.3d 1364, 1368–69 (11th Cir. 1997)).

The Court finds that it would be inappropriate to consider these emails in this procedural posture. The emails only present a portion of the parties' communications, and it would be unfair and inappropriate to consider a one-sided presentation of evidence at the pleading stage. Therefore, the Court **STRIKES** Ex. B, Dkt. No. [6-3].[3]

B. Defendant's Motion to Dismiss

Defendant has moved to dismiss all of Plaintiffs' claims against it. The Court will consider each claim in turn.

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[3] Should the parties need to include the emails as exhibits to future documents—such as a motion for summary judgment—the Court will decide whether these emails are privileged at that juncture with the benefit of briefing on the subject. The parties should follow the Standing Order's process for sealing documents should either party elect to attach correspondence which Plaintiffs contend is privileged.

1. Legal Malpractice

To state a legal malpractice claim under Georgia law, a plaintiff must prove: "(1) employment of the defendant attorney, (2) failure of the attorney to exercise ordinary care, skill and diligence, and (3) that such negligence was the proximate cause of damage to the plaintiff." Roberts v. Langdale, 363 S.E.2d 591, 592 (Ga. Ct. App. 1987) (quoting Rogers v. Novell, 330 S.E.2d 392, 396 (Ga. Ct. App. 1985)). Defendant moves to dismiss Plaintiffs' legal malpractice claim for three reasons: (1) Plaintiffs have not plausibly pled breach of a duty; (2) Plaintiffs have not plausibly pled causation; and (3) individual Plaintiffs Gray and Hubbard were not clients of S&K and thus cannot bring malpractice claims against them.

a. Plaintiffs have pled Defendant breached a duty.

Defendant first argues that Plaintiffs do not allege Defendant provided them any incorrect legal advice or that Plaintiffs were unaware of the three relevant sales requirements that are at issue. Dkt. No. [22-1] at 12. However, the Court finds that Plaintiffs have pled that Defendant breached a duty. Plaintiffs pled that Defendant was retained to assure Fund II complied with Georgia law, and the SEC contends that it did not. Further, Plaintiffs have pled that despite knowing Plaintiffs would market Fund II with the Offering Documents, Defendant did not advise Plaintiffs that the documents could not be relied upon as provided or give any advice regarding what marketing Plaintiffs *could* do with the documents provided.

The Court also does not find persuasive Defendant's argument that because Plaintiffs knew O.C.G.A. § 47-20-87 existed, Defendant is immunized from all potential malpractice regarding that statute's sales requirements. Plaintiffs are not attorneys; the mere fact they knew a statute existed does not *ipso facto* mean they had an understanding of its legal implications. In fact, that Plaintiffs pointed Defendant to the relevant statute at issue actually cuts in favor of Plaintiffs, as it was clear that Defendant was on notice of the legal advice Plaintiffs sought. Therefore, the Court finds Plaintiffs have plausibly pled that Defendant breached a duty to them.

b. Plaintiffs have pled Defendant's negligence caused some of their harm.

Defendant next argues that Plaintiffs have not pled that S&K's purported negligence caused the SEC to investigate Plaintiffs and thus their resultant damages. Specifically, Defendants argue that Plaintiffs were already aware of O.C.G.A. § 47-20-87's sales requirements notwithstanding S&K's involvement and the OIP's allegation that Gray made a factual misrepresentation cannot be causally related to its representation.

For the reasons stated above, the Court does not find that Plaintiffs' knowledge of the relevant statute relieves Defendant of liability, as knowing a statute exists is different from knowing what the statute means. As well, the Court finds that Plaintiffs have plausibly pled that their marketing efforts are tied to the advice—or lack of advice—Defendant provided them.

However, the Court does not find that Defendant would be liable for Plaintiff Gray making a material misrepresentation of fact, as the OIP alleges Gray falsely stated that other public pensions had already invested in Fund II when they had not. OIP, Dkt. No. [6-4] ¶ 24. This OIP allegation is untethered from any alleged legal advice and solely relates to a then-existing fact which Gray as a lay person would have known. Accordingly, Defendant's Motion is **GRANTED, in part** as to the OIP's allegation that Gray misrepresented facts regarding committed Fund II investors but **DENIED, in part** as to the remaining allegations.

c. Plaintiffs have plausibly pled that individual Plaintiffs Gray and Hubbard were Defendant's clients.

Finally, Defendant argues that Plaintiffs Gray and Hubbard were not its clients and thus cannot bring legal malpractice claims against it. Under Georgia law,

> one who supplies information during the course of his business, profession, employment, or in any transaction in which he has a pecuniary interest has a duty of reasonable care and competence to parties who rely upon the information in circumstances in which the maker was manifestly aware of the use to which the information was to be put and intended that it be so used. But, crucially, such a duty extends only to those persons, or the limited class of persons who the **professional is actually aware will rely upon the information he prepared**, and thus professional liability for negligence of this kind does not extend to an unlimited class of persons whose presence is merely 'foreseeable.' This is true whether the claim is couched in terms of negligent misrepresentation, negligence, professional negligence, or professional malpractice . . . .

Douglas Asphalt Co. v. QORE, Inc., 657 F.3d 1146, 1158 (11th Cir. 2011) (internal citations omitted) (applying Georgia law).

The Court finds that, as pled, Defendant was actually aware that senior officers in Gray Financial, and specifically the individual Plaintiffs, would rely on its legal advice. The individual Plaintiffs were the ones who actually *used* the legal advice given to the corporate Plaintiff, and the representation letter did not otherwise limit the scope of S&K's representation to just the corporate Plaintiff. In fact, the representation letter never explicitly defines who "You," i.e. the client, is under the agreement. Therefore, the Court finds Gray and Hubbard may bring malpractice claims at this procedural posture.

d. Plaintiffs may pursue their special damages.

Defendant next argues that Plaintiffs' reputational claims are barred by the statute of limitations, O.C.G.A. § 9-3-33, and are also otherwise unrecoverable in legal malpractice cases. O.C.G.A. § 9-3-33 provides that "injuries to the reputation" "shall be brought within one year after the right of action accrues." Citing Hamilton v. Powell, Goldstein, Frazer & Murphy, 306 S.E.2d 340 (Ga. Ct. App. 1983), Defendant claims that because Plaintiffs argue their damages flow from the bad publicity caused by the SEC investigation—and the resultant client loss—Plaintiffs' damages are barred by the statute of limitations as this action was filed on May 12, 2016, over one year after the SEC's investigation became public, and general reputational damages are barred in malpractice cases.

Plaintiffs do not dispute that their case was not filed within one year of the investigation's publication, but rather argue that they do not seek general damages for reputational harm, but rather special damages, which they argue are not barred by the one-year statute of limitations. In Hamilton, 306 S.E.2d at 340, the plaintiff—Hamilton—filed a legal malpractice lawsuit against his former law firm after he was indicted for securities fraud and later acquitted. Hamilton sought money damages for "injury to his reputation, for mental and physical strain, for humiliation, for decreased capacity to earn money, for attorney fees incurred in the defense of the criminal case and for other general damages." Id. at 341. At trial, the parties stipulated that Hamilton had incurred $38,206 in special damages—the cost of defending himself in the criminal action—and that any further damages awarded would be general damages. Defendant argued that all general damages should be barred because (1) all reputational damages were barred by a one-year statute of limitations, and (2) any remaining general damages were barred by a two-year statute of limitations. The jury returned a $1,000,000 verdict, and the trial court reduced the award to $38,206—or Hamilton's special damages.

On appeal, Hamilton argued that (1) the statute of limitation did not run on his general damages because it did not commence until he had suffered "actual, recoverable tort damages," and (2) general damages for reputational damage, mental and physical strain, humiliation, and a decreased capacity to earn money should be recoverable legal malpractice damages. The Court of Appeals first

found that O.C.G.A. § 9-3-33 would apply to legal malpractice actions, and thus any action for general reputational damages had to be filed within one year. But, the Court found that regardless of whether the statute of limitations applied,[4] plaintiff "was unable to recover general damages for damage to reputation, mental and physical strain, humiliation, or decreased earning capacity in this case due to the absence of allegations and proof of physical injury or wanton, voluntary or intentional misconduct." Id. at 344. However, Hamilton was able to recover his legal expenses, or his special damages. Id.

Here, Plaintiffs do not seek "general damages"[5] for reputational harm, but rather seek "concrete special damages[6] in the form of financial injury through lost clients, lost business value, and exposure to significant civil monetary liability." Dkt. No. [9] at 23; see also Compl., Dkt. No. [1] at ¶¶ 57-63. Special damages are appropriate even following Hamilton, and thus the Court will not limit Plaintiffs' damages at this time. However, the Court does remain mindful of Hamilton's

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[4] The Court of Appeals did not hold when the cause of action would have accrued, but suggested that there was some authority which suggested it accrued when the malpractice itself occurred. Hamilton, 306 S.E.2d at 343.

[5] General damages are "Damages that the law presumes follow from the type of wrong complained of; specif., compensatory damages for harm that so frequently results from the tort for which a party has sued that the harm is reasonably expected and need not be alleged or proved." DAMAGES, Black's Law Dictionary (10th ed. 2014).

[6] Special damages are "Damages that are alleged to have been sustained in the circumstances of a particular wrong" and must be proved. DAMAGES, Black's Law Dictionary (10th ed. 2014).

holding, and thus Plaintiffs are cautioned that general reputational damages will not be allowed.

2. Plaintiffs' Alternative Claims.

Defendant next moves to dismiss Plaintiffs' breach of fiduciary duty and simple negligence claims as duplicative of their legal malpractice claim. Defendant further argues that Plaintiffs' simple negligence claim should be dismissed, as any evaluation of Defendant's conduct would necessary involve the Court to consider professional standards, and thus the simple negligence claim cannot stand.

Plaintiffs respond that their breach of fiduciary duty and simple negligence claims are *bona fide* alternative claims under Rule 8(d)(2). However, Plaintiffs do not respond to Defendant's argument that their simple negligence claim cannot stand because professional standards would dictate whether Defendant was negligent. See LR 7.1B, NDGa.

First, the Court finds that Plaintiffs' fiduciary duty claim is appropriate at this stage of the pleading, especially in light of the fact that it is disputed whether the individual Plaintiffs were Defendant's clients. See Fed. R. Civ. P. 8(d)(2); Both v. Frantz, 629 S.E.2d 427, 431 (Ga. Ct. App. 2006) (fiduciary duty claim not merely duplicative of legal malpractice in the event the jury finds no evidence of attorney-client relationship). However, the Court finds that Plaintiffs cannot bring simple negligence as an alternative claim because any assessment of Defendant's actions will require the Court to determine if Defendant met its

professional standard of care. Grady Gen. Hosp. v. King, 653 S.E.2d 367, 368 (Ga. Ct. App. 2007) ("If the professional's allegedly negligent action requires the actor to exercise professional skill and judgment to comply with a standard of conduct within the professional's area of expertise, the action is for professional negligence."). Defendant's Motion is thus **GRANTED, in part** as to Plaintiffs' simple negligence claim but **DENIED, in part** as to Plaintiffs' breach of fiduciary duty claim.

3. Attorney Fees and Punitive Damages.

Defendant next moves to dismiss Plaintiffs' attorney fees and punitive damages claims, arguing that these claims cannot stand if all other claims have been dismissed, and even if not, there is no evidence that Defendant was willful or wanton. At this stage of the litigation, the Court denies Defendant's request as whether Defendant acted in bad faith or was willful is a factual issue which is better resolved later in the proceeding. Arch Ins. Co. v. Bennett, CIV. A. 2:08-CV0075-RWS, 2009 WL 5175591, at *5 (N.D. Ga. Dec. 21, 2009) ("If Plaintiff is successful on any of the still surviving claims, it may be entitled to attorneys' fees."); Moore v. Federated Retail Holdings, Inc., 6:07-CV-1557-ORL-31GJK, 2008 WL 596109, at *2 (M.D. Fla. Feb. 29, 2008) ("Plaintiff's entitlement to punitive damages is a factual issue that need not be decided at [the motion to dismiss] stage of the litigation."). Accordingly, Defendant's Motion is **DENIED** as to attorney fees and punitive damages.

VI. Conclusion

Based on the foregoing, Defendant's Motion to Dismiss is **GRANTED, in part** and **DENIED, in part**. Plaintiffs' (1) legal malpractice claim based upon the OIP's allegation that Gray misrepresented facts regarding committed Fund II investors; and (2) simple negligence claim are **DISMISSED**. All other claims remain.[7]

IT IS SO ORDERED this 1st day of December, 2016.

LEIGH MARTIN MAY
UNITED STATES DISTRICT JUDGE

[7] Further, the Court **STRIKES** Ex. B, Dkt. No. [6-3], from the Record. Should the parties need to include the emails in future documents—such as a motion for summary judgment—the Court will decide whether these emails are privileged at that juncture with the benefit of briefing on the subject.

Exhibit 2

SEWARD & KISSEL LLP

Private Funds

Since 1949, with the establishment of what is considered to be the very first hedge fund, A.W. Jones & Company, Seward & Kissel has been recognized for its work relating to private investment funds, particularly in the "hedge fund" and alternative investment fund area.

Working with investment advisory firms, banks, brokerage firms and other financial institutions located throughout the U.S. and abroad, we guide funds and their advisers on the structure and organization of numerous investment vehicles that are exempt from registration under the Investment Company Act of 1940. We are able to leverage the Firm's broad private investment fund-related expertise to provide our clients with full service guidance on tax, ERISA, litigation, employment, trademark, bankruptcy, trusts & estates, corporate finance, capital markets, derivatives, commodities, business transactions and real estate matters. In addition, we are particularly active in advising our clients with respect to numerous types of investment opportunities, including: private equity, private debt and other business transactions; structured finance deals; distressed debt transactions; and activist investor plays.

Drawing on our extensive experience and industry contacts, we help our clients achieve practical business solutions within a complex legal and regulatory framework.

Our broad client base ranges from entrepreneurial start-ups to global financial institutions utilizing a wide range of strategies (including long-short equity, convertible, merger and statistical arbitrage, macro, distressed debt, funds-of-funds, commodity pools, managed futures products, private equity funds, LBO funds and venture capital funds) and structures (including partnerships, limited liability companies, offshore funds, group trusts and registered funds).

Overview

- One of the most experienced and extensive legal practices covering the private investment fund industry and consistently ranked as an industry leader in numerous reports and surveys
- A key practice area of the Firm with over 45 attorneys and 15 paralegals specializing in the investment management area serving clients throughout the U.S. and overseas
- Integrated Firm practice groups provide related legal services (see Legal Services Offered)
- Strong relationships with senior staff at service providers throughout the industry, including auditors, accountants, prime brokers, administrators and offshore counsel
- Extensive dealings with numerous funds-of-funds, institutional and seed capital investors, and third party marketers

• Knowledge, experience and industry contacts allow the Firm to act as an advisor and consultant not only on legal issues, but also on business and strategic matters

• Innovative practice area responsible for many pioneering developments in the industry

• Practice area partners are frequently quoted in industry publications and they often lecture and write on investment management topics

• Firm's substantial mutual fund practice provides the private funds practice with significant depth and overall knowledge of the entire investment management industry

• Washington, D.C. office complements New York City office by providing key input on legislative/regulatory issues

• Each project is staffed by a highly experienced and responsive core team, usually consisting of a partner, one or two associates and a paralegal

• Comprehensive, user-friendly fund documentation well-received throughout the industry by investors, managers and service providers

• Proactive legal practice provides clients with guidance on numerous legal and regulatory issues as they develop and submit comment letters to regulators on pending legislation that may impact the industry

Legal Services Offered

• Fund structuring, regulatory and ongoing compliance matters, including advice relating to: Securities Act of 1933; Securities Exchange Act of 1934; Investment Company Act of 1940; Investment Advisers Act of 1940; Commodity Exchange Act; FINRA Rules; and other applicable laws

• Federal and New York State tax analysis

• Management company structuring and planning, including: operating agreement issues; estate planning; employee ownership; vesting; multiple owners; compensation and deferred compensation arrangements; and other matters

• Counsel on employee compensation, retention, promotion, non-competition, confidentiality and termination

• Structuring for investments by ERISA plan assets

• Investor admittance issues, including: side letters; strategic investments; MFN clauses; and AML

• Regulatory filings and advice relating to: blue sky; entity formation/qualification; tax-related matters; CFTC/ NFA commodity pool operation and commodity trading advisor registration or exemption; SEC and state investment adviser registration; broker-dealer operations; disclosures under Forms 3, 4, 5, 13D, 13G, 13H, SLT and Schedule 13F; Hart Scott Rodino antitrust matters; and the establishment of large ownership positions in public or private companies and/or in regulated industries

• Transaction advice relating to: restricted securities, distressed debt, PIPEs and other equity and debt investments; structured finance; agreements concerning derivatives, prime brokerage, custody and related matters; repurchase agreements, secured/unsecured borrowings and other forms of

leverage; joint ventures, seed capital arrangements, venture capital transactions, mergers & acquisitions; and asset purchases and sales

- Corporate compliance/capital raising advice relating to: public offerings; exchange offers and redemptions; tender offers; proxy contests; restructurings; recapitalizations; board affiliations; Sarbanes-Oxley; and insider trading

- Counsel on trademark registration and enforcement

- Litigation advice relating to: securities; regulatory; trademark; contract; employment; bankruptcy and other matters

- Real estate advice, including: leases and sub-leases

- We also offer a wide range of compliance support services to our investment management clients. For additional information, please click here.

Exhibit 3

SEWARD & KISSEL LLP

ONE BATTERY PARK PLAZA
NEW YORK, NEW YORK 10004

TELEPHONE: (212) 574-1200
FACSIMILE: (212) 480-8421
WWW.SEWKIS.COM

1200 G STREET, N.W.
WASHINGTON, D.C. 20005
TELEPHONE: (202) 737-8833
FACSIMILE: (202) 737-5184

ROBERT B. VAN GROVER
Partner
212-574-1205
vangrover@sewkis.com

July 15, 2011

VIA EMAIL
john.robinson@egrayco.com

John C. Robinson, CTP
Senior Managing Director
Gray & Company
7000 Peachtree-Dunwoody Road
Building 5
Atlanta, Georgia 30328

Re: Engagement Letter

Dear John:

We are pleased that you have agreed to retain our firm as your counsel. This letter is intended to notify you of the basic terms of our engagement as required by Part 1215 of Title 22 of the Official Compilations of Codes, Rules and Regulations of the State of New York.

1. Description of Engagement. We will represent you in connection with the organization of one or more private investment funds (each a "Fund"). We will prepare a Fund's private offering memorandum, subscription agreement and other organizational documents. We will coordinate initial state blue sky filings for a Fund. We will also provide legal advice in connection with the offering of interests and structuring and business advice in connection with the offering. On an ongoing basis, we will advise you on regulatory and other matters for which you request our assistance.

2. Fee and Disbursement Policies and Billing Practices. Our standard fee and disbursement policies and billing practices are described in the Schedule hereto.

We request that you pay an advance retainer of $15,000 prior to our commencement of our work. We will generally bill you for legal fees and disbursements on a monthly basis.

3. Availability of Arbitration. You may have the right to have certain disputes regarding our fees arbitrated pursuant to Part 137 of the Rules of the Chief Administrator of the Appellate Divisions of the Supreme Court where that Part is applicable. Nothing in this letter is intended to alter our respective rights or obligations under Part 137.

4. Conflicts and Waiver. You understand that our firm represents Voyager Management, LLC. You understand that our firm will not provide legal services to you in connection with the negotiation of any agreement that it enters into with Voyager and Gray waives any conflict of interest of the firm in connection with the firm's representation of Voyager in such matter and related matters.

If you have any questions concerning the foregoing, please contact the undersigned.

Very truly yours,

Robert B. Van Grover

ACCEPTED AND AGREED TO BY:

Gray & Company

by:_____

Address:_____

_____

Date:_____, 2011

RVG:il

SCHEDULE

STANDARD FEE AND DISBURSEMENT POLICIES AND BILLING PRACTICES
EFFECTIVE 1/1/2011

1. Standard Hourly Rates. The Firm accounts for and generally bills the time recorded by its lawyers, paralegals and other time keepers at the standard hourly rates applicable to those time keepers. Effective January 1, 2011, hourly rates for partners generally range from $585 to $895; hourly rates for counsel generally range from $450 to $795; hourly rates for associates and senior attorneys generally range from $245 to $575 per hour and hourly rates for paralegals generally range from $105 to $305. The Firm seeks to staff our engagements with the appropriate personnel with a view to providing cost-effective services that meet the requirements of the particular engagement. A client may request information concerning the hourly rate of any time keeper assigned to the engagement from the attorney in charge or the Firm's Executive Director. The Firm typically adjusts its billing rates on an annual basis each January 1. However, the Firm reserves the right to change these rates prospectively at any time and to take other factors into account in determining the appropriate amount to bill for a particular engagement.

2. Disbursements. In addition to fees recorded by time keepers, the Firm also bills for certain other items in connection with the engagement, including: (a) all direct third party charges incurred including filing fees, court fees, corporate service firm fees, postage, courier charges, witness fees and the charges of outside service providers, including printing, duplicating or binding services, investigators, accountants, appraisers, correspondent counsel and other experts or professionals; (b) all travel and away from office food and lodging; (c) long distance phone use; (d) use of computerized research services; (e) domestic outgoing facsimile transmission at $1 for the first page and $.25 for each additional page; (f) international outgoing facsimile transmission at $1 for each page; (g) in office duplicating at $.20 per page and appropriate charges for in office document assembly, binding and delivery; and (h) an allowance or other reimbursement for food and home-bound taxi for personnel working outside of normal business hours in accordance with rules established by the Firm from time to time. The Firm reserves the right to change these disbursement policies prospectively at any time.

3. Billing Practices. The Firm encourages its lawyers to bill all recorded time and disbursements in connection with each engagement either monthly or quarterly, unless alternative arrangements are reflected in the engagement letter. Unless alternative arrangements are reflected in the engagement letter, all recorded time is expected to be billed at our standard hourly rates and all disbursements are to be billed in accordance with our standard disbursement policies unless the Firm determines that other factors warrant a different billing basis. Amounts shown due on our statements are due on receipt of those statements and should be paid promptly after receipt. The Firm expects its clients to raise any questions about its statements promptly on receipt of those statements. Any issues so raised that are not adequately and promptly addressed by the attorney in charge should be directed promptly in writing to the Firm, Attention: Executive Director.

4. [Optional] Wiring Instructions.

Citibank, N.A.
120 Broadway, New York, NY 10271
ABA # 021000089
Seward & Kissel Regular Account #371-19785

Exhibit 4

List of Documents Produced by Seward & Kissel LLP
to Securities & Exchange Commission

DOC ID SEC-NGDefense-EPROD	DOC BEG	DOC END	DATE	DESCRIPTION
920297	SK_0133	SK_0173	7/9/2012	Confidential Private Offering Memorandum / GrayCo Alternative Partners II, LP
963643	SK_0251	SK_0254	6/28/2012 - 8/6/2012	Email Exchange between B. Hubbard and A. Segal discussing GCAPII structure, disclosures and documentation [CONFIDENTIAL]
963644	SK_0255	SK_0262	7/31/2012, 10/31/2012	S&K Statements for Legal Services to Gray & Co for formation and advice related to GCAPII [CONFIDENTIAL]
963645 963646	SK_0001	SK_0008	6/8/2012 6/17/2014	B. Hubbard Email to A. Segal re: proceeding with GCAPII, requesting draft docs and structure (forwarded by A. Segal to herself on 6/17/2014 with copy of Senate Bill 402 attached)
963647	SK_0009	SK_0010	6/8/2012	A. Segal response to Hubbard email regarding proceeding with GCAPII and structure
963648	SK_0011	SK_0013	6/14/2012-6/18/2012	Email Exchange between B. Hubbard and A. Segal discussing GCAPII structure and Georgia requirements
963649	SK_0014	SK_0016	6/18/2012 - 7/4/2012	Email exchange between P. Pront and A. Segal exchanging and discussing draft GrayCo Alternative Partners II, LP offering documents
963650	SK_0017	SK_0017	7/9/2012	A. Segal email to B. Hubbard (cc: B. VanGrover) forwarding offering docs for GCAPII
963651	SK_0018	SK_0067	7/9/2012	GCAPII Limited Partnership Agreement
963652	SK_0068	SK_0110	7/9/2012	Confidential Private Offering Memorandum / GrayCo Alternative Partners II, LP
963653	SK_0111	SK_0132	7/9/2012	Subscription Instructions and Agreement / GrayCo Alternative Partners II, LP
963654	SK_0174	SK_0222	7/9/2012	Limited Partnership Agreement GCAPII

List of Documents Produced by Seward & Kissel LLP
to Securities & Exchange Commission

963655	SK_0223	SK_0244	7/9/2012	Subscription Instructions and Agreement / GrayCo Alternative Partners II, LP
963656	SK_0245	SK_0246	3/25/2014	Email exchange between M. Hyland and T. Weiss
963657	SK_0247	SK_0250	3/24/2014	Email from T. Weiss to R. Van Grover, K. Gostinger, A. Segal and copying M. Hyland summarizing conference call regarding Gray & Co.

Exhibit 5

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
ATLANTA REGIONAL OFFICE
950 East Paces Ferry Road, Suite 900
Atlanta, Georgia 30326-1382

PETER J. DISKIN
Assistant Regional Director, Enforcement

Telephone : (404) 842-7631
Facsimile : (404) 842-7666

June 16, 2014

Via Electronic Mail and UPS

Custodian of Records
Seward & Kissel LLP
c/o Robert B. Van Grover, Esq.
One Battery Park Plaza
New York, NY 10004

Re: In the Matter of Gray Financial Group (A-3486)

Dear Sir or Madam:

The staff of the United States Securities and Exchange Commission is conducting an investigation in the matter identified above. The enclosed subpoena has been issued to you as part of this investigation. The subpoena requires you to provide us documents and give sworn testimony. Please note that if you comply with the instructions producing documents, you will not need to appear for testimony at the indicated time.

Please read the subpoena and this letter carefully. This letter answers some questions you may have about the subpoena. You should also read the enclosed SEC Form 1662. You must comply with the subpoena. You may be subject to a fine and/or imprisonment if you do not.

Producing Documents

What materials do I have to produce?

The subpoena requires you to provide us the documents described in the attachment to the subpoena. You must provide these documents by June 30, 2014. The attachment to the subpoena defines some terms (such as "document") before listing what you must provide.

You should produce each and every document in your possession, custody, or control, including any documents that are not in your immediate possession but that you have the ability to obtain. All responsive documents shall be produced as they are kept in the usual course of business, and shall be organized and labeled to correspond with the numbered paragraphs in the subpoena attachment. In that regard, documents should be produced in a unitized manner, *i.e.*, delineated with staples or paper clips to identify the document boundaries.

Documents responsive to this subpoena may be in electronic or paper form. Electronic documents such as email should be produced in accordance with the attached document entitled SEC Data Delivery Standards (the "Standards"). If you have any questions concerning the production of documents in an electronic format, please contact me as soon as possible but in any event before producing documents. **All electronic documents responsive to the document subpoena, including all metadata, must also be secured and retained in their native software format and stored in a safe place.** The staff may later request or require that you produce the native format.

For documents in paper format, you may send the originals, or, if you prefer, you may send copies of the originals. The Commission cannot reimburse you for the copying costs. If you are sending copies, the staff requests that you scan (rather than photocopy) hard copy documents and produce them in an electronic format consistent with the Standards. Alternatively, you may send us photocopies of the documents in paper format. **If you choose to send copies, you must secure and retain the originals and store them in a safe place.** The staff may later request or require that you produce the originals.

Whether you scan or photocopy documents, the copies must be identical to the originals, including even faint marks or print. Also, please note that if copies of a document differ in any way, they are considered separate documents and you must send each one. For example, if you have two copies of the same letter, but only one of them has handwritten notes on it, you must send both the clean copy and the one with notes.

If you do send us scanned or photocopied documents, please put an identifying notation on each page of each document to indicate that you produced it, and number the pages of all the documents submitted. (For example, if Jane Doe sends documents to the staff, she may number the pages JD-1, JD-2, JD-3, etc., in a blank corner of the documents.) Please make sure the notation and number do not conceal any writing or marking on the document. If you send us originals, please do not add any identifying notations.

In producing a photocopy of an original document that contains post-it(s), notation flag(s), or other removable markings or attachments which may conceal all or a portion of the markings contained in the original document, photocopies of the original document both with and without the relevant post-it(s), notation flag(s), or removable markings or attachments should be produced.

Do I need to send anything else?

You should enclose a list briefly describing each item you send. The list should state to which numbered paragraph(s) in the subpoena attachment each item responds.

Please include a cover letter stating whether you believe you have met your obligations under the subpoena by searching carefully and thoroughly for everything called for by the subpoena, and sending it all to us.

Please also provide a narrative description describing what you did to identify and collect documents responsive to the subpoena. At a minimum, the narrative should describe:

- who searched for documents;
- who reviewed documents found to determine whether they were responsive;
- what sources were searched (e.g., computer files, CDs, DVDs, thumb drives, flash drives, online storage media, hard copy files, diaries, datebooks, planners, filing cabinets, home office, work office, voice mails, home email, webmail, work email, backup tapes or other media);
- what third parties, if any, were contacted to obtain responsive documents (e.g., phone companies for phone records, brokerage firms for brokerage records); and
- where the original electronic and hardcopy documents are maintained and by whom.

What if I do not send everything described in the attachment to the subpoena?

The subpoena requires you to send all the materials described in it. If, for any reason – including a claim of attorney-client privilege – you do not produce something called for by the subpoena, you should submit a list of what you are not producing. The list should describe each item separately, noting:

- its author(s);
- its date;
- its subject matter;
- the name of the person who has the item now, or the last person known to have it;
- the names of everyone who ever had the item or a copy of it, and the names of everyone who was told the item's contents;
- the reason you did not produce the item; and
- the specific request in the subpoena to which the document relates.

If you withhold anything on the basis of a claim of attorney-client privilege or attorney work product protection, you should identify the attorney and client involved. If you withhold anything on the basis of the work product doctrine, you should also identify the litigation in anticipation of which the document was prepared.

If documents responsive to this subpoena no longer exist because they have been lost, discarded, or otherwise destroyed, you should identify such documents and give the date on which they were lost, discarded or destroyed.

Where should I send the materials?

Peter J. Diskin, Attn: Kimberly Fleming
U.S. Securities and Exchange Commission
Atlanta Regional Office
950 East Paces Ferry Road, Suite 900
Atlanta, GA 30326

Testifying

Where and when do I testify?

The subpoena requires you to come to the Commission's offices at 950 East Paces Ferry Road, Suite 900 Atlanta, GA 30326 at 9:30 a.m. on July 2, 2014 to testify under oath in the matter identified on the subpoena. **But, as noted above, if you comply with all the directions for producing documents, we will not require you to testify at the indicated time. We may require your testimony later, however.**

Other Important Information

May I have a lawyer help me respond to the subpoena?

Yes. You have the right to consult with and be represented by your own lawyer in this matter. Your lawyer may also advise and accompany you when you testify. We cannot give you legal advice.

What will the Commission do with the materials I send and the testimony I provide?

The enclosed SEC Form 1662 includes a List of Routine Uses of information provided to the Commission. This form has other important information for you. Please read it carefully.

Has the Commission determined that anyone has done anything wrong?

This investigation is a non-public, fact-finding inquiry. We are trying to determine whether there have been any violations of the federal securities laws. The investigation and the subpoena do not mean that we have concluded that you or anyone else has broken the law. Also, the investigation does not mean that we have a negative opinion of any person, entity or security.

Important Policy Concerning Settlements

Please note that, in any matter in which enforcement action is ultimately deemed to be warranted, the Division of Enforcement will not recommend any settlement to the Commission unless the party wishing to settle certifies, under penalty of perjury, that all documents responsive to Commission subpoenas and formal and informal document requests in this matter have been produced.

I have read this letter, the subpoena, and the SEC Form 1662, but I still have questions. What should I do?

If you have any other questions, you may call me at the telephone number above. If you are represented by a lawyer, you should have your lawyer contact me.

Sincerely,

Peter J. Diskin
Assistant Regional Director
Division of Enforcement

Enclosures: Subpoena and Attachment
SEC Data Delivery Standards
SEC Form 1662

SUBPOENA

UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

In the Matter of In the Matter of Gray Financial Group (A-3486)

To: Custodian of Records
Seward & Kissel LLP
c/o Robert B. Van Grover, Esq.
One Battery Park Plaza
New York, NY 10004

☒ **YOU MUST PRODUCE** everything specified in the Attachment to this subpoena to officers of the Securities and Exchange Commission, at the place, date and time specified below:

Securities and Exchange Commission, Atlanta Regional Office, 950 East Paces Ferry Road, Suite 900 Atlanta GA, 30326, no later than June 30, 2014 at 5:00 p.m.

☒ **YOU MUST TESTIFY** before officers of the Securities and Exchange Commission, at the place, date and time specified below:

Securities and Exchange Commission, Atlanta Regional Office, 950 East Paces Ferry Road, Suite 900 Atlanta GA, July 2, 2014 at 9:30 a.m.

FEDERAL LAW REQUIRES YOU TO COMPLY WITH THIS SUBPOENA.
Failure to comply may subject you to a fine and/or imprisonment.

By: _____ Date: June 16, 2014

Peter J. Diskin, Assistant Regional Director
U.S. Securities and Exchange Commission
950 East Paces Ferry Road, Suite 900
Atlanta, GA 30326

I am an officer of the U.S. Securities and Exchange Commission authorized to issue subpoenas in this matter. The Securities and Exchange Commission has issued a formal order authorizing this investigation under: 20(a) of the Securities Act of 1933, Section 21(a) of the Securities Exchange Act of 1934, and Section 209(a) of the Investment Advisers Act of 1940.

NOTICE TO WITNESS: If you claim a witness fee or mileage, submit this subpoena with the claim voucher.

SUBPOENA ATTACHMENT FOR CUSTODIAN OF RECORDS, SEWARD & KISSEL LLP
June 16, 2014
In the Matter of Gray Financial Group (A-3486)

A. **Definitions**

As used in this subpoena, the words and phrases listed below shall have the following meanings:

1. "Seward & Kissel LLP" means the entity doing business under the name "Seward & Kissel LLP" including parents, subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, general partners, limited partners, partnerships and aliases, code names, or trade or business names used by any of the foregoing.

2. "Document" shall include, but is not limited to, any written, printed, or typed matter including, but not limited to all drafts and copies bearing notations or marks not found in the original, letters and correspondence, interoffice communications, slips, tickets, records, worksheets, financial records, accounting documents, bookkeeping documents, memoranda, reports, manuals, telephone logs, telegrams, facsimiles, messages of any type, telephone messages, voice mails, tape recordings, notices, instructions, minutes, summaries, notes of meetings, file folder markings, and any other organizational indicia, purchase orders, information recorded by photographic process, including microfilm and microfiche, computer printouts, spreadsheets, and other electronically stored information, including but not limited to writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations that are stored in any medium from which information can be retrieved, obtained, manipulated, or translated.

3. "Concerning" means directly or indirectly, in whole or in part, describing, constituting, evidencing, recording, evaluating, substantiating, concerning, referring to, alluding to, in connection with, commenting on, relating to, regarding, discussing, showing, describing, analyzing or reflecting.

4. To the extent necessary to bring within the scope of this subpoena any information or Documents that might otherwise be construed to be outside its scope:

   a. the word "or" means "and/or";
   b. the word "and" means "and/or";
   c. the functional words "each," "every" "any" and "all" shall each be deemed to include each of the other functional words;
   d. the masculine gender includes the female gender and the female gender includes the masculine gender; and
   e. the singular includes the plural and the plural includes the singular.

B. **Instructions**

1. Unless otherwise specified, the subpoena calls for production of the original Documents and all copies and drafts of same. Documents responsive to this subpoena may be in electronic or paper form. Electronic Documents such as email should be produced in accordance with the attached Document entitled SEC Data Delivery Standards. All electronic Documents responsive to the Document subpoena, including all metadata, should also be produced in their native software format.

2. For Documents in paper format, you may send the originals, or, if you prefer, you may send copies of the originals. The Commission cannot reimburse you for the copying costs. If you are sending copies, the staff requests that you scan (rather than photocopy) hard copy Documents and produce them in an electronic format consistent with the SEC Data Delivery Standards. Alternatively, you may send us photocopies of the Documents in paper format. If you choose to send copies, you must secure and retain the originals and store them in a safe place. The staff may later request or require that you produce the originals.

3. Whether you scan or photocopy Documents, the copies must be identical to the originals, including even faint marks or print. Also, please note that if copies of a Document differ in any way, they are considered separate Documents and you must send each one. For example, if you have two copies of the same letter, but only one of them has handwritten notes on it, you must send both the clean copy and the one with notes.

4. In producing a photocopy of an original Document that contains post-it(s), notation flag(s), or other removable markings or attachments which may conceal all or a portion of the markings contained in the original Document, photocopies of the original Document both with and without the relevant post-it(s), notation flag(s), or removable markings or attachments should be produced.

5. Documents should be produced as they are kept in the ordinary course of business or be organized and labeled to correspond with the categories in this request. In that regard, Documents should be produced in a unitized manner, i.e., delineated with staples or paper clips to identify the Document boundaries.

6. Documents should be labeled with sequential numbering (bates-stamped).

7. The scope of any given request should not be limited or narrowed based on the fact that it calls for Documents that are responsive to another request.

8. You are not required to produce exact duplicates of any Documents that have been previously produced to the Securities and Exchange Commission staff in

connection with this matter. If you are not producing Documents based upon a prior production, please identify the responsive Documents that were previously produced.

9. This subpoena covers all Documents in or subject to your possession, custody or control, including all Documents that are not in your immediate possession but that you have the ability to obtain, that are responsive, in whole or in part, to any of the individual requests set forth below. If, for any reason – including a claim of attorney-client privilege – you do not produce something called for by the request, you should submit a list of what it is not producing. The list should describe each item separately, noting:

   a. its author(s);
   b. its date;
   c. its subject matter;
   d. the name of the Person who has the item now, or the last Person known to have it;
   e. the names of everyone who ever had the item or a copy of it, and the names of everyone who was told the item's contents;
   f. the basis upon which you are not producing the responsive Document;
   g. the specific request in the subpoena to which the Document relates;
   h. the attorney(s) and the client(s) involved; and
   i. in the case of the work product doctrine, the litigation for which the Document was prepared in anticipation.

10. If Documents responsive to this subpoena no longer exist because they have been lost, discarded, or otherwise destroyed, you should identify such Documents and give the date on which they were lost, discarded or destroyed.

C. Documents to be Produced

1. All Documents Concerning professional services rendered by Seward & Kissel LLP during 2012 regarding:

   a. the GrayCo Alternative Partners II, LP and/or

   b. Ga. Code Ann. § 47-20-87.

U.S. Securities and Exchange Commission

Data Delivery Standards

The following outlines the technical requirements for producing scanned paper collections, email and electronic document/native file collections to the Securities and Exchange Commission. The SEC uses Recommind® *Axcelerate* v4.5 software to search, review and retrieve documents produced to us in electronic format. Any proposed production in a format other than those identified below, the proposed use of *Predictive Coding*, *computer-assisted review* or *technology-assisted review* (TAR), or the use of de-duplication during the processing of documents, must be discussed with and approved by the legal and technical staff of the Division of Enforcement (ENF) and the methodology must be disclosed in the cover letter. We appreciate your efforts in assisting us by preparing data in a format that will enable our staff to use the data efficiently.

General Instructions

1. A cover letter should be included with each production. *This letter MUST be imaged and provided as the first record in the load file.*
   The following information should be included in the letter:
   a. List of each piece of media (hard drive, thumb drive, DVD or CD) included in the production by the unique number assigned to it, and readily apparent on the physical media.
   b. List of custodians, identifying:
      1) The Bates range (and any gaps therein) for each custodian
      2) Total number of records for each custodian
      3) Total number of images for each custodian
      4) Total number of native files for each custodian
   c. List of fields in the order in which they are listed in the data file.
   d. Time zone in which emails were standardized during conversion (email collections only).
2. Documents created or stored electronically MUST be produced in their original electronic format, not printed to paper or PDF.
3. Data can be produced on CD, DVD or hard drive; *use the media requiring the least number of deliverables.*
4. Label all media with the following:
   a. Case number
   b. Production date
   c. Bates range
   d. Disk number (1 of X), if applicable

5. Organize productions by custodian, unless otherwise instructed. All documents from an individual custodian should be confined to a single load file.
6. All productions should be checked and produced free of computer viruses.
7. All produced media should be encrypted.
8. Passwords for documents, files, compressed archives and encrypted media should be provided separately either via email or in a separate cover letter from the data.

Delivery Formats

1. **Structured Data - *Concordance*® Format**

The SEC prefers that all data be produced in structured format prepared for *Concordance*®. All scanned paper, email and native file collections should be converted / processed to TIFF files, Bates numbered, and include fully searchable text. Additionally, email and native file collections should include linked native files.

Bates numbering documents:
The Bates number must be a unique, consistently formatted identifier, i.e., an alpha prefix along with a fixed length number for EACH custodian, i.e., ABC0000001. This format MUST remain consistent across all production numbers for each custodian. The number of digits in the numeric portion of the format should not change in subsequent productions, nor should spaces, hyphens, or other separators be added or deleted.

The following describes the specifications for producing image-based productions to the SEC and the load files required for *Concordance*® and *Concordance Image*®.

1. **Images**
   a. Images should be single-page, Group IV TIFF files, scanned at 300 dpi.
   b. File names cannot contain embedded spaces.
   c. Bates numbers should be endorsed on the lower right corner of all images.
   d. The number of TIFF files per folder should not exceed 500 files.
   e. Rendering to images PowerPoint, AUTOCAD/ photographs and Excel files:
      1) PowerPoint: All pages of the file should be scanned in full slide image format, with any speaker notes following the appropriate slide image.
      2) AUTOCAD/ photographs: If possible, files should be scanned to single page JPEG (.JPG) file format.
      3) Excel: TIFF images of spreadsheets are not useful for review purposes; because the imaging process can often generate thousands of pages per file, a placeholder image, named by the *IMAGEID* of the file, may be used instead.

2. ***Concordance Image*® Cross-Reference File**

The image cross-reference file is needed to link the images to the database. It is a comma-delimited file consisting of seven fields per line. There must be a line in the cross-reference file for every image in the database.

The format is as follows:
ImageID,VolumeLabel,ImageFilePath,DocumentBreak,FolderBreak,BoxBreak,PageCount

ImageID: The unique designation that *Concordance*® and *Concordance Image*® use to identify an image. *Note: This ImageID key must be a unique and fixed length number. This number will be used in the .DAT file as the ImageID field that links the database to the images. The format of this image key must be consistent across all productions. We recommend that the format be a 7 digit number to allow for the possible increase in the size of a production.*

VolumeLabel: Optional

ImageFilePath: The full path to the image file.

DocumentBreak: The letter "Y" denotes the first page of a document. If this field is blank, then the page is not the first page of a document.

FolderBreak: Leave empty

BoxBreak: Leave empty

PageCount: Optional

Sample

```
IMG0000001,,E:\001\IMG0000001.TIF,Y,,,
IMG0000002,,E:\001\IMG0000002.TIF,,,,
IMG0000003,,E:\001\IMG0000003.TIF,,,,
IMG0000004,,E:\001\IMG0000003.TIF,Y,,,
IMG0000005,,E:\001\IMG0000003.TIF,Y,,,
IMG0000006,,E:\001\IMG0000003.TIF,,,,
```

3. ***Concordance*® Data File**

The data file (.DAT) contains all of the fielded information that will be loaded into the *Concordance*® database.

a. The first line of the .DAT file must be a header row identifying the field names.

b. The .DAT file must use the following *Concordance*® default delimiters:

Comma	¶	ASCII character (020)
Quote	þ	ASCII character (254)
Newline	®	ASCII character (174)

c. Date fields should be provided in the format: mm/dd/yyyy

d. All attachments should sequentially follow the parent document/email.

e. All metadata associated with email, audio files, and native electronic document collections must be produced (see pages 4-5).

f. The .DAT file for scanned paper collections must contain, at a minimum, the following fields:

1) FIRSTBATES: Beginning Bates number
2) LASTBATES: Ending Bates number
3) IMAGEID: Image Key field
4) CUSTODIAN: Individual from whom the document originated
5) OCRTEXT: Optical Character Recognition (file path, or text)

Sample of .DAT file (when text files are provided separately)

```
þFIRSTBATESþ¶þLASTBATESþ¶þIMAGEIDþ¶þCUSTODIANþ¶þOCRTEXTþ
þPC00000001þ¶þPC00000002þ¶þIMG0000001þ¶þSmith, Johnþ¶þE:\TEXT\PC00000001.TXTþ
þPC00000003þ¶þPC00000003þ¶þIMG0000003þ¶þSmith, Johnþ¶þE:\TEXT\PC00000003.TXTþ
þPC00000004þ¶þPC00000005þ¶þIMG0000004þ¶þSmith, Johnþ¶þE:\TEXT\PC00000004.TXTþ
```

Sample of .DAT file (with text)

```
þFIRSTBATESþ¶þLASTBATESþ¶þIMAGEIDþ¶þCUSTODIANþ¶þOCRTEXTþ
þPC00000001þ¶þPC00000002þ¶þIMG0000001þ¶þSmith, Johnþ¶þ*** IMG0000001 ***®®The world of
investing is fascinating and complex, and it can be very fruitful. But unlike the banking
world, where deposits are guaranteed by the federal government, stocks, bonds and other
securities can lose value. There are no guarantees. That's why investing is not a spectator
sport. By far the best way for investors to protect the money they put into the securities
markets is to do research and ask questions.®® *** IMG0000002 ***®®The laws and rules that
govern the securities industry in the United States derive from a simple and
straightforward concept: all investors, whether large institutions or private individuals,
should have access to certain basic facts about an investment prior to buying it, and so
long as they hold it. To achieve this, the SEC requires public companies to disclose
meaningful financial and other information to the public. This provides a common pool of
knowledge for all investors to use to judge for themselves whether to buy, sell, or hold a
particular security. Only through the steady flow of timely, comprehensive, and accurate
information can people make sound investment decisions.þ
þPC00000003þ¶þPC00000003þ¶þIMG0000003þ¶þSmith, Johnþ¶þ***IMG0000003 ***®®The result of this
information flow is a far more active, efficient, and transparent capital market that
facilitates the capital formation so important to our nation's economy.þ
þPC00000004þ¶þPC00000005þ¶þIMG0000004þ¶þSmith, Johnþ¶þ *** IMG0000004 ***®®To insure that
this objective is always being met, the SEC continually works with all major market
participants, including especially the investors in our securities markets, to listen to
their concerns and to learn from their experience.®® *** IMG0000005 ***®®The SEC oversees
the key participants in the securities world, including securities exchanges, securities
brokers and dealers, investment advisors, and mutual funds. Here the SEC is concerned
primarily with promoting the disclosure of important market-related information,
maintaining fair dealing, and protecting against fraud.þ
```

The text and metadata of Email and the attachments, and native file document collections should be extracted and provided in a .DAT file using the field definition and formatting described below:

Field Name	Sample Data	Description
FIRSTBATES	EDC0000001	First Bates number of native file document/email
LASTBATES	EDC0000001	Last Bates number of native file document/email **The LASTBATES field should be populated for single page documents/emails.
ATTACHRANGE	EDC0000001 - EDC0000015	Bates number of the first page of the parent document to the Bates number of the last page of the last attachment "child" document
BEGATTACH	EDC0000001	First Bates number of attachment range
ENDATTACH	EDC0000015	Last Bates number of attachment range
PARENT_BATES	EDC0000001	First Bates number of parent document/Email **This PARENT_BATES field should be populated in each record representing an attachment "child" document
CHILD_BATES	EDC0000002; EDC0000014	First Bates number of "child" attachment(s); can be more than one Bates number listed depending on the number of attachments **The CHILD_BATES field should be populated in each record representing a "parent" document
CUSTODIAN	Smith, John	Email: mailbox where the email resided Native: Individual from whom the document originated
FROM	John Smith	Email: Sender Native: Author(s) of document **semi-colon should be used to separate multiple Entries
TO	Coffman, Janice; LeeW [mailto:LeeW@MSN.com]	Recipient(s) **semi-colon should be used to separate multiple Entries
CC	Frank Thompson [mailto: frank_Thompson@cdt.com]	Carbon copy recipient(s) **semi-colon should be used to separate multiple Entries
BCC	John Cain	Blind carbon copy recipient(s) **semi-colon should be used to separate multiple Entries
SUBJECT	Board Meeting Minutes	Email: Subject line of the email Native: Title of document (if available)
DATE_SENT	10/12/2010	Email: Date the email was sent Native: (empty)
TIME_SENT	07:05 PM	Email: Time the email was sent Native: (empty) **This data must be a separate field and cannot be combined with the DATE_SENT field
LINK	D:\001\EDC0000001.msg	Hyperlink to the email or native file document **The linked file must be named per the FIRSTBATES number
MIME_TYPE	MSG	The content type of an Email or native file document as identified/extracted from the header
FILE_EXTEN	MSG	The file type extension representing the Email or native file document; will vary depending on the email format
AUTHOR	John Smith	Email: (empty) Native: Author of the document
DATE_CREATED	10/10/2010	Email: (empty) Native: Date the document was created

TIME_CREATED	10:25 AM	Email: (empty) Native: Time the document was created **This data must be a separate field and cannot be combined with the DATE_CREATED field
DATE_MOD	10/12/2010	Email: (empty) Native: Date the document was last modified
TIME_MOD	07:00 PM	Email: (empty) Native: Time the document was last modified **This data must be a separate field and cannot be combined with the DATE_MOD field
DATE_ACCESSD	10/12/2010	Email: (empty) Native: Date the document was last accessed
TIME_ACCESSD	07:00 PM	Email: (empty) Native: Time the document was last accessed **This data must be a separate field and cannot be combined with the DATE_ACCESSD field
PRINTED_DATE	10/12/2010	Email: (empty) Native: Date the document was last printed
FILE_SIZE	5,952	Size of native file document/email in KB
PGCOUNT	1	Number of pages in native file document/email
PATH	J:\Shared\SmithJ\October Agenda.doc	Email: (empty) Native: Path where native file document was stored including original file name.
INTFILEPATH	Personal Folders\Deleted Items\Board Meeting Minutes.msg	Email: original location of email including original file name. Native: (empty)
INTMSGID	<000805c2c71b75977050cb8306d1@MSN>	Email: Unique Message ID Native: (empty)
MD5HASH	d131dd02c5e6eec4693d9a0698aff95c 2fcab58712467eab4004583eb8fb7f89	MD5 Hash value of the document.
TEXT	From: Smith, John Sent: Tuesday, October 12, 2010 07:05 PM To: Coffman, Janice Subject: Board Meeting Minutes Janice, Attached is a copy of the September Board Meeting Minutes and the draft agenda for October. Please let me know if you have any questions. John Smith Assistant Director Information Technology Phone: (202) 555-1111 Fax: (202) 555-1112 Email: jsmith@xyz.com	Extracted text of the native file document/email

4. Text
Searchable text of the entire document must be provided for every record, at the document level.

a. Extracted text must be provided for all documents that originated in electronic format. The text files should include page breaks that correspond to the 'pagination' of the image files. Note: Any document in which text cannot be extracted must be OCR'd, particularly in the case of PDFs without embedded text.

b. OCR text must be provided for all documents that originated in hard copy format. A page marker should be placed at the beginning, or end, of each page of text, e.g. *** IMG0000001 *** whenever possible. The data surrounded by asterisks is the *Concordance*® ImageID .

Sample page markers with OCR text:

> *** IMG0000001 ***
>
> The world of investing is fascinating and complex, and it can be very fruitful. But unlike the banking world, where deposits are guaranteed by the federal government, stocks, bonds and other securities can lose value. There are no guarantees. That's why investing is not a spectator sport. By far the best way for investors to protect the money they put into the securities markets is to do research and ask questions.
>
> *** IMG0000002 ***
>
> The laws and rules that govern the securities industry in the United States derive from a simple and straightforward concept: all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it. To achieve this, the SEC requires public companies to disclose meaningful financial and other information to the public. This provides a common pool of knowledge for all investors to use to judge for themselves whether to buy, sell, or hold a particular security. Only through the steady flow of timely, comprehensive, and accurate information can people make sound investment decisions.

c. For redacted documents, provide the full text for the redacted version.

d. Delivery
The text can be delivered two ways:
1) As multi-page ASCII text files with the files named the same as the ImageID field. Text files can be placed in a separate folder or included with the .TIF files. The number of files per folder should be limited to 500 files.
2) Included in the .DAT file.

5. Linked Native Files
Copies of original email and native file documents/attachments must be included for all electronic productions.
a. Native file documents must be named per the FIRSTBATES number.
b. The full path of the native file must be provided in the .DAT file for the LINK field.
c. The number of native files per folder should not exceed 500 files.

II. Native File Production
The SEC will also accept native file productions. The files must be produced as they are maintained in the normal course of business. Data must be organized by custodian named file folders.

III. Audio Files
Audio files from telephone recording systems must be produced in a format that is playable using Microsoft Windows Media Player™. Additionally, the call information (metadata) related to each audio recording MUST be provided. The metadata file must be produced in a delimited text format. Field names must be included in the first row of the text file.

The metadata must include, at a minimum, the following fields:

1)	Caller Name:	Caller's name or account/identification number
2)	Originating Number:	Caller's phone number
3)	Called Party Name:	Called party's name
4)	Terminating Number:	Called party's phone number

5)	Date:	Date of call
6)	Time:	Time of call
7)	Filename:	Filename of audio file

IV. **Video Files**
Video files must be produced in a format that is playable using Microsoft Windows Media Player™.

V. **Electronic Trade and Bank Records**
When producing electronic trade and bank records, provide the files in one of the following formats:

1. MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.

2. Delimited text file with header information detailing the field structure. The preferred delimiter is a vertical bar "|". If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.

VI. **Electronic Phone Records**
When producing electronic phone records, provide the files in one of the following formats:

1. MS Excel spreadsheet with header information detailing the field structure. If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details. Data must be formatted in its native format (i.e. dates in a date format, numbers in an appropriate numerical format, and numbers with leading zeros as text).

2. Delimited text file with header information detailing the field structure. The preferred delimiter is a vertical bar "|". If any special codes exist in the dataset, a separate document must be provided that details all such codes. If details of the field structure do not fit in the header, a separate document must be provided that includes such details.

The metadata must include, at a minimum, the following fields in separate columns:

1)	Account Number:	Caller's telephone account number
2)	Originating Number:	Caller's phone number
3)	Terminating Number:	Called party's phone number
4)	Connection Date:	Date of call
5)	Connection Time:	Start time of call
6)	End Time:	End time of call
7)	Elapsed Time:	Duration in minutes of the call

Each field of data must be loaded into a separate column. For example, Connection Date and Connection Time must be produced in separate columns and not combined into a single column containing both pieces of information. Any fields of data that are provided in addition to those listed here must also be loaded into separate columns.

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena

A. False Statements and Documents

Section 1001 of Title 18 of the United States Code provides as follows:

> Whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully–
> (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
> (2) makes any materially false, fictitious, or fraudulent statement or representation; or
> (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
> shall be fined under this title, imprisoned not more than 5 years . . . or both.

B. Testimony

If your testimony is taken, you should be aware of the following:

1. *Record.* Your testimony will be transcribed by a reporter. If you desire to go off the record, please indicate this to the Commission employee taking your testimony, who will determine whether to grant your request. The reporter will not go off the record at your, or your counsel's, direction.

2. *Counsel.* You have the right to be accompanied, represented and advised by counsel of your choice. Your counsel may advise you before, during and after your testimony, question you briefly at the conclusion of your testimony to clarify any of the answers you give during testimony, and make summary notes during your testimony solely for your use. If you are accompanied by counsel, you may consult privately.

If you are not accompanied by counsel, please advise the Commission employee taking your testimony if, during the testimony, you desire to be accompanied, represented and advised by counsel. Your testimony will be adjourned once to afford you the opportunity to arrange to be so accompanied, represented or advised.

You may be represented by counsel who also represents other persons involved in the Commission's investigation. This multiple representation, however, presents a potential conflict of interest if one client's interests are or may be adverse to another's. If you are represented by counsel who also represents other persons involved in the investigation, the Commission will assume that you and counsel have discussed and resolved all issues concerning possible conflicts of interest. The choice of counsel, and the responsibility for that choice, is yours.

3. *Transcript Availability.* Rule 6 of the Commission's Rules Relating to Investigations, 17 CFR 203.6, states:

> A person who has submitted documentary evidence or testimony in a formal investigative proceeding shall be entitled, upon written request, to procure a copy of his documentary evidence or a transcript of his testimony on payment of the appropriate fees. *Provided, however,* That in a nonpublic formal investigative proceeding the Commission may for good cause deny such request. In any event, any witness, upon proper identification, shall have the right to inspect the official transcript of the witness' own testimony.

If you wish to purchase a copy of the transcript of your testimony, the reporter will provide you with a copy of the appropriate form. Persons requested to supply information voluntarily will be allowed the rights provided by this rule.

4. *Perjury.* Section 1621 of Title 18 of the United States Code provides as follows:

> Whoever–
> (1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both.

5. *Fifth Amendment and Voluntary Testimony.* Information you give may be used against you in any federal, state, local or foreign administrative, civil or criminal proceeding brought by the Commission or any other agency.

You may refuse, in accordance with the rights guaranteed to you by the Fifth Amendment to the Constitution of the United States, to give any information that may tend to incriminate you.

If your testimony is not pursuant to subpoena, your appearance to testify is voluntary, you need not answer any question, and you may leave whenever you wish. Your cooperation is, however, appreciated.

6. *Formal Order Availability.* If the Commission has issued a formal order of investigation, it will be shown to you during your testimony, at your request. If you desire a copy of the formal order, please make your request in writing.

C. Submissions and Settlements

Rule 5(c) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(c), states:

> Persons who become involved in . . . investigations may, on their own initiative, submit a written statement to the Commission setting forth their interests and position in regard to the subject matter of the investigation. Upon request, the staff, in its discretion, may advise such persons of the general nature of the investigation, including the indicated violations as they pertain to them, and the amount of time that may be available for preparing and submitting a statement prior to the presentation of a staff recommendation to the Commission for the commencement of an administrative or injunction proceeding. Submissions by interested persons should be forwarded to the appropriate Division Director or Regional Director with a copy to the staff members conducting the investigation and should be clearly referenced to the specific investigation to which they relate. In the event a recommendation for the commencement of an enforcement proceeding is presented by the staff, any submissions by interested persons will be forwarded to the Commission in conjunction with the staff memorandum.

The staff of the Commission routinely seeks to introduce submissions made pursuant to Rule 5(c) as evidence in Commission enforcement proceedings, when the staff deems appropriate.

Rule 5(f) of the Commission's Rules on Informal and Other Procedures, 17 CFR 202.5(f), states:

> In the course of the Commission's investigations, civil lawsuits, and administrative proceedings, the staff, with appropriate authorization, may discuss with persons involved the disposition of such matters by consent, by settlement, or in some other manner. It is the policy of the Commission, however, that the disposition of any such matter may not, expressly or impliedly, extend to any criminal charges that have been, or may be, brought against any such person or any recommendation with respect thereto. Accordingly, any person involved in an enforcement matter before the Commission who consents, or agrees to consent, to any judgment or order does so solely for the purpose of resolving the claims against him in that investigative, civil, or administrative matter and not for the purpose of resolving any criminal charges that have been, or might be, brought against him. This policy reflects the fact that neither the Commission nor its staff has the authority or responsibility for instituting, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and representatives of the Department of Justice.

D. Freedom of Information Act

The Freedom of Information Act, 5 U.S.C. 552 (the "FOIA"), generally provides for disclosure of information to the public. Rule 83 of the Commission's Rules on Information and Requests, 17 CFR 200.83, provides a procedure by which a person can make a written request that information submitted to the Commission not be disclosed under the FOIA. That rule states that no determination as to the validity of such a request will be made until a request for disclosure of the information under the FOIA is received. Accordingly, no response to a request that information not be disclosed under the FOIA is necessary or will be given until a request for disclosure under the FOIA is received. If you desire an acknowledgment of receipt of your written request that information not be disclosed under the FOIA, please provide a duplicate request, together with a stamped, self addressed envelope.

E. Authority for Solicitation of Information

Persons Directed to Supply Information Pursuant to Subpoena. The authority for requiring production of information is set forth in the subpoena. Disclosure of the information to the Commission is mandatory, subject to the valid assertion of any legal right or privilege you might have.

Persons Requested to Supply Information Voluntarily. One or more of the following provisions authorizes the Commission to solicit the information requested: Sections 19 and/or 20 of the Securities Act of 1933; Section 21 of the Securities Exchange Act of 1934; Section 321 of the Trust Indenture Act of 1939; Section 42 of the Investment Company Act of 1940; Section 209 of the Investment Advisers Act of 1940; and 17 CFR 202.5. Disclosure of the requested information to the Commission is voluntary on your part.

F. Effect of Not Supplying Information

Persons Directed to Supply Information Pursuant to Subpoena. If you fail to comply with the subpoena, the Commission may seek a court order requiring you to do so. If such an order is obtained and you thereafter fail to supply the information, you may be subject to civil and/or criminal sanctions for contempt of court. In addition, if the subpoena was issued pursuant to the Securities Exchange Act of 1934, the Investment Company Act of 1940, and/or the Investment Advisers Act of 1940, and if you, without just cause, fail or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, correspondence, memoranda, and other records in compliance with the subpoena, you may be found guilty of a misdemeanor and fined not more than $1,000 or imprisoned for a term of not more than one year, or both.

Persons Requested to Supply Information Voluntarily. There are no direct sanctions and thus no direct effects for failing to provide all or any part of the requested information.

G. Principal Uses of Information

The Commission's principal purpose in soliciting the information is to gather facts in order to determine whether any person has violated, is violating, or is about to violate any provision of the federal securities laws or rules for which the Commission has enforcement authority, such as rules of securities exchanges and the rules of the Municipal Securities Rulemaking Board. Facts developed may, however, constitute violations of other laws or rules. Information provided may be used in Commission and other agency enforcement proceedings. Unless the Commission or its staff explicitly agrees to the contrary in writing, you should not assume that the Commission or its staff acquiesces in, accedes to, or concurs or agrees with, any position, condition, request, reservation of right, understanding, or any other statement that purports, or may be deemed, to be or to reflect a limitation upon the Commission's receipt, use, disposition, transfer, or retention, in accordance with applicable law, of information provided.

H. Routine Uses of Information

The Commission often makes its files available to other governmental agencies, particularly United States Attorneys and state prosecutors. There is a likelihood that information supplied by you will be made available to such agencies where appropriate. Whether or not the Commission makes its files available to other governmental agencies is, in general, a confidential matter between the Commission and such other governmental agencies.

Set forth below is a list of the routine uses which may be made of the information furnished.

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. To other federal, state, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.

3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board, the Securities Investor Protection Corporation, the Public Company Accounting Oversight Board, the federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, state securities regulatory agencies or organizations, or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.

4. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.

5. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

6. In connection with proceedings by the Commission pursuant to Rule 102(e) of its Rules of Practice, 17 CFR 201.102(e).

7. To a bar association, state accountancy board, or other federal, state, local, or foreign licensing or oversight authority; or professional association or self-regulatory authority to the extent that it performs similar functions (including the Public Company Accounting Oversight Board) for investigations or possible disciplinary action.

8. To a federal, state, local, tribal, foreign, or international agency, if necessary to obtain information relevant to the SEC's decision concerning the hiring or retention of an employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit.

9. To a federal, state, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency; to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

10. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

11. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction, or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)) or pursuant to the Commission's Rules of Practice, 17 CFR 201.100 – 900 or the Commission's Rules of Fair Fund and Disgorgement Plans, 17 CFR 201.1100-1106, or otherwise, where such trustee, receiver, master, special counsel, or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice or the Rules of Fair Fund and Disgorgement Plans.

12. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

13. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

14. In reports published by the Commission pursuant to authority granted in the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), which authority shall include, but not be limited to, section 21(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(a)).

15. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.

16. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735-1 to 200.735-18, and who assists in the investigation by the Commission of possible violations of the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

17. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

18. To members of Congress, the press, and the public in response to inquiries relating to particular Registrants and their activities, and other matters under the Commission's jurisdiction.

19. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78c(a)(47), as amended.

20. To respond to subpoenas in any litigation or other proceeding.

21. To a trustee in bankruptcy.

22. To any governmental agency, governmental or private collection agent, consumer reporting agency or commercial reporting agency, governmental or private employer of a debtor, or any other person, for collection, including collection by administrative offset, federal salary offset, tax refund offset, or administrative wage garnishment, of amounts owed as a result of Commission civil or administrative proceedings.

* * * * *

Small Business Owners: The SEC always welcomes comments on how it can better assist small businesses. If you have comments about the SEC's enforcement of the securities laws, please contact the Office of Chief Counsel in the SEC's Division of Enforcement at 202-551-4933 or the SEC's Small Business Ombudsman at 202-551-3460. If you would prefer to comment to someone outside of the SEC, you can contact the Small Business Regulatory Enforcement Ombudsman at http://www.sba.gov/ombudsman or toll free at 888-REG-FAIR. The Ombudsman's office receives comments from small businesses and annually evaluates federal agency enforcement activities for their responsiveness to the special needs of small business.

Exhibit 6

From: Weiss, Terry R. (Shld-Atl-LT)
Sent: Friday, November 18, 2016 3:05 PM
To: hyland@sewkis.com
Cc: Sullivan, George D. (Shld-NY-WCO-LT)
Subject: RE: In the Matter of Gray Financial Group, Inc., et al., SEC AP File No. 3-16554 - Subpoena

Mark, Please give us the courtesy of letting us know if you are planning on contesting any item sought by the subpoena. I am open to discussing particular areas of serious concern and avoiding the related litigation expense and inconvenience. TRW

Terry R. Weiss
Shareholder
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American Lawyer Media/Fulton County Daily Report

From: weisstr@gtlaw.com [mailto:weisstr@gtlaw.com]
Sent: Friday, November 18, 2016 1:56 PM
To: hyland@sewkis.com; vangrover@sewkis.com; segal@sewkis.com; tavss@sewkis.com
Cc: HicksW@sec.gov; HuddlestonP@SEC.GOV; Weiss, Terry R. (Shld-Atl-LT)
Subject: In the Matter of Gray Financial Group, Inc., et al., SEC AP File No. 3-16554 - Subpoena

Dear Messrs. Hyland, Van Grover, Tavss and Ms. Segal:

Enclosed is correspondence and a document subpoena issued by the Honorable Cameron Elliot to Seward & Kissel, LLP, Robert Van Grover and Alexandra Segal in the referenced SEC administrative proceeding. The documents described in the Subpoena are required to be produced within ten days of receipt of this letter, by Monday, November 28, 2016.

Please do not hesitate to contact me if you have any questions or concerns.

Terry R. Weiss
Shareholder
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