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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16649

In the Matter of:

Ironridge Global Partners, LLC,
Ironridge Global IV, Ltd.

Respondents.

RESPONDENTS' RESPONSE IN SUPPORT OF THEIR SECOND SUBPOENA REQUEST

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I. INTRODUCTION

The Division has alleged that Respondent Ironridge Global IV, Ltd. ("Global IV") should have registered with the Commission as a "dealer" under § 15(a) of the Securities Exchange Act of 1934, and that Respondent Ironridge Global Partners, LLC ("Partners") violated § 20(b) by knowingly forcing Global IV to violate § 15(a). To support its allegations, the Division has relied primarily on the fact that registered broker-dealers sold to other registered broker-dealers on behalf of Global IV some of the shares of stock that were issued in court-approved exchanges under § 3(a)(10) of the Securities Act of 1933, as amended. To defend against that charge, Respondents have requested a subpoena for several categories of documents. The Court should grant that request.

First, Respondents seek factual portions of notes from witness interviews the Division conducted off the record that reportedly addressed key topics, including Global IV's selling practices. The Division argues that the notes are protected as attorney-opinion work product, but the *factual* portions of such notes are ordinary work product that Respondents may obtain upon showing a substantial need.

Second, Respondents seek documents regarding a former ALJ's recent allegations that the administrative process is slanted in the Division's favor. Those documents are relevant to Respondents' defense that the administrative process as a whole is systemically biased. The Division opposes that request because the Commission supposedly rejected a similar request recently, but Respondents' request in fact differs from the one the Commission considered.

Third, Respondents seek documents about the Division's past enforcement policies, which are relevant to Respondents' defense that the Division is changing those policies here and thus violating the Due Process Clause. The Division argues that those documents are public. But that is not a reason to deny the request, especially because the Division knows better where

to find documents (public or not) about the Division's own enforcement practices than Respondents do.

The Court should overrule the Division's objections and grant the request.

II. BACKGROUND

Global IV is an institutional investor. Among other investment strategies, it engages in court-approved "§ 3(a)(10)" exchanges in which a public company proposes that Global IV extinguish some of the company's debts in return for some of the company's stock. If Global IV determines that the public company is a good investment and that the debts are "bona fide outstanding," Global IV and the public company ask a court to review the proposed exchange for fairness. If the court approves the deal and each side's counsel also approve, then the public company and Global IV complete the exchange. Under the Securities Act of 1933, the stock issued in the exchange is entirely exempt from the Securities Act. 15 U.S.C. § 77c(a)(10).

In October 2013, the Division resolved to end Global IV's court-approved § 3(a)(10) exchanges. The Division obtained an Order Directing Private Investigation, which authorized the Division to investigate whether Global IV's sole shareholder, Partners, had committed securities fraud or violated the Securities Act's registration provision as a result of Global IV's § 3(a)(10) exchange with a single issuer.

For the next 20 months, the Division searched high and low for a reason – any reason – to charge Global IV or Partners with a securities-law violation. The Division tried several different theories, including two varieties of securities fraud, violation of the Securities Act's registration provision, violation of Exchange Act § 20(a), violation of Exchange Act 20(b), and violation of Exchange Act § 15(a). *See* ***Exhibits A-C*** (Wells notices reflecting the Division's changing theories). The Division also collected over 43,000 documents and conducted seven witness examinations. On top of that, the Division apparently interviewed witnesses about Global IV's

business – albeit off the record. A central topic of at least one of those interviews was Global IV's selling practices.

While the Division was searching for evidence and a theory, the Wall Street Journal published facts and allegations about the SEC's internal administrative process. First, the Wall Street Journal reported that the Division had won 90% of cases before SEC Administrative Law Judges from 2010 through March 2015, compared with only 69% before federal courts. Jean Eaglesham, "SEC Wins with In-House Judges," *The Wall Street Journal* (May 6, 2015), http://www.wsj.com/articles/sec-wins-with-in-house-judges-1430965803. The Wall Street Journal also reported that the Division had won 95% of appeals to the Commission during that period. *Id.* Additionally, the Wall Street Journal published allegations that might explain, in part, why the Division is so successful in the administrative process. According to the article, former Administrative Law Judge Lillian McEwen alleged that Chief ALJ Brenda Murray had criticized McEwen for "finding too often in favor of defendants." *Id.* McEwen also said that "SEC in-house judges were expected to work on the assumption that 'the burden was on the people who were accused to show that they didn't do what the agency said they did.'" *Id.*

Despite those allegations, less than a month later the Division obtained an Order Instituting Proceedings that initiated an administrative action against Respondents. The Division alleged that Global IV should have registered with the Commission under § 15(a) as a "dealer," primarily because Global IV is supposedly an underwriter (even though the Staff had previously said that being an underwriter was not enough, alone, to make one a dealer under § 15(a)). *See* OIP, ¶ 1; *Acqua Wellington North Am. Equities Fund, Ltd.*, SEC No-Action Letter, 2001 WL 1230266 (Oct. 11, 2001) (issuing a No-Action letter to a self-described underwriter inquiring whether failing to register would violate § 15(a)). The Division appears to contend that Global IV is an underwriter, and thus a dealer, based on the length of time between when Global IV acquired stock from the

§ 3(a)(10) exchanges and when registered broker-dealers sold that stock and also based on those sales' magnitude. *See, e.g.*, OIP, ¶¶ 1, 26, 29, 30.

The Division also alleged that Partners was vicariously liable for Global IV's alleged § 15(a) violation, relying on Exchange Act § 20(b). OIP, ¶ 43.

Thereafter, the Division produced to Respondents seven hearing-examination transcripts and over 43,000 documents collected during the investigation. But the production was incomplete. In late August, Respondents learned that the Division had not produced a transcript from at least one witness interview. A central topic of that interview was Global IV's selling practices – the very conduct that the Division contends makes Global IV an underwriter and thus a dealer. On September 1, 2015, Respondents wrote to the Division asking it to "identify all witnesses the Staff has already interviewed and produce all transcripts or statements reflecting those interviews." *See* ***Exhibit D***. Days later, the Division responded that it had already produced all "transcripts or other Jencks materials" and refused to identify whom the Division had interviewed. *See* ***Exhibit E***.

Respondents then filed a request for a subpoena to obtain the following from the Division:

> 1. ... [A]ll portions of notes and summaries from interviews of witness[es] conducted during the investigation of Respondents to the extent those portions relate to the facts and circumstances of this case, the portions do not reflect attorney-opinion work product, and the notes or summaries are not about examinations for which the Division has produced transcripts.
>
> 2. Documents sufficient to identify all enforcement actions (whether or not in an administrative proceeding) brought by the Commission, other than this proceeding, in which the Commission chose to bring a claim for a violation of Section 15(a) of the Securities Exchange Act of 1934 without also bringing a claim for either securities fraud or violation of Section 5(a) of the Securities Act.

3. Documents sufficient to identify all enforcement actions (whether or not in an administrative proceeding) brought by the Commission, other than this proceeding, in which the Commission has alleged that an entity or person violated Section 15(a) of the Securities Exchange Act of 1934 in connection with transactions in securities exempted from registration under Section 3(a)(10) of the Securities Act of 1933.

4. All documents and communications that support, or reflect or are related to the allegations made by Lillian McEwen, a former SEC administrative law judge, as reported by the Wall Street Journal on May 6, 2015, that chief administrative law judge Brenda Murray "questioned [her] loyalty to the SEC" as a result of finding too often in favor of defendants and that SEC administrative law judges are expected to work on the assumption that "the burden was on the people who were accused to show that they didn't do what the agency said they did."

The Division has objected to those requests.

III. ARGUMENT

The Court should grant Respondents a subpoena for documents responsive to each of the proposed categories, which are all relevant to a charge or defense in the case. The Division's arguments against the request are unconvincing. [1]

A. The Court Should Order the Division to Produce the Factual Portions of Interview Notes.

The Court should require the Division to produce factual portions of interview notes because those notes are relevant to key issues and because Respondents have no reasonable way to obtain the information elsewhere. The Division is incorrect that the factual portions of the notes are protected as attorney-opinion work product.

After this case began, Respondents learned that the Division had interviewed at least one witness during the investigation, yet had not produced a transcript of that interview. The witness

[1] In a footnote, the Division asks permission to file a motion to quash if the Court grants Respondents' request to issue the subpoena. The Division does not explain why it should get two bites at the apple, so the Court should deny the Division's request.

informed respondents that Global IV's practices in selling stock were a central topic of the interview.

What that witness and any others said about those practices is highly relevant to this case, because Global IV's selling practices – specifically, the speed and magnitude of the sales – are apparently what the Division contends makes Global IV an underwriter and thus a dealer under § 15(a). *See, e.g.*, OIP, ¶¶ 1, 26, 29, 30. Respondents thus submitted a subpoena-request for notes or summaries of the Division's witness interviews, narrowed to exclude portions of documents that reflect attorneys' opinions and documents about witnesses for which the Division had produced examination transcripts.

The Division objected to that tailored request, invoking the work-product doctrine. In limited circumstances, that doctrine protects documents "prepared in anticipation of litigation." *In re Blizzard*, Admin. File No. 3-10007, 2002 WL 662783, at *3 (April 23, 2002) (quotation marks and citation omitted). The doctrine allows discovery of most documents when there is a "substantial need" for them. *Id.* Documents (or portions thereof) that reflect an attorney's opinions, legal theories, or legal strategies have greater protection. *See id.* The Division contends that its off-the-record interview notes are attorney-opinion work product and thus have extra protection here. The Division's argument fails for several reasons.

First, the Division has not shown that the notes are work product of any kind. Indeed, the Division has not presented any evidence that the interview notes were prepared in anticipation of litigation, which is a prerequisite for invoking work-product protection. *See SEC v. Thrasher*, No. 92-6987, 1995 WL 46681, at *3 (S.D.N.Y. Feb. 7, 1995) (rejecting the Commission's work-product argument where the "Commission ma[de] no effort" to provide "evidence establishing the basis of its work-product claim," such as affidavits about the interview notes' contents). If the Division believes that the Court should simply assume that all interview notes from the 20-

month investigation were prepared in anticipation of litigation, the Division is mistaken. As other courts have held in these circumstances, interview notes the Division prepared during that time for "fact gathering," investigatory purposes were not prepared in anticipation of litigation. *SEC v. Stratton Oakmont, Inc.*, No. 92-1993, 1992 WL 226924, at *1 (S.D.N.Y. June 22, 1992) (holding that SEC's notes from "conversations with non-parties ... while conducting a fact gathering investigation and prior to the Commission's determination to institute litigation ... are not protected by the work-product privilege"); *see also Thrasher*, 1995 WL 46681 at *4.

Second, and in any event, interview notes' factual portions[2] – which is all that Respondents seek here – are at most ordinary work product (rather than attorney-opinion work product) and thus discoverable if one shows substantial need for them. *In re John Doe Corp.*, 675 F.2d 482, 492-93 (2d Cir. 1982) (interview notes that "recite in a paraphrased, abbreviated form, statements by" a witness are not "worthy of the description" of attorney-opinion work product); *Thrasher*, 1995 WL 46681, at *6 (same); *see also SEC v. Cuban*, No. 08-2050, 2013 WL 1091233, at *5-6 (N.D. Tex. March 15, 2013) (applying the rules for discovery of ordinary work product where a party sought from the SEC "factual, non-opinion work product portion of SEC notes and summaries from interviews"). Indeed, the Commission itself held in *In re Blizzard* that where documents concerning witness interviews had been "redacted of opinion

[2] The factual portions include at least those that "thorough[ly]" summarize witness statements, omit any "explicit mental impression or opinions" from an attorney, and do not "discuss[] legal strategy." *SEC v. Sentinel Mgmt. Grp., Inc.*, No. 07-4684, 2010 WL 4977220, at *11 (N.D. Ill. Dec. 2, 2010) (holding that even under the "heightened standard applicable for opinion work product, there [was] justification" for ordering the SEC to produce interview notes or to answer interrogatories about those notes).

content" and thus provided factual summaries only, the documents were work product discoverable upon showing "substantial need." 2002 WL 662783, at *4.[3]

The Division contends that even the factual portions of its interview notes are attorney-opinion work product because they "represent the interviewing attorney's attempt to capture what he thought was important given the legal theories that he was considering" – *i.e.*, that the notes could reflect the attorney's questions. Motion at 3 (citing *SEC v. Roberts*, 254 F.R.D. 371, 383 (N.D. Cal. 2008)). That the factual summaries might hint at the attorney's questions, however, does not necessarily mean that the factual summaries sufficiently reveal the attorney's legal opinions or legal theories to make the factual portions attorney-opinion work product. As the Second Circuit has held, interview notes that "imply the [Division] attorney's questions from which inferences might be drawn as to his thinking," and in the process "merely disclose the concerns a layman would have as well as a lawyer," "in no way reveal anything worth of the description 'legal theory.'" *In re John Doe Corp.*, 675 F.2d at 493; *see also Thrasher*, 1995 WL 46681, at *6 (notes that reveal only that the "Commission was seeking the type of information that any attorney investigating [the matter] would pursue" are not attorney-opinion work product). The Division has therefore failed to show that the factual portions of the interview notes are attorney-opinion work product in their entirety. Those portions are thus discoverable if Respondents can show substantial need for them.

Third, Respondents indeed have substantial need for the interview notes' factual portions, both because they are important and because there is no other way to obtain the information they contain. The interview notes are important because they "are likely to have relevant information

[3] At least one of the Division's cases acknowledges the same. *See SEC v. NIR Grp., LLC*, 283 F.R.D. 127, 135 (E.D.N.Y. 2012) ("[W]here a witness's statements can be effectively isolated from the representative's thoughts, even where the representative took a hand in soliciting and deciding how to document the witness's statements, a showing of sufficient need may justify disclosure.").

that bears directly on the merits of the SEC's case." *Cuban*, 2013 WL 1091233, at *5. As explained above, the Division appears to have interviewed witnesses about the aspects of Global IV's operations that, according to the Division, make Global IV a dealer. In particular, the Division appears to have asked about Global IV's practices in selling stock, which are central to the Division's case. *See, e.g.*, OIP, ¶¶ 1, 26, 29, 30. Moreover, there is no alternative, practical way for Respondents to determine what these witnesses intend to testify about regarding the Global IV's operations, because the Division has refused even to name the witnesses. *See Cuban*, 2013 WL 1091233, at *5-6 (finding substantial need for discovery of interview notes where the requester could not "obtain information substantially equivalent to that found in the interview[]" notes); *Thrasher*, 1995 WL 46681, at *7 ("All that is needed is a showing that it is likely to be significantly more difficult, time-consuming or expensive to obtain the information from another source than from the factual work product of the objecting party."). Even if the Division had disclosed the witnesses' identities, the Rules of Practice would likely not permit Respondents to depose those witnesses. *See Sentinel Mgmt.*, 2010 WL 4977220, at *9 ("[T]he Court concludes that Bloom has demonstrated that he is unable to obtain information from [the witnesses] directly, either through a deposition or interview."); *compare Roberts*, 254 F.R.D. at 382 (holding that a party did not have substantial need for interview notes because the party could obtain the same information through depositions of the same witnesses). [4] Because

[4] The unavailability of other ways to obtain information distinguishes still more of the cases the Division cites. *SEC v. Jasper*, No. 07-06112, 2010 WL 375137, at *2 (N.D. Cal. Jan. 25, 2010) (holding that a party had not shown sufficient need for the work product partly because there had been alternative means of obtaining the information); *SEC v. Cavanaugh*, No. 98-1818, 1998 WL 132842, at *3 (S.D.N.Y. March 23, 1998) (holding that the requesting party had not shown substantial need for interview notes partly because there were other ways to obtain the information sought); *Hickman v. Taylor*, 329 U.S. 495, 513 (1947) (denying discovery request where the requesting party could use "[s]earching interrogatories ... [requests for] production of written documents and statements ... to reveal the facts").

Respondents have substantial need for the notes' factual portions, these portions are discoverable.

In arguing that notes of witness interviews are undiscoverable work product, the Division relies heavily on *Upjohn Co. v. United States*, 449 U.S. 383 (1981). The Division misreads that case. The reason the Court held that the notes of the witness "communications" at issue there were undiscoverable is that those "communications" *were attorney-client privileged* under the unique circumstances there (which do not apply here). *Id.* at 401. The Court also did apply the work product doctrine, but only to hold that anything *other* than witness statements – *e.g.*, material "evaluating" those statements – would be protected work product. *Id. Upjohn* does not help the Division here.

In short, the factual portions of the Division's interview notes are discoverable. Respondents respectfully request that the Court issue the subpoena for those portions or, alternatively, order the Division to produce them for the Court's *in camera* review.

B. The Court Should Allow Discovery Regarding ALJ McEwen's Allegations.

Next, the Court should allow discovery about ALJ McEwen's allegations in the Wall Street Journal, which are relevant to Respondents' defense that the administrative process is systemically biased in the Division's favor. The Division is incorrect that the Commission recently rejected a substantially identical request.

An agency violates Due Process by designing an administrative process that is "systematically" biased against those the agency hales before it, whether or not the agency's individual hearing officer is biased. *Johnson v. Shaffer*, No. 12-1059, 2014 WL 6834019, at *10 (E.D. Cal. Dec. 3, 2014); *see also id.* at *9-13 (holding that a parole-eligibility protocol that was allegedly designed to make it harder for parolees to prevail could violate Due Process by causing systemic bias against parolees); *Rothenberg v. Daus*, 481 F. App'x 667, 676-77 (2d Cir. 2012).

Here, Respondents have raised as a defense that the SEC's administrative process – where the Division wins almost every case – is systemically biased partly because ALJs are routinely pressured to rule in the Division's favor, as well as because the SEC's procedures handicap respondents. *See, e.g.*, Partners' Answer, Sixth Affirmative Defense; Global IV's Answer, Sixth Affirmative Defense; *see also Johnson*, 2014 WL 6834019, at *13 ("Any source of bias that distorts the decision-making process – whether that bias arises in the minds of individual decision-makers or is generated by [a procedure] skewed to support a particular outcome – is equally offensive to fundamental fairness.").

To support that defense, Respondents ask to subpoena documents related to ALJ McEwen's allegations that the Chief ALJ pressured her to rule in the Division's favor and that ALJs generally are pressured to presume that respondents are guilty. *See, e.g.*, Eaglesham, *supra*, ("One former SEC judge said she thought the system was slanted against defendants at times."); *id.* (quoting ALJ McEwen as saying that the Chief ALJ criticized McEwen for "finding too often in favor of the defendants"); *id.* ("Ms. McEwen said the SEC in-house judges were expected to work on the assumption that 'the burden was on the people who were accused to show that they didn't do what the agency said they did.'"). That request is one the Court has granted before. Order Granting in Part Subpoena Request at 2, *In the Matter of Charles L. Hill, Jr.*, Admin. File No. 3-16383 (May 21, 2015), http://www.sec.gov/alj/aljorders/2015/ap-2706.pdf.

In opposing that request, the Division contends that the "Commission recently rejected a nearly identical request for additional discovery ... ." Motion at 5-6. That arguments fails for two reasons. First, the requests are not "nearly identical." The requests in *Timbervest* were much broader, and thus more likely to be unduly burdensome. ***Exhibit F*** at 3-4. In addition to documents about ALJ McEwen's statements, the requests sought performance evaluations of the presiding ALJ, performance evaluations of the Chief ALJ, performance evaluations of a former

ALJ, documents about ALJ training, documents assessing ALJs' history of ruling in the Division's favor, documents about ALJ compensation, and an opportunity to *depose the presiding ALJ, the Chief ALJ, and a former ALJ. Id.* That the Commission rejected such broad requests does not mean that the Commission would also deem overly burdensome the more narrow requests at issue here.

Second, the reason the Commission denied discovery in *Timbervest* does not support doing the same here. The Commission denied the discovery because the *Timbervest* respondents had not made a prima facie case to support the defense for which they sought the discovery: That the specific ALJ presiding over the case, ALJ Elliot, was biased. Opinion of the Commission at 37, *In the Matter of Timbervest, LLC*, Admin. File No. 3-15519 (Sept. 17, 2015) ("Respondents claim that the ALJ who presided over the administrative hearing and who issued the initial decision, Cameron Elliot, was biased ... ."); *id.* at 38-39. The Commission explained that the Wall Street Journal article about ALJ McEwen was not "link[ed] ... to th[at] proceeding" and thus could not support a prima facie showing that ALJ Elliot had been biased in that particular proceeding. *Id.*

But here Respondents are seeking the discovery to support a different defense: That the administrative process is systemically biased, not that the presiding ALJ is. *See, e.g., Johnson*, 2014 WL 6834019, at *10. And Respondents can make a prima facie showing to support *that* defense. The Wall Street Journal article reveals that the Division wins overwhelmingly in the administrative process, much more often than in federal court. *See Rothenberg*, 481 F. App'x at 676 (holding that a "history of ALJs ruling for the agency" could support a charge of systemic bias). The article also reveals that, according to a former ALJ, the "*system* was slanted against defendants at times" and that "SEC in-house judges" in general "were expected to work on the assumption that 'the burden was on the people who were accused to show that they didn't do

what the agency said they did.'" Eaglesham, *supra* (emphasis added); *see also* Nate Raymond, "U.S. Judge Criticizes SEC Use of In-House Court for Fraud Cases," Reuters (November 2014) http://www.reuters.com/article/2014/11/05/us-sec-fraud-rakoff-idUSKBN0IP2EG20141105 (noting that the Division had a 100% success rate in the administrative process in 2014 but only a 61% success rate in federal court). Moreover, the Commission itself appears to have recognized that the current administrative procedures systematically handicap respondents, because the Commission has proposed new procedures liberalizing respondents' discovery tools and giving them more time to prepare for the final hearing. Amendments to the Commission's Rule of Practice, SEC Release No. 34-75976, File N. S7-18-15, https://www.sec.gov/rules/proposed/2015/34-75976.pdf; *see also* Daniel Wilson, "SEC Administrative Case Rules Likely Out of Date, GC Says," Law360 (June 17, 2014), http://www.law360.com/articles/548907/sec-administrative-case-rules-likely-out-of-date-gc-says (quoting the SEC's general counsel as saying, "We want to make sure the process is fair and reasonable, so [changing] procedures to reflect [the increased complexity of cases] makes a lot of sense." (first alteration in original)). Thus, Respondents have justified the discovery they seek on their systemic-bias defense, even if the *Timbervest* respondents did not justify the discovery they sought on their defense that the presiding ALJ was biased.

The Division also argues that Respondents' remedy for bias is to ask the presiding ALJ to recuse himself rather than seek evidence for documents related to ALJ McEwen's allegations of bias. That argument misunderstands Respondents' bias defense. Respondents' defense is that the system is biased, not that the presiding ALJ is biased. There is no reason for Respondents to seek the ALJ's recusal. The Court should therefore reject the Division's argument and grant Respondents' request for a subpoena for documents on that topic.

C. The Court Should Permit Discovery into the Division's Past Enforcement Practices.

The Court also should allow discovery into the Division's past enforcement practices, which are relevant to Respondents' Due Process defense that the Division is using Respondents as guinea pigs to test novel theories. The Division is incorrect that Respondents may not subpoena publicly-available materials for that purpose.

Respondents have raised as a defense here that the Division is attempting to sanction them "pursuant to a substantial change in [the Division's] enforcement policy that was not reasonably communicated to the public." *Upton v. SEC*, 75 F.3d 92, 98 (2d Cir. 1996) ("The Commission may not sanction Upton pursuant to a substantial change in its enforcement policy that was not reasonably communicated to the public."). For instance, the Division has asserted that Global IV is an underwriter and that being an underwriter is enough, alone, to make Global IV a dealer that should have registered under § 15(a). That is directly contrary to existing guidance. *Acqua Wellington North American Equities Fund, Ltd., supra.* Likewise, the Division is asserting that Global IV is a dealer based on Global IV's participation in exchanges that Securities Act § 3(a)(10) exempts from regulation. Respondents are aware of no guidance that engaging in such exempt exchanges would trigger the Exchange Act's registration requirements. *Brucker v. Thyssen-Bornemisza Eur. N.V.*, 424 F. Supp. 679, 691 (S.D.N.Y. 1976) (Exchange Act proxy rules "were not meant to apply to judicially approved settlement agreements, particularly in light of the legislative history"), *aff'd sub nom., Brucker v. Indian Head, Inc.*, 559 F.2d 1202 (2d Cir. 1977). Additionally, the Division is pursuing § 15(a) charges against Global IV without any allegation that Global IV committed securities fraud or violated the Securities Act's registration provision, which otherwise appear to be common charges in § 15(a) cases. *See, e.g., In the Matter of Dennis J. Malouf*, Admin. File No. 3-15918, 2015 WL 1534396 (April 7, 2015).

To support that Due Process defense, Respondents have requested permission to collect from the Division the two remaining categories of documents, both related to the Division's past enforcement actions in § 15(a) cases.

The Division has opposed those requests, arguing that all such documents are publicly available and that Respondents thus could obtain the documents just as easily as the Division. That such documents are supposedly publicly available, however, is no matter. Indeed, this Court recently granted a similar request even though the information the respondent sought was "a matter of public record." Order Granting in Part Subpoena Request at 1-2, *In the Matter of Charles L. Hill, Jr., supra.*[5] More to the point, not all Commission documents are in the public domain. The Division itself cites two orders (one in *Raymond James Financial Services, et al.*, Admin. File No. 3-11692 (Nov. 30, 2004), and the other in *Kenneth Alderman, et al.*, Admin. Ruling No. 754 (Feb 28, 2013)) without pointing to any location where the orders are publicly available.

The Division also is incorrect that Respondents can find the documents at issue as easily as the Division can. Even assuming those documents are all public, the Division is still better situated to find them. They relate to the Division's own enforcement decisions, so the Division should have a better idea of what documents in the public domain are worth reviewing for

[5] The cases the Division relies upon do not support a persuasive contrary argument. In *In the Matter of Egan-Jones Rating Company and Sean Egan*, the court stated without elaboration that it would unduly burden the Commission to produce documents "which are public and are equally available to both parties." Admin File No. 3-14856, 2012 WL 8718379, at *2 (Oct. 10, 2012). Such unelaborated reasoning is not persuasive in deciding whether the circumstances here warrant disclosure. In *In the Matter of Monetta Financial Services, Inc., et al.*, the court held that the respondents could not discover information that was already in the public domain because the respondents had not explained adequately why the discovery was necessary. Admin. File No. 3-9546, 1998 WL 211406, at *3 (April 21, 1998). As explained above, such discovery is necessary under the circumstances here.

responsiveness and what documents are likely irrelevant. The Court should therefore grant Respondents' request for the remaining two categories of documents.

IV. CONCLUSION

For these reasons, Respondents respectfully request that the Court grant Respondents' second request for a subpoena to the Commission.

Dated: October 5, 2015.

Respectfully submitted,

Stephen E. Hudson
Hillary D. Rightler
Josh C. Hess

KILPATRICK TOWNSEND & STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309-4530
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Counsel for Respondents

RULE 154(c) CERTIFICATE

I hereby certify that the foregoing brief contains 4,985 words, exclusive of the Table of Contents, Table of Authorities, Cover Page, and Certificates.

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Josh C. Hess

Counsel for Respondents

Exhibit A

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Atlanta Regional Office
950 East Paces Ferry Road, N.E., Suite 900
Atlanta, Georgia 30326

DIVISION OF ENFORCEMENT

Matthew F. McNamara
Assistant Director
T: (404) 842-7688
F: (404) 842-7633

July 23, 2014

By UPS

Mark T. Hiraide, Esq.
Petillon, Hiraide & Loomis LLP
Del Amo Financial Center
21515 Hawthorne Blvd., Suite 1260
Torrance, California 90503

Re: In the Matter of Ironridge Global Partners, LLC A-3545

Dear Mr. Hiraide:

This letter confirms our telephone conversation earlier today, in which I advised you that the staff of the Securities and Exchange Commission has made a preliminary determination to recommend that the Commission file an enforcement action against your client, Ironridge Global Partners, LLC ("Ironridge"). This proposed action would allege violations of § 5 of the Securities Act of 1933 (the "Securities Act") and § 15(a) of the Securities Exchange Act of 1934 (the "Exchange Act") based on Ironridge's operation as an unregistered dealer and its participation in various unregistered securities transactions. The recommendation may involve a public administrative proceeding and/or cease-and-desist proceeding, and may seek remedies that include a cease-and-desist order and civil money penalties.

As described in Rule 5(c) of the Commission's Rules on Informal and Other Procedures, 17 C.F.R. § 202.5(c), we are offering your client the opportunity to make a Wells Submission. For further information, you may wish to review Securities Act Release No. 5310, "Procedures Relating to the Commencement of Enforcement Proceedings and Termination of Staff Investigations," which can be found at: http://www.sec.gov/divisions/enforce/wells-release.pdf.

If your client wishes to make a written or videotaped submission setting forth any reasons of law, policy, or fact why the proposed enforcement action should not be filed, or bringing any facts to the Commission's attention in connection with its consideration of this matter, you should send the submission to me by August 6, 2014. Any written submission should be limited to 40 pages, and any video submission should not exceed 12 minutes. Please inform me by no

later than July 30, 2014, whether your client will be making a Wells Submission. Any submission should be sent to:

Matthew F. McNamara
Assistant Director, Division of Enforcement
Securities and Exchange Commission
950 East Paces Ferry Rd., N.E., Suite 900
Atlanta, Georgia 30326

If the staff makes an enforcement recommendation to the Commission in this matter with respect to your client, we will send to the Commission any submission that your client makes. The Commission may use the information contained in such a submission as an admission, or in any other manner permitted by the Federal Rules of Evidence, or for any of the Routine Uses of Information described in Form 1662, "Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena." Form 1662 can be found at: http://www.sec.gov/about/forms/sec1662.pdf; paper copies are available upon request. The staff will not accept any submission that purports to limit its admissibility under the Federal Rules of Evidence or the Commission's ability to use the submission for any purpose identified in Form 1662. Any submission your client makes may be discoverable by third parties in accordance with applicable law.

If you have any questions, please contact me at 404-842-7688.

Sincerely,

Matthew F. McNamara
Assistant Director, Division of Enforcement

Exhibit B

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
950 East Paces Ferry Road, N.E.
Suite 900
Atlanta, GA 30326

DIVISION OF
ENFORCEMENT

Matthew F. McNamara
Direct Dial: 404.842.7688
Facsimile: 404.842.7633

January 5, 2015

By UPS

Erich T. Schwartz, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005

Re: In the Matter of Ironridge Global Partners LLC (A-03545)

Dear Erich:

This letter confirms our telephone conversation of December 19, 2014. In that conversation, I advised you that the staff of the Securities and Exchange Commission ("staff") is amending its July 23, 2014 Wells Notice to your client, Ironridge Global Partners, LLC ("Ironridge"), to provide additional notice that the staff is considering charging Ironridge with liability pursuant to Section 20(a) of the Securities Exchange Act of 1934 ("Exchange Act") for Ironridge Global IV, Ltd.'s violations of Section 15(a) of the Exchange Act.

As described in Rule 5(c) of the Commission's Rules on Informal and Other Procedures, 17 C.F.R. § 202.5(c), we are offering your client the opportunity to make an additional Wells Submission to address this amendment to the July 23, 2014 Wells Notice to your client. For further information, you may wish to review Securities Act Release No. 5310, "Procedures Relating to the Commencement of Enforcement Proceedings and Termination of Staff Investigations," which can be found at: http://www.sec.gov/divisions/enforce/wells-release.pdf.

If your client wishes to make an additional written or videotaped submission setting forth any reasons of law, policy, or fact why the amended proposed enforcement action should not be filed, or bringing any facts to the Commission's attention in connection with its consideration of this matter, you should send the submission to me by January 16, 2015. Any written submission should be limited to 40 pages, and any video submission should not exceed 12 minutes. Please inform me by no later than January 9, 2015, whether your client will be making a Wells Submission. Any submission should be sent to:

Matthew F. McNamara
Assistant Director, Division of Enforcement
Securities and Exchange Commission
950 East Paces Ferry Rd., N.E., Suite 900
Atlanta, Georgia 30326

If the staff makes an enforcement recommendation to the Commission in this matter with respect to your client, we will send to the Commission any submission that your client makes. The Commission may use the information contained in such a submission as an admission, or in any other manner permitted by the Federal Rules of Evidence, or for any of the Routine Uses of Information described in Form 1662, "Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena." Form 1662 can be found at: http://www.sec.gov/about/forms/sec1662.pdf; paper copies are available upon request. The staff will not accept any submission that purports to limit its admissibility under the Federal Rules of Evidence or the Commission's ability to use the submission for any purpose identified in Form 1662. Any submission your client makes may be discoverable by third parties in accordance with applicable law.

If you have any questions, please contact me at 404-842-7688.

Sincerely,

Matthew F. McNamara
Assistant Director, Division of Enforcement

Exhibit C

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Atlanta Regional Office
950 East Paces Ferry Road, N.E., Suite 900
Atlanta, Georgia 30326

DIVISION OF ENFORCEMENT

Matthew F. McNamara
Assistant Director
T: (404) 842-7688
F: (404) 842-7633

January 6, 2015

By UPS

Ironridge Global IV, Ltd.
ATTN: David Sims, Director
Harbour House Waterfront Drive
P.O. Box 972, Road Town
Tortola VG1110
BRITISH VIRGIN ISLANDS

Re: In the Matter of Ironridge Global Partners, LLC A-3545

Dear Mr. Sims:

This letter is to advise you that the staff of the United States Securities and Exchange Commission has made a preliminary determination to recommend that the Commission file an enforcement action against Ironridge Global IV, Ltd. ("Global IV"). This proposed action would allege violations of § 5 of the Securities Act of 1933 and § 15(a) of the Securities Exchange Act of 1934. The recommendation may involve a public administrative proceeding, and/or cease-and-desist proceeding, and may seek remedies that include a cease-and-desist order and civil money penalties. Global IV has the right to hire an attorney to represent it. If Global IV does hire an attorney, please have its counsel contact me as soon as possible.

The Commission has a procedure to permit parties involved in its investigations to present reasons or arguments why the Commission should not file an action against them. This letter describes how Global IV can make such a presentation. If Global IV wants to make a presentation, it may do so in writing or by videotape recording. Any written presentation should be 40 pages or less, and any video presentation should be 12 minutes or less. Global IV's presentation may include any reasons of law, policy, or fact why it believes the proposed enforcement action should not be filed, and may bring any facts to the Commission's attention that it believes it should consider. We have enclosed a document that describes in greater detail the Commission's process for these presentations. The document is called Securities Act Release No. 5310, "Procedures Relating to the Commencement of Enforcement Proceedings and Termination of Staff Investigations." The Commission rule that relates to these presentations is Rule 5(c) of the Commission's Rules on Informal and Other Procedures, 17 C.F.R. § 202.5(c).

It is entirely voluntary on Global IV's part whether to make a presentation. It is not required to make one. If Global IV wishes to make a presentation, it should send it to me by January 30, 2015. My address is:

Matthew F. McNamara
Assistant Director, Division of Enforcement
Securities and Exchange Commission
950 East Paces Ferry Rd., N.E., Suite 900
Atlanta, Georgia 30326
USA

If we make an enforcement recommendation to the Commission in this matter concerning Global IV, we will send to the Commission any presentation that Global IV makes.

The Commission may use the information or statements contained in any presentation that Global IV makes as evidence against it in any action that it brings against Global IV. This use of the presentation is described in another document that I have enclosed that is called Form 1662, "Supplemental Information for Persons Requested to Supply Information Voluntarily or Directed to Supply Information Pursuant to a Commission Subpoena," in Item 4 of the section on "Routine Uses of Information." Form 1662 also describes other uses that the Commission can make of any presentation. You also should know that any presentation Global IV makes may be obtained by third parties through legal processes they pursue. These third parties may include private parties and other federal or state departments, offices, or agencies.

If you have any questions, please contact me at 011-1-404-842-7688.

Sincerely,

Matthew F. McNamara
Assistant Director, Division of Enforcement

Enclosures: Securities Act Release No. 5310
SEC Form 1662

PROCEDURES RELATING TO THE COMMENCEMENT OF ENFORCEMENT PROCEEDINGS AND TERMINATION OF STAFF INVESTIGATIONS

SECURITIES ACT OF 1933, Release No. 5310; SECURITIES EXCHANGE ACT OF 1934, Release No. 9796; INVESTMENT COMPANY ACT OF 1940, Release No. 7390; INVESTMENT ADVISORS ACT OF 1940, Release No. 336

September 27, 1972

The Report of the Advisory Committee on Enforcement Policies and Practices, submitted to the Commission on June 1, 1972, contained several recommendations designed to afford persons under investigation by the Commission an opportunity to present their positions to the Commission prior to the authorization of an enforcement proceeding.[1] These procedural measures, if adopted, would in general require that a prospective defendant or respondent be given notice of the staff's charges and proposed enforcement recommendation and be accorded an opportunity to submit a written statement to the Commission which would accompany the staff recommendation. The objective of the recommended procedures is to place before the Commission prior to the authorization of an enforcement proceeding the contentions of both its staff and the adverse party concerning the facts and circumstances which form the basis for the staff recommendation.[2]

The Commission has given these recommendations careful consideration. While it agrees that the objective is sound, it has concluded that it would not be in the public interest to adopt formal rules for that purpose. Rather, it believes it necessary and proper that the objective be attained, where practicable, on a strictly informal basis in accordance with procedures which are now generally in effect.

The Commission desires not only to be informed of the findings made by its staff but also, where practicable and appropriate, to have before it the position of persons under investigation at the time it is asked to consider enforcement action.

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[1] See Report of the Advisory Committee on Enforcement Policies and Practices, June 1, 1972, page 31 et seq.

[2] It should be noted that the obtaining of a written statement from a person under investigation is expressly authorized by Section 20(a) of the Securities Act of 1933 and Section 21(a) of the Securities Exchange Act of 1934. Section 21(a) of the Exchange Act provides as follows:

> "The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this title or any rule or regulation thereunder, and may require or permit any person to file with it a statement in writing, under oath or otherwise as the Commission shall determine, as to all the facts and circumstances concerning the matter to be investigated. . . ."

The Commission, however, is also conscious of its responsibility to protect the public interest. It cannot place itself in a position where, as a result of the establishment of formal procedural requirements, it would lose its ability to respond to violative activities in a timely fashion.

The Commission believes that the adoption of formal requirements could seriously limit the scope and timeliness of its possible action and inappropriately inject into actions it brings issues, irrelevant to the merits of such proceedings, with respect to whether or not the defendant or respondent had been afforded an opportunity to be heard prior to the institution of proceedings against him and the nature and extent of such opportunity.

The Commission is often called upon to act under circumstances which require immediate action if the interests of investors or the public interest are to be protected. For example, in one recent case involving the insolvency of a broker-dealer firm, the Commission was successful in obtaining a temporary injunctive decree within 4 hours after the staff had learned of the violative activities. In cases such as that referred to, where prompt action is necessary for the protection of investors, the establishment of fixed time periods, after a case is otherwise ready to be brought, within which proposed defendants or respondents could present their positions would result in delay contrary to the public interest.

The Commission, however, wishes to give public notice of a practice, which it has heretofore followed on request, of permitting persons involved in an investigation to present a statement to it setting forth their interests and position. But the Commission cannot delay taking action which it believes is required pending the receipt of such a submission, and, accordingly, it will be necessary, if the material is to be considered, that it be timely submitted. In determining what course of action to pursue, interested persons may find it helpful to discuss the matter with the staff members conducting the investigation. The staff, in its discretion, may advise prospective defendants or respondents of the general nature of its investigation, including the indicated violations as they pertain to them, and the amount of time that may be available for preparing a submission. The staff must, however, have discretion in this regard in order to protect the public interest and to avoid not only delay, but possible untoward consequences which would obstruct or delay necessary enforcement action.

Where a disagreement exists between the staff and a prospective respondent or defendant as to factual matters, it is likely that this can be resolved in an orderly manner only through litigation. Moreover, the Commission is not in a position to, in effect, adjudicate issues of fact before the proceeding has been commenced and the evidence placed in the record. In addition, where a proposed administrative proceeding is involved, the Commission wishes to avoid the possible danger of apparent prejudgment involved in considering conflicting contentions, especially as to factual matters, before the case comes to the Commission for decision. Consequently, submissions by prospective defendants or respondents will normally prove most useful in connection with questions of policy, and on occasion, questions of law, bearing upon the question of whether a proceeding should be initiated, together with considerations relevant to a particular prospective defendant or respondent which might not otherwise be brought clearly to the Commission's attention.

Submissions by interested persons should be forwarded to the appropriate Division Director or Regional Administrator with a copy to the staff members conducting the investigation and should be clearly referenced to the specific investigation to which it relates. In the event that a recommendation for enforcement action is presented to the Commission by the staff, any submissions by interested persons will be forwarded to the Commission in conjunction with the staff memorandum.

It is hoped that this release will be useful in encouraging interested persons to make their views known to the Commission and in setting forth the procedures by which that objective can best be achieved.

The Advisory Committee also recommended that the Commission should adopt in the usual case the practice of notifying a person who is the subject of an investigation, and against whom no further action is contemplated, that the staff has concluded its investigation of the matters referred to in the investigative order and has determined that it will not recommend the commencement of an enforcement proceeding against him.[3]

We believe this is a desirable practice and are taking steps to implement it in certain respects. However, we do not believe that we can adopt a rule or procedure under which the Commission in each instance will inform parties when its investigation has been concluded. This is true because it is often difficult to determine whether an investigation has been concluded or merely suspended, and because an investigation believed to have been concluded may be reactivated as a result of unforeseen developments. Under such circumstances, advice that an investigation has been concluded could be misleading to interested persons.

The Commission is instructing its staff that in cases where such action appears appropriate, it may advise a person under inquiry that its formal investigation has been terminated. Such action on the part of the staff will be purely discretionary on its part for the reasons mentioned above. Even if such advice is given, however, it must in no way be construed as indicating that the party has been exonerated or that no action may ultimately result from the staff's investigation of that particular matter. All that such a communication means is that the staff has completed its investigation and that at that time no enforcement action has been recommended to the Commission. The attempted use of such a communication as a purported defense in any action that might subsequently be brought against the party, either civilly or criminally, would be clearly inappropriate and improper since such a communication, at the most, can mean that, as of its date, the staff of the Commission does not regard enforcement action as called for based upon whatever information it then has. Moreover, this conclusion may be based upon various reasons, some of which, such as workload considerations, are clearly irrelevant to the merits of any subsequent action.

By the Commission.

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[3] Report, page 20.

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:

> [W]hoever, 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 would like more information, or have questions or comments about federal securities regulations as they affect small businesses, please contact the Office of Small Business Policy, in the SEC's Division of Corporation Finance, 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 D

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September 1, 2015

VIA EMAIL: gordonr@sec.gov

Robert K. Gordon
Senior Trial Counsel
Securities and Exchange Commission
Atlanta Regional Office
950 East Paces Ferry Rd., N.E., Suite 900
Atlanta, Ga, 30326

Re: *In the Matter of Ironridge Global Partners, LLC and Ironridge Global IV, Ltd.*, SEC Administrative Proceeding File No. 3-16649

Dear Robert:

Respondents learned recently that the Atlanta Staff interviewed at least one witness for whom the Division appears not to have produced an examination transcript or any other witness statement. We note that you previously represented in an August 7 letter that "the Division has provided [Respondents] with transcripts of all the testimony from the investigation leading to this proceeding." Rule of Practice 231(a) imposes an affirmative duty on the Division to produce statement of any person the Division has "called" as a witness, as well as of any person the Division intends to call. Respondents therefore request that you identify all witnesses the Staff has already interviewed and produce all transcripts or statements reflecting those interviews.

You have previously denied our request for such materials because the Scheduling Order requires the parties to file witness lists on November 2, 2015. That argument incorrectly assumes that the Division only needs to produce information for witnesses it intends to call at the final hearing. Rule 231(a) applies to witnesses the Division has already spoken with.

If you would like to confer further on this issue, please let me know. We look forward to your prompt response.

Sincerely,

Josh C. Hess
Counsel for Respondents

cc: W. Shawn Murnahan (via email: murnahanw@sec.gov)
Kyle A. Bradley (via email: bradleyky@sec.gov)

Exhibit E

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

Robert K. Gordon
Senior Trial Counsel

Telephone: (404) 842-7652
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September 4, 2015

BY EMAIL
Mr. Josh C. Hess
Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530

Re: ***In the Matter of Ironridge Global Partners, LLC, et al.,***
Administrative Proceeding File No. 3-16649

Dear Josh:

This responds to your letter of September 1, 2015. The Division has no transcripts or other Jencks materials for witnesses or potential witnesses beyond what it has produced. Because the Rules do not authorize discovery of the identity of persons with whom the Division staff has spoken during the investigation, the Division declines your request for such information.

Sincerely,

Robert K. Gordon
Senior Trial Counsel

Exhibit F

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15519

In the Matter of **Timbervest, LLC,** **Joel Barth Shapiro,** **Walter William Anthony Boden, III,** **Donald David Zell, Jr.,** **and Gordon Jones II,** **Respondents.**	**RESPONDENTS' MOTION TO ALLOW SUBMISSION OF ADDITIONAL EVIDENCE AND MOTION FOR LEAVE TO ADDUCE ADDITIONAL EVIDENCE**

Pursuant to SEC Rule of Practice 452, Respondents submit this motion seeking submission of additional evidence and also seek leave to adduce additional evidence as to Respondents' argument that their due process rights were violated because of the lack of ALJ impartiality and as to the appointment of the SEC ALJs that presided over this matter. First, as to Respondents' lack of ALJ impartiality claim, a May 6, 2015 Wall Street Journal article titled "SEC Wins With In-House Judges" (referred to herein as the "WSJ Article" and attached hereto as **Exhibit 1**) includes statements made by former SEC ALJ Lillian McEwen that support Respondents' arguments that the SEC's administrative forum lacks impartiality and raises serious concerns of institutional SEC ALJ bias against respondents generally in SEC administrative actions. Specifically, the WSJ Article states the following--

> **Bias allegation**
>
> One former SEC judge said she thought the system was slanted against defendants at times. Lillian McEwen, who was an SEC judge from 1995 to 2007, said she came under fire from Ms. Murray for finding too often in favor of defendants.

> "She questioned my loyalty to the SEC," Ms. McEwen said in an interview, adding that she retired as a result of the criticism.

Former ALJ McEwen is quoted as stating that "the SEC in-house judges were expected to work on the assumption that 'the burden was on the people who were accused to show that they didn't do what the agency said they did.'" Respondents request that the statements made by former SEC ALJ McEwen in the WSJ Article be admitted as additional evidence supporting Respondents' argument that the SEC's administrative forum is biased and lacks impartiality.

Under SEC Rule of Practice 452, additional evidence should be admitted if (1) "there were reasonable grounds for failure to adduce such evidence previously," and (2) "such additional evidence is material." The WSJ Article and the statements made therein by former SEC ALJ McEwen were published on May 6, 2015 and therefore were not available to Respondents until that date. Thus, there are reasonable grounds for Respondents' failure to adduce such evidence because the evidence was not available until recently.

Further, ALJ's McEwen's statements are material. The due process clause entitles Respondents to an impartial and unbiased judge. *See Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242 (1980). Former ALJ McEwen's statement that her loyalty was questioned by Chief Judge Murray because she ruled too often in favor of defendants and that SEC ALJs worked under the assumption that the burden was on the respondent to show that "they didn't do what the agency said they did" supports Respondents' argument that the SEC administrative process lacks impartiality. Although former SEC ALJ McEwen departed the Commission years before the hearing in this matter, Chief Judge Murray initially presided over this hearing, issued rulings against the Respondents, including Respondent's *Brady* motion and motion for summary disposition. ALJ Murray also supervises ALJ Cameron Elliot who presided over the hearing and

issued the Initial Decision here. As set forth in Respondents' briefs to the Commission, ALJ Elliot has a history of ruling in favor of the Division of Enforcement in every case before him and, in this case, issued rulings that show bias. This includes finding a witness who testified for the Division of Enforcement credible even though that witness admitted offering to provide better testimony for the Respondents if the Respondents paid him amounts he believed they owed him. Further, on nearly every credibility ruling, ALJ Elliot found against Respondents. Ruling against a respondent alone is not evidence of bias, but the presumption of impartiality is rebutted when an ALJ rules in favor of the agency in every case before them. *See Rothenberg v. Daus*, 2012 WL 1970438, at *8 (2d Cir. 2012) (stating that presumption of impartiality may be rebutted by, among other things, "a history of ALJs ruling for the agency"). The statements made by former ALJ McEwen along with the history of SEC ALJ rulings, and in particular ALJ Elliot's rulings, in favor of the agency support Respondents' arguments of bias and lack of impartiality.

In addition to admitting the statements made by former ALJ McEwen as additional evidence of lack of impartiality, Respondents request limited discovery from the SEC. Specifically, Respondents move to seek the following discovery:

(1) Documents that refer or relate to ALJ McEwen's statement that she "came under fire from Ms. Murray for finding too often in favor of defendants."

(2) Documents that refer or relate to the statement made by former ALJ McEwen that "the SEC in-house judges were expected to work on the assumption that 'the burden was on the people who were accused to show that they didn't do what the agency said they did.'"

(3) A copy of any and all evaluations of ALJ Elliot as an SEC ALJ by the Commission, the SEC's Office of Administrative Law Judge, or any other governmental office entity.

(4) A copy of any and all evaluations of Chief Judge Brenda Murray as Chief Judge and SEC ALJ by the Commission, the SEC's Office of Administrative Law Judges, or any other governmental office entity.

(5) A copy of any and all evaluations of ALJ McEwen as an SEC ALJ by the Commission, the SEC's Office of Administrative Law Judges, or any other governmental office entity.

(6) Documents that relate to the training of Commission ALJs, including, but not limited to SEC ALJ handbooks, manuals, and/or policy guidebooks.

(7) Documents that reflect the history of Commission ALJ's ruling in favor of the Division of Enforcement, including but not limited to internal memoranda, statistics, reports, data analysis, or correspondence.

(8) Documents that reflect the compensation system for Commission ALJs, including but not limited to, the documents describing and reflecting the manner in which compensation decisions, including salary adjustments and bonuses, are made and have been made during the last ten years.

(9) Depositions of Chief Judge Brenda Murray, former SEC ALJ McEwen, and SEC ALJ Elliot, limited to the issue of impartiality. Specifically, whether there is pressure to rule in favor of the Commission, how SEC ALJs are evaluated, and whether SEC ALJs are expected to work on the assumption that the burden is on the respondents to show that "they didn't do what the agency said they did."

To the extent the Division of Enforcement opposes Respondents' request to admit the statements made by former ALJ McEwen because it is hearsay, the Commission has recognized "that hearsay statements may be admitted as evidence and, in an appropriate case, may even form

the sole basis for findings of fact." *In the Matter of the Application of Mark J. Hankoff*, 50 S.E.C. 1009, Release No. 30778, 1992 WL 129520, at *3 (1992). The Commission has further stated that "[i]n determining whether to rely on hearsay evidence, it is necessary to evaluate its probative value, reliability and the fairness of its use." *Id.* The factors used include "the possible bias of the declarant; whether or not the statements are contradicted by direct testimony; the type of hearsay at issue; whether the missing witness was available to testify; and whether or not the hearsay is corroborated." *Id.* Therefore, if the Commission does not credit the statements made by former ALJ McEwen within the WSJ article because they are hearsay, it is even more appropriate to allow for limited discovery to evaluate whether to rely on the hearsay evidence.

In sum, former SEC ALJ McEwen's statements raise serious concerns about the SEC's administrative process and it is appropriate to admit those statements in the record as evidence of lack of impartiality. It is also imperative to allow for discovery on this issue, especially to the extent the Commission has any concerns about the reliability of former SEC ALJ McEwen's statements in the WSJ Article.

Additionally, Respondents request discovery on how the SEC ALJs that presided over this matter were appointed. In a May 11, 2015 hearing in *Tilton v. Securities and Exchange Commission*, 15 cv 2472 (S.D.N.Y.), a case that raises similar constitutional separation of powers issues as the arguments raised here, the Department of Justice, attorneys for the SEC, stated that the Commission did not appoint the ALJ in the underlying SEC administrative proceeding instituted against Tilton. (*Tilton* May 11, 2015 Hearing Transcript at 26, attached hereto as **Exhibit 2.**) The DOJ acknowledged that if the district court in *Tilton* found that SEC ALJs are inferior officers, "that would make it more likely that the plaintiffs can succeed on the merits of the Article II challenge, at least with respect to the appointments clause challenge."

(*Id.* at 29.) The Appointment Clause violation is applicable here as well if the Commission did not appoint ALJ Elliot. Respondents thus request discovery as to how ALJ Elliot and Chief ALJ Murray were appointed and whether the Commission itself appointed them.

This 20th day of May, 2015.

Stephen D. Councill
Julia Blackburn Stone

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15519

In the Matter of

Timbervest, LLC,

Joel Barth Shapiro,
Walter William Anthony Boden, III,
Donald David Zell, Jr.,
and Gordon Jones II,

Respondents.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a copy of the foregoing upon counsel of record in this matter by causing same to be delivered to the following as indicated below.

Via Facsimile to 202-772-9324
and Overnight Delivery

Secretary Elizabeth M. Murphy
Office of Administrative Law Judges
U.S. Securities and Exchange Commission
100 F Street, N.E., Mail Stop 2557
Washington, DC 20549
(original and two copies)

Via Email and First Class Mail

Robert K. Gordon
Anthony J. Winter
U.S. Securities and Exchange Commission
950 East Paces Ferry Road, NE
Suite 900
Atlanta, Georgia 30236-1382
GordonR@sec.gov
WinterA@sec.gov

This 20th day of May, 2015.

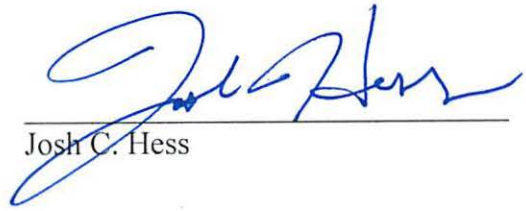
George Kostolampros

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2015, I filed and original and three copies of the foregoing and all attachments by Federal Express Overnight Mail with the Office of the Secretary, Securities and Exchange Commission, Attn: Secretary of Commission Brent J. Fields, 100 F Street NE, Mail Stop 1090, Washington, DC 20549, and by facsimile transmission to (202) 772-9324, and served a true and correct copy upon counsel of record and the hearing officer by electronic mail, as follows:

Mr. Robert Gordon: gordonr@sec.gov
Securities and Exchange Commission

The Honorable James E. Grimes: alj@sec.gov
Administrative Law Judge
William Miller: millerwi@sec.gov



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