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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16836

In the Matter of

STEVEN J. MUEHLER, ALTERNATIVE SECURITIES MARKETS GROUP CORP., AND BLUE COAST SECURITIES CORP., dba GLOBALCROWDTV, INC., AND BLUE COAST BANC,

Respondents.

DIVISION OF ENFORCEMENT'S OPPOSITION TO RESPONDENTS' MOTION FOR SUMMARY DISPOSITION

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I. INTRODUCTION

The Division of Enforcement ("Division") hereby opposes Respondents' motion for summary disposition. In their motion, Respondents make three arguments: (1) that proceeding in this administrative forum is unconstitutional; (2) that the Division has knowingly violated Rule 230 of the Commission's Rules of Practice by failing to timely provide discovery to Respondents; and (3) that the SEC lacks subject matter jurisdiction as Respondents' alleged conduct falls outside the scope of the federal securities laws. None of Respondents' arguments are well taken. Accordingly, their motion for summary disposition should be denied.

II. ARGUMENT

A. Respondents' Various Constitutional Challenges To This Administrative Proceeding Should Be Rejected

1. Respondents' Forum Challenge Lacks Merit

Respondents' argument that they are entitled to summary disposition because this matter does not belong in an administrative forum (Mot. 32) ignores the fact that Congress granted the Commission discretion to address potential violations of the Securities Exchange Act of 1934 by authorizing the filing of an enforcement action in either district court *or* administrative proceedings. *See, e.g.*, 15 U.S.C. §§ 78u(d), 78u-2, 78u-3. It is well established that where the law affords such a choice, prosecutors may exercise their discretion in selecting the forum in which to bring an action. e.g., *United States v. Haynes*, 985 F.2d 65, 69 (2d Cir. 1993); *see also Hartman v. Moore*, 547 U.S. 250, 263 (2006) (prosecutorial decision-making is accorded a strong "presumption of regularity"). And, as the Commission has recently explained, its decision to authorize an action in an administrative forum, rather than in federal district court, is a discretionary choice based on

various considerations that are specific to each case. *In re Harding Advisory LLC*, No. 3-15574, 2014 SEC LEXIS 4546, at *26 (Mar. 14, 2014). Respondents' argument cannot be reconciled with those fundamental principles.

2. The Appointment And Removal of Commission ALJs is NOT Unconstitutional

Respondents also contend that this proceeding violates Article II of the Constitution because the presiding ALJ was not properly appointed and is protected by two layers of for-cause removal. *See* Mot. 2-3, 33. But as the Commission found in *In re David F. Bandimere*, No. 3-15124, 2015 SEC LEXIS 4472, at *68-86 (Oct. 29, 2015), *In re Timbervest, LLC,* No. 3-15519, 2015 SEC LEXIS 3854, at *89-118 (Sept. 17, 2015), and *In re Raymond J. Lucia Cos.,* No. 3-15006, 2015 SEC LEXIS 3628, at *76-90 (Sept. 3, 2015), Commission ALJs are employees, not constitutional officers, and thus they are not subject to Article II's requirements.

3. Respondents' Other Constitutional Challenges Lack Merit

Respondent's other constitutional challenges are equally without merit.

Equal Protection. Respondents appear to argue that the Commission's decision to proceed administratively, rather than in federal court, violates the Equal Protection Clause. Mot. 3-4. But the Commission has rejected analogous challenges, explaining that a "class-of-one" equal-protection claim — in which a respondent alleges that he or she was intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment — "is not legally cognizable in the context of an inherently discretionary governmental decision to bring charges in one forum rather than another." *Bandimere*, 2015 SEC LEXIS 4472, at *68. Respondents' class-of-one argument, moreover, is precisely the sort that the Supreme Court has found meritless: that

an inherently "subjective, individualized decision" was in fact made in a "subjective and individualized" manner. *Engquist v. Oregon Dep't of Ag.*, 553 U.S. 591, 604 (2008). Indeed, as the Commission has explained, the selection of the forum in which to bring a case necessarily reflects "a highly individualized assessment of the facts and circumstances of [that] case." *In re Timbervest*, No. 3-15519, 2015 SEC LEXIS 3854, at *115. That Respondents would prefer the Commission to have made a different choice does not render its decision an equal protection violation.

The Seventh Amendment. Respondents similarly err in asserting that the pending action is unconstitutional because they have been improperly denied a jury trial. Mot. 4. It is well established that Congress "may assign th[e] adjudication" of cases involving so-called "public rights" to "an administrative agency with which a jury trial would be incompatible[] without violating the Seventh Amendment[] . . . even if the Seventh Amendment would have required a jury where the adjudication of those rights is assigned instead to a federal court of law." *Atlas Roofing Co. v. Occupational Safety & Health Review Comm'n*, 430 U.S. 442, 455 (1977). Here, in pursuing civil penalties against Respondents, the Commission is acting in the government's "sovereign capacity under an otherwise valid statute creating enforceable public rights," *id.* at 458, and thus, Congress' decision to give the Commission the authority to choose the administrative forum is proper.

Due Process. To the extent Respondents suggest that the Commission's Rules improperly constrain the ALJ in violation of their due process rights (Mot. 4, 18-20), that argument also fails. As the Commission recently observed, "[s]uch broad attacks on the procedures of the administrative process have been repeatedly rejected by the courts." *In re Harding Advisory LLC*, No. 3-15574, 2014 SEC LEXIS 4546, at *34. Those courts

have correctly recognized that to accept such challenges "would do considerable violence to Congress' purposes in establishing" specialized administrative agencies and would "work a revolution in administrative (not to mention constitutional) law." *Blinder, Robinson & Co.* v. *SEC*, 837 F.2d 1099, 1107 (D.C. Cir. 1988). Due process requires only "the opportunity to be heard 'at a meaningful time and in a meaningful manner,' " *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), and Respondents have been afforded such opportunity.

Accordingly, for all these reasons, Respondents' various constitutional challenges to this administrative proceeding should be rejected.

B. Respondents' Claim That They Were Not Promptly Provided With Discovery Is Both Meritless And Moot

The OIP was served on Respondents on September 29, 2015. Thereafter, by letter dated October 5, 2015, the Division advised Respondent Muehler that, pursuant to Rule 230 of the Commission's Rules of Practice, it was making available for inspection and copying documents and materials from its investigation. *See* Ex. 1, attached hereto. Thereafter, by letter dated October 16, 2016, the Division provided an encrypted hard drive, containing electronic copies of all documents required to be produced by Rule 230 and, by email on the same date, provided Respondent Muehler with the password to that hard drive. *See* Exs. 2, 3 attached hereto. Thereafter, in the parties' joint prehearing conference statement, filed on November 16, 2015, Respondent Muehler acknowledged and agreed that the Division's "[p]roduction of documents set forth in Rule 230 is complete."

At the January 4, 2016 prehearing conference Muehler asserted that he was unable to access the electronic documents that the Division had previously provided him, claiming

that he did not have the password to the encrypted hard drive. Roughly one hour after the prehearing conference was concluded, the Division re-forwarded its October 16, 2015 email, containing the password, to Muehler. Ex. 4, attached hereto. The following day, Muehler filed a motion to compel the Division to respond to discovery, asserting he was still unable to gain access to the documents on the hard drive. On January 7, 2016, the administrative law judge ordered the parties to confer to provide Muehler with access to the electronic documents by January 8, 2016, and that if Muehler were still unable to access the documents by that date, the Division should provide Muehler with an unencrypted (and non-password protected) hard drive no later than January 12, 2016.

To avoid any further issues, the Division elected to send Muehler an unencrypted copy of the hard drive. Muehler received that hard drive on January 8, 2016, and reported that he was able to access the files thereon. Ex. 5, attached hereto.

Accordingly, regardless of the reasons why Muehler was not aware that the Division had provided him with the password to the encrypted hard drive on October 16, 2015, and regardless of his belated discovery that he was not able to use that password to gain access to the contents of the encrypted drive, this discovery issue is now moot.

C. Respondents' Claim That The Commission Lacks Subject Matter Jurisdiction Over Their Alleged Conduct Is Also Meritless

A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). Here, in wholly conclusory fashion, Respondents claim that the SEC lacks subject matter jurisdiction, asserting that all of their alleged conduct falls outside the scope of the federal securities laws. But on a motion for summary disposition, the facts of the pleadings against whom the motion is

made shall be taken as true, except as modified by stipulations or admissions made by that party, by uncontested affidavits, or by facts officially noted pursuant to Rule 323. 17 C.F.R. § 201.250(a). Here, the facts alleged in the OIP clearly set forth violations of the securities laws.

As an initial matter, it should be noted that the parties, in their joint prehearing conference statement, agreed that this matter is not appropriate for summary disposition. And for good reason. The OIP alleges antifraud violations, which involve issues such as scienter that are generally not susceptible to summary disposition. *In re Arthur F. Jacob*, Admin. No. 3-16883, 2015 SEC LEXIS 4945 (Dec. 4, 2015), at *4 ; *see also Commission Rules of Practice*, 60 Fed Reg. 32738, 32768 (June 23, 1995) (final rules rel.) ("Typically, Commission proceedings that reach litigation involve basic disagreement as to material facts. Based on past experience, the circumstances when summary disposition prior to hearing could be appropriately sought or granted will be comparatively rare.").

In any event, Respondents' argument that their conduct is beyond the scope of the federal securities laws because they never offered for sale, or sold, any securities (Mot. 34), misapprehends the law as well as the alleged facts.

1. The Shares of Preferred Stock Marketed to Investors and the Shares of Issuer Common Stock Acquired From Issuer Customers are Securities

The OIP alleges that since at least August 2013, Muehler and his companies, Blue Coast and ASMG, have offered to help small businesses raise money from investors, by offering to structure and prepare securities offerings, shepherd the offerings through the Commission review process, and then market the securities to the public. Although none of them were registered as, or associated with, a broker-dealer, they offered and agreed to effect securities actions for customers over the Internet, primarily under Regulation A.

OIP, II. B. 1, 4-10. In addition, through their "Listing & Direct Public Offering and Marketing Agreements" with customers, Respondents offered their broker-dealer services in return for upfront fees, monthly fees, a percentage of the funds raised, and an equity stake in each issuer. *Id.*, II. B. 11. In some instances, Respondents took an additional stake in an offering's success by agreeing to purchase any of the customer's newly issued securities not told to investors. *Id.*

The shares of preferred stock that the Respondents offered to help customers issue and sell to investors are the securities underlying the Division's Section 15(a) charges because the Respondents agreed to effect transactions in those securities for their customers. The shares of issuer common stock that Respondents contracted to acquire from their issuer customers underlie the Division's Section 10(b) and Rule 10b-5 charges because Respondents contracted to acquire those securities in connection with their fraudulent solicitation of issuer customers.[1] Both the preferred stock and the issuer common stock are "securities" under Section 3(a)(10) of the Exchange Act, which defines "security" to include "stock" and "any interest or instrument commonly known as a security." *See Landreth Timber Co. v. Landreth*, 471 U.S. 681, 687 & n.2 (1985) (holding common stock to be within definition and noting that preferred stock could also satisfy definition); *Briggs v. Sterner*, 529 F. Supp. 1155, 1166 (S.D. Iowa 1981) (holding that debentures that were convertible to common stock were securities because they were

[1] Respondents acquired the right to issuer common stock in three different ways, each of which supports the Division's Section 10(b) charges: (1) in some instances, Respondents acquired a vested, non-contingent right to issuer common stock upon executing the respective Issuer Agreements; (2) with respect to those issuers and many others, they acquired a contractual right to common stock based on the success of the proposed offerings; and (3) with respect to several other issuers, they also contracted to purchase any issuer common stock not sold to investors within a specified period of time. OIP, II. B. 2, 11.

akin to an option or entitlement to purchase shares). In addition, Muehler has repeatedly described both the preferred stock and the issuer common stock as "securities." OIP, II. B. 5.

Respondents' contention that they never sold a security through the ASMG website, even if true, is simply beside the point. Section 3(a)(13) of the Exchange Act defines a "purchase" of securities to include "any contract to buy, purchase, or otherwise acquire" securities. *See also Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 750-51 (1975) ("contract to purchase or sell securities is expressly defined by § 3(a) of the 1934 Act ... as a purchase or sale of securities for the purposes of that Act."); *Wharf (Holdings) Ltd. v. United Int'l Holdings, Inc.*, 532 U.S. 588, 594-95 (2001) (contractual right to acquire stock was "security" for purposes of Rule 10b-5). Here, Respondents convinced prospective customers to sign contracts through which Respondents acquired the right to a portion of the issuer's common stock based on the success of the proposed offering. OIP, B. II. 11. In some instances, ASMG also acquired a vested right to a portion of the issuer's common stock upon the execution of the contract itself. *Id.* Because they made misrepresentations and omissions in connection with contracts to acquire securities, they made them in connection with the purchase of securities.

Similarly, because Section 15(a) applies to those who "attempt to induce the purchase or sale" of securities, the solicitation of investors and issuers to buy and sell securities may constitute broker activity even if no transactions are consummated. *See Salvani et al,* No. 3-10298, Exchange Act Rel. No. 44590 (July 26, 2001); *accord ABC & S, Inc. v. MacFarlane Group, Inc.*, No. 13 C 07480, 2015 U.S. Dist. LEXIS 8383, at *7 (N.D. Ill. Jan. 22, 2015) (promise to help issuer raise money from investors was "attempt

to induce the purchase or sale" of securities in violation of Section 15(a)). Here, the OIP alleges that Respondent solicited both investors and issuers to buy and sell securities. For example, a press release that Muehler circulated on the Internet in July 2014, listed twenty-seven "IPOs" scheduled for the Alternative Securities Market in August and September 2014, and states that ASMG "expects the securities of Companies listed on the Alternative Securities Market to become quoted on the OTCQB, OTCQX or the NASDAQ Capital Markets within approximately one to four years of IPO or Listing on the Alternative Securities Market." OIP, II. B. 8. The version of the website that was available to the public in July 2014, and which Muehler marketed to investors over the Internet, provided a webpage for each customer that listed the terms of the proposed offering, included a link to the customer's offering statement, and included an "INVEST" button that led to an investor login page. *Id.* As of at least June 2015, the website listed eighteen companies as purportedly available for "trading" on the Alternative Securities Market. *Id.* Respondents have also marketed their customers' securities in promotional videos made available to the public on the website and YouTube, in which Muehler recommended specific offerings to potential investors and directed them to the website to invest. Id., II. B. 9. In a video for at least one customer, Muehler stated that the customer's securities were already available for sale on the Alternative Securities Market to accredited investors. *Id.* These allegations, amongst others, clearly allege a violation of Section 15(a).

2. Respondents Violated the Antifraud Provisions of Section 10(b) and Rule 10b-5(b) Through False Statements and Omissions

Section 10(b) of the Exchange Act and Rule 10b-5(b) prohibit any person from making any untrue statement of material fact or misleading omissions in connection with

the purchase or sale of any security. The OIP alleges that Respondents violated those provisions by using false statements and misleading omissions to acquire issuer common stock from their customers. Those alleged false statements and omissions include:

- falsely stating that Respondents have helped customers raise millions of dollars from investors;
- falsely stating that ASMG is a registered broker-dealer firm;
- falsely stating that Respondents were working with securities counsel to ensure the lawfulness of the proposed offerings;
- using "Legal@asmmarketsgroup.com" and references to ASMG's "Legal Dept." to create the false impression that ASMG had in-house counsel;
- falsely describing ASMG as an established financial services company with the ability to make multi-million-dollar loans;
- agreeing to use investment funds controlled by Muehler to purchase securities not sold to investors without disclosing that the funds had neither assets nor a reasonable expectation of having assets to satisfy the guarantees; and
- falsely stating that customer fees are used to pay SEC filing fees and that the SEC plans to dramatically increase its filing fees.

OIP, II. B. 12. The OIP also alleges that Respondents misled prospective customers by emphasizing their experience raising millions of dollars for small businesses through exempt offerings, and promising to do the same for prospective customers, without disclosing that Muehler's experience includes being disciplined by state securities regulators for promoting unregistered securities and defrauding the issuers of those securities. *Id.*, II. B.13.

a. Respondents Made the False Statements and Omissions

In *Janus Capital Group, Inc. v. First Derivative Traders*, __U.S.__, 131 S. Ct. 2296, 2302 (2011), the Supreme Court held that the "maker" of a statement for purposes

of Section 10(b) and Rule 10b-5 is "the person or entity with ultimate authority over the statement, including its content and whether and how to communicate it." Here, Muehler made numerous false statements and omissions personally and as the person with ultimate control over statements made by Blue Coast and ASMG. He falsely told prospective customers by telephone and email that his companies had helped raise millions of dollars from investors and that they were working with securities counsel on the offerings. OIP, II. B. 12. He created ASMG's website, which falsely described ASMG as, among other things, an established financial services company with the ability to make multi-million-dollar loans. *Id.* He signed contracts in which Respondents agreed to purchase securities not sold to investors without disclosing that they lacked sufficient assets to do so. *Id.* He told prospective customers by telephone and email that the fees he charged were mandatory SEC filing fees, and that the SEC planned to increase those fees in the near future. *Id.* He failed to disclose the California and Minnesota Orders when personally emphasizing his experience with exempt offerings and promising to conduct exempt offerings for new customers. *Id.*, II. B. 13. Accordingly, he and the entity Respondents made false statements and omissions.

b. The Misrepresentations and Omissions Were Material

To be actionable under the antifraud provisions of the Exchange Act, misrepresentations and omissions must be material. *Basic Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988); *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). A statement or omission is considered material if there is a substantial likelihood that a reasonable investor would consider it important in deciding whether to buy or sell securities. *Basic*, 485 U.S. at 299; *see also Brody v. Transitional Hosps. Corp.*, 280 F.3d 997, 1006 (9th Cir. 2002) (to be actionable, a false statement or omission must be more

than incomplete, it must "affirmatively create an impression of a state of affairs that differs in a material way from the one that actually exists.").

The alleged misrepresentations and omissions were material because they went to the heart of what Respondents promised to do for their customers. Misrepresentations about past success raising investor funds suggested that Respondents would succeed in raising funds for new customers going forward. OIP, II. B. 12. Misrepresentations that Respondents were working with legal counsel, particularly when combined with representations that Respondents had determined the proposed offerings to be lawful under all applicable securities laws, suggested that the offerings were lawful and would go effective within a reasonable time. *Id.* Misrepresentations about their ability to make multi-million-dollar loans suggested that Respondents were financially sound; not merely a fly-by-night scheme. *Id.* Misrepresentations about SEC filing fees misled customers about the use of their funds and pressured customers to sign without further diligence. *Id.* Promises to use ASMG-controlled funds to purchase any securities not sold to investors, without disclosing the lack of sufficient assets to do so, misled customers into believing that they were guaranteed to raise funds and that Respondents had skin in the game. *Id.* Respondents' failure to disclose the California and Minnesota Orders hid Muehler's history of misconduct in offerings like those proposed to his customers, including a substantially similar scheme in which he was found to have defrauded small business owners and unlawfully engaged in unregistered broker-dealer activity. *Id.*, II. B. 13. The Division expects that multiple issuer customers will testify that these false statements and omissions were important to their decision to do business with Respondents, and that they would not have signed customer agreements had they known the truth.

c. Respondents Acted with Scienter

Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) require a showing of scienter. *Aaron v. SEC*, 446 U.S. 680, 701-02 (1980). In the Ninth Circuit, scienter may be established by proof of intent or knowledge. *In re VeriFone Holdings, Inc. Securities Litig.*, 704 F.3d 694, 702 (9th Cir. 2012). Scienter may also be established by a showing of recklessness, which the Ninth Circuit has defined as "an extreme departure from the standards of ordinary care, and which presents a danger of misleading buyers or sellers that is either known to the defendant or is so obvious that the actor must have been aware of it." *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1569-70 (9th Cir. 1990) (*en banc*). The Ninth Circuit further clarified the "reckless" standard in *SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072, 1093 (9th Cir. 2010), where it held that scienter requires either "deliberate recklessness" or "conscious recklessness" – a "form of intent rather than a greater degree of negligence." As their founder and sole operator, Muehler's scienter is imputed to Blue Coast and ASMG. *See, e.g., SEC v. Manor Nursing Centers*, Inc., 458 F.2d 1082, 1089 n.3 (2d Cir. 1972); *In re Ponder Indus., Inc. et al.*, No. 3-9349, 1997 SEC LEXIS 1515 at *6 (July 22, 1997).

The OIP alleges that Muehler – and, thus, Blue Coast and ASMG – acted with a high degree of scienter by repeatedly making material misrepresentations while knowing that the statements were not true. Muehler knew he had not helped customers raise investor capital in the past, and in his motion for summary disposition admits as much. Mot. at 10, ¶ 39 ("Because MUEHLER has only prepared Private Placement offerings for Issuers as part of a services agreement, the amount of capital raised by these companies in not known by Mr. Muehler."). Muehler also knew Respondents were not working with legal counsel. He knew ASMG was not an established enterprise with the ability to make

multi-million-dollar loans. Since there are no Regulation A filing fees, he also had no reasonable basis for representing otherwise. Muehler also knew about the Minnesota and California Orders while soliciting customers, and he knew, or was reckless in not knowing, that issuers would want to know about his prior misconduct involving offerings similar to those that he proposed to facilitate for them. *In re VeriFone Holdings, Inc. Securities Litig.*, 704 F.3d at 702; *see also In re Elan Corp. Securities Litig.*, 543 F. Supp. 2d 187, 221 (S.D.N.Y. 2008) (evidence of similar schemes properly considered proof of unlawful intent); *SEC v. Kimmes*, 799 F. Supp. 852, 858 (N.D. Ill. 1992), *aff'd* 997 F.2d 287 (7th Cir. 1993).

3. Respondents' Violated the Antifraud Provisions of Section 10(b) and Rules 10b-5(a) and (c) Through their Fraudulent Scheme

Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) make it unlawful for any person in connection with the purchase or sale of securities to employ any device, scheme or artifice to defraud, or to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. Courts have explained that a "'scheme to defraud' is merely a plan or means to obtain something of value by trick or deceit." *Kimmes*, 799 F. Supp. at 858. Proof of scienter is required. *Aaron*, 446 U.S. at 701-02.[2]

The OIP alleges that Respondents engaged in a fraudulent scheme to solicit issuer customers, charge fees, and acquire issuer common stock through the misrepresentations

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[2] To be liable as a primary violator for a scheme to defraud, a defendant must have engaged in conduct that had the principal purpose and effect of creating a false appearance of fact in furtherance of the scheme. *See Simpson v. AOL Time Warner, Inc.*, 452 F.3d 1040, 1048 (9th Cir. 2006), *vacated on other grounds sub nom. Avis Budget Group Inc. v. Cal State Teachers' Ret. System*, 552 U.S. 1162 (2008). As alleged in the OIP, Muehler is directly responsible for the false statements and other fraudulent conduct. OIP, II. B. 12.

and omissions discussed above. They also employed deceptive devices, acts, and practices, including: (i) using email addresses like legal@asmmarketsgroup.com and legal@bluecoastsecurities.com (along with references to ASMG's "Legal Dept.") to falsely suggest that Respondents had an in-house legal team working on the Regulation A filings; (ii) directing prospective customers to the AMSG website and other marketing materials designed by Muehler to create the misimpression that Respondents are stable and sophisticated players in the securities industry; and (iii) assuring customers that they would soon qualify under Regulation A despite notice of uncured deficiencies in the offering statements. The OIP alleges that Respondents engaged in that conduct knowingly and/or recklessly in furtherance of their scheme and are thus liable under Section 10(b) and Rules 10b-5(a) and (c).

4. Respondents' also Violated Section 15(a) of the Exchange Act

Section 15(a) of the Exchange Act requires broker-dealers who "effect any transaction in, or induce or attempt to induce the purchase or sale of," any security using interstate commerce to be registered with the Commission or, if the broker-dealer is a natural person, to be associated with a registered broker-dealer that is not a natural person. *SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003), *aff'd*, 94 F. App'x 871 (2d Cir. 2004). To be liable under Section 15(a), the person in question must have acted as a broker-dealer using interstate commerce without being registered as a broker-dealer (or a natural person associated with a registered broker-dealer) and without qualifying for an exemption or safe harbor from registration. *Id.* Scienter is not an element of a Section 15(a) violation. *See SEC v. Interlink Data Network*, Civil Action No. 93, 1993 U.S. Dist. LEXIS 307312, at *46 (C.D. Cal. Nov. 15, 1993); *Martino*, 255 F. Supp. 2d at 283.

a. Respondents' Acted as Unregistered Broker-Dealers

Section 3(a)(4) of the Exchange Act defines "broker" as any person "engaged in the business of effecting transactions in securities for the accounts of others." A person "effects transactions in securities" if he or she participates in transactions at key points in the chain of distribution. *Mass. Fin. Servs., Inc. v. SIPC*, 411 F. Supp. 411, 415 (D. Mass. 1976), *aff'd*, 545 F.2d 754 (1st Cir. 1976); *see also SEC v. Nat'l Exec. Planners, Ltd.*, 503 F. Supp. 1066, 1073 (M.D.N.C. 1980).

The statute does not define "engaged in the business," but courts have interpreted the phrase to require "a certain regularity of participation in securities transactions." *SEC v. Hansen*, No. 83 Civ. 3602, 1984 U.S. Dist. LEXIS 17835, at *25 (S.D.N.Y. Apr. 6, 1984) (quoting *Mass. Fin. Servs., Inc.*, 411 F. Supp. at 415). Holding oneself out as a broker-dealer may be sufficient to establish that a person has engaged in the business with regularity. *SEC v. Schmidt*, No. 71 Civ 2008, 1971 U.S. Dist. LEXIS 11384, at *3 (S.D.N.Y. Aug. 26, 1971).[3] Other factors indicating that a person is engaged in the business include, among others, receiving transaction-based compensation, soliciting securities transactions, advertising for customers, and possessing customer funds and securities.[4]

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[3] *See also David A. Lipton*, Broker-Dealer Registration § 1:5 (updated 2014) ("merely holding oneself out as willing to engage in securities transactions will satisfy the need for regularity"); *Strengthening the Commission's Requirements Regarding Auditor Independence*, Securities Act Release No. 47265, n.82 (Jan. 28, 2003) (a person may be "engaged in the business" by "holding itself out as a broker-dealer").

[4] *See In re Kemprowski*, No. 3-8569, 1994 SEC LEXIS 3743 at *5 (Dec. 8, 1994) ("A number of factors are relevant in determining whether a person was acting as a broker, including whether the person: 1) actively solicited investors; 2) advised investors as to the merits of an investment; 3) acted with a 'certain regularity of participation in securities transactions'; and 4) received commission or transaction-based remuneration.") (citations omitted); *SEC v. Margolin*, 92 Civ. 6307 (PKL), 1992 U.S. Dist. LEXIS 14872

The Commission has explained that "solicitation" includes efforts to induce a single transaction or to develop an ongoing securities business relationship. *See Registration Requirements for Foreign Broker-Dealers*, Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013, 30017-18 (July 18, 1989). A broker "solicits" securities transactions by, among other things, "advertising one's function as a broker or market maker" and "recommending the purchase or sale of particular securities with the anticipation that the customer will execute the transaction through the broker-dealer." *Id.*; *see also Pinter v Dahl,* 486 U.S. 622, 646 (1988) ("The solicitation of a buyer is perhaps the most critical stage of the selling transaction. It is the first stage of a traditional securities sale to involve the buyer, and it is directed at producing the sale.").

Under these standards, the OIP adequately alleges that Respondents have engaged in the business of a broker-dealer by holding themselves out as broker-dealers and by offering and providing broker-dealer services with the expectation of receiving transaction-based compensation. They have done so with regularity by soliciting numerous issuers to offer securities, signing dozens of customers to offer securities, advertising the proposed offerings, and soliciting investors. OIP, II. B. 4-11. Muehler personally provided many of these services, including by running Blue Coast and ASMG, and by offering his personal recommendations about investments in promotional videos. That he attempted to induce securities transactions in earlier schemes is further evidence that he has engaged in the business of a broker-dealer with sufficient regularity. *Id.*, II.B. 9. Regardless of whether

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(S.D.N.Y. Sept. 30, 1992) (indicating that "receiving transaction-based compensation, advertising for clients, and possessing client funds and securities" are "evidence of brokerage activity"); *SEC v. Century Investment Transfer Corporation*, 71 Civ. 3384, 1971 U.S. Dist. LEXIS 11364 (S.D.N.Y. Oct. 5, 1971) (finding that soliciting customers through ads in the *Wall Street Journal* meant a firm engaged in "the broker-dealer business").

Respondents completed any securities transactions, Respondents attempted to do so for purposes of Section 15(a). *In re Salvani et al.*, No. 3-10293, Exchange Act Rel. No. 44590 at *2-4; *accord ABC & S, Inc.*, 2015 U.S. Dist. LEXIS 8383, at *7. Since they have engaged in those activities using interstate commerce, for the accounts of others, and without registering as broker-dealers, the OIP adequately alleges that Respondents violated Section 15(a).[5]

In short, the Commission clearly has subject matter jurisdiction over Respondents' alleged conduct.

III. CONCLUSION

For all the foregoing reasons, the Divisions respectfully submits that Respondents' motion for summary disposition should be denied.

Respectfully submitted,

DIVISION OF ENFORCEMENT

Donald W. Searles LMD

DONALD W. SEARLES
LYNN DEAN
M. LANCE JASPER

[5] The OIP alleges that Respondents used interstate commerce to solicit securities transactions by, among other things, advertising on the ASMG website and in web-based press releases; soliciting issuers via email; and accepting payments from customers through PayPal. OIP, B. II. 5, 8-10; C. II. 2. They acted for the accounts of others by soliciting third-party issuers and investors for securities transactions.

EXHIBIT 1

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Los Angeles Regional Office
444 S. Flower Street, Suite 900
Los Angeles, CA 90071

DIVISION OF ENFORCEMENT

Donald W. Searles
Senior Trial Counsel
(323) 965-4573
searlesd@sec.gov

October 5, 2015

By Email and U.S. Mail
Steven J. Muehler
[redacted]
Marina Del Rey, CA [redacted]
(legal@alternativesecuritiesmarket.com)

Re: *In the Matter of Steven J. Muehler, Alternative Securities Markets Group Corp. and Blue Coast Securities Corp., dba GlobalCrowdTV, Inc. and Blue Coast Banc*
Administrative Proceeding No. 3-16836

Dear Mr. Muehler:

Pursuant to Rule 230 of SEC Rules of Practice, you and Alternative Securities Markets Group Corp. and Blue Coast Securities Corp., dba GlobalCrowdTV, Inc. and Blue Coast Banc (collectively, "Respondents"), are hereby notified that documents and other materials (the "Production") from the investigation *In the Matter of Alternative Securities Market Group* (LA-4435) are available for inspection and copying here at the Commission's Los Angeles Regional Office, 444 South Flower Street, Suite 900, Los Angeles, California 90071 (the "Production"). If you wish to inspect or copy the Production or any portion thereof, please contact me to arrange a date and time.

For your benefit, we are providing you with a list of what the Production includes:

1. Documents obtained from third-parties;
2. Subpoenas issued in the investigation;
3. Other requests;
4. Testimony transcripts;
5. Testimony exhibits;
6. Other documents obtained during the investigation, including filings available on Edgar; certified copies of documents from the Commission's Office of the Secretary; and correspondence between the Commission's

Division of Corporation Finance and you, Alternative Securities Market Group Corp., and certain issuers;

7. Email communications with particular third parties;

8. Hard copy and email correspondence with third parties;

9. Declarations; and

10. Formal Orders.

Certain documents are protected from disclosure by the attorney-client or law enforcement privileges, or the attorney work product doctrine, and are withheld from production and will not be offered into evidence, namely: internal memoranda, internal notes or other writings prepared by U.S. Securities and Exchange Commission employees, internal communications, and communications with other law enforcement agencies.

I have also enclosed a proposed stipulated protective order regarding the restricted use and disclosure of documents contained in the production that contain personally identifiable information ("PII"), such as financial account numbers, social security numbers, taxpayer-identification numbers, and similar information. We request that you stipulate to the entry of the proposed order, and return a signed copy to me, whereupon I will submit it to the Court. In the event you agree to enter into the proposed stipulated protective order, we will produce to you the aforementioned production, at our expense, on a computer hard drive or other suitable electronic media.

Finally, pursuant to the September 30, 2015 Order Scheduling Hearing and Designating a Presiding Judge, the parties are required to confer and notify the presiding judge of a suggested date and time for a telephonic prehearing conference. During that prehearing conference, the parties and the presiding judge will discuss, among other things, the physical location of the hearing, the date for the commencement of the hearing (which is typically set approximately four to five months after the Order Instituting Administrative and Cease-And-Desist Proceedings is filed), the date for the exchange of witness and exhibits lists, a schedule for the exchange of prehearing motions or briefs, the potential for summary disposition of any or all issues, and the potential for settlement. *See* Rule 221 of the Commission's Rules of Practice. 15 C.F.R. § 201.221. We would suggest that we confer on Friday, October 9, 2015 at 10:00 a.m., to discuss a proposed date or dates for that prehearing conference, which we can then recommend to the presiding judge. We will call you at that time, unless we hear from you beforehand.

Should you have any questions concerning our production, the proposed protective order, the prehearing conference, or if you have any other questions, you may contact me directly at (323) 965-4573 or at searlesd@sec.gov.

Sincerely,

Donald W. Searles
Senior Trial Counsel

EXHIBIT 2

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Los Angeles Regional Office
444 S. Flower Street, Suite 900
Los Angeles, CA 90071

DIVISION OF ENFORCEMENT

M. Lance Jasper
Senior Counsel
(323) 965-3290
jasperml@sec.gov

October 16, 2015

By Email and United Parcel Service
Steven J. Muehler
4050 Glencoe Avenue, Unit 210
Marina Del Rey, CA 90292
(stevemuehler@gmail.com)
(legal@alternativesecuritiesmarket.com)

Re: In the Matter of Steven J. Muehler, Alternative Securities Markets Group Corp. and Blue Coast Securities Corp., dba GlobalCrowdTV, Inc. and Blue Coast Banc
Administrative Proceeding No. 3-16836

Dear Mr. Muehler:

By letter dated October 5, 2015, we informed you that certain documents and materials are available to you, Alternative Securities Markets Group Corp., and Blue Coast Securities Corp. (collectively, "Respondents") for inspection and copying at the Commission's Los Angeles Regional Office, 444 South Flower St., Suite 900, Los Angeles, California 90071. As a courtesy to you, we have prepared the enclosed hard drive, labeled LA-04435 Production, which includes both Concordance-ready documents and native versions of those documents that can be reviewed without using Concordance. Please read the instructions included on the hard drive to access the documents. We will send you a password for the hard drive via email.

Should you have any questions concerning the Production, you may contact me directly at (323) 965-3290, jasperml@sec.gov, or Donald Searles at (323) 965-4573, searlesd@sec.gov.

Sincerely,

M. Lance Jasper
Senior Counsel

EXHIBIT 3

Kassabgui, Ramy I.

From: Kassabgui, Ramy I.
Sent: Friday, October 16, 2015 2:40 PM
To: [redacted]; legal@alternativesecuritiesmarket.com
Cc: Jasper, Lance; Searles, Donald
Subject: [SMAIL] In the Matter of Steven J. Muehler et al AP File No.
Attachments: Muehler re HDD Prod 10-16-15.pdf

Mr. Muehler:

Please reference the attached letter. The password for the hard drive is Sec_LA-04435$

Ramy Kassabgui
U.S. Securities and Exchange Commission
Division of Enforcement
Senior Paralegal
444 South Flower Street, Suite 900
Los Angeles, CA 90071
323.965.3966
kassabguir@sec.gov

EXHIBIT 4

Kassabgui, Ramy I.

From: Searles, Donald
Sent: Monday, January 04, 2016 12:45 PM
To: AltaVista Capital Markets; Kassabgui, Ramy I.; Jasper, Lance; Dean, Lynn M.
Cc: Perlman, Benjamin
Subject: FW: [SMAIL] In the Matter of Steven J. Muehler et al AP File No.
Attachments: Muehler re HDD Prod 10-16-15.pdf

Dear Mr. Muehler,

I am re-forwarding the email from mid-October, providing the password to the hard drive that we sent you, along with a copy of our October 16, 2015 production letter.

Please confirm that you have received the password.

Regards

Donald W. Searles
Senior Trial Counsel
Division of Enforcement
Securities and Exchange Commission
444 S. Flower Street, Suite 900
Los Angeles, CA 90071
(323) 965-4573 (work)
(213) 590-7962 (cell)

From: Kassabgui, Ramy I.
Sent: Friday, October 16, 2015 2:40 PM
To: [redacted]; legal@alternativesecuritiesmarket.com
Cc: Jasper, Lance; Searles, Donald
Subject: [SMAIL] In the Matter of Steven J. Muehler et al AP File No.

Mr. Muehler:

Please reference the attached letter. The password for the hard drive is [redacted]

Ramy Kassabgui
U.S. Securities and Exchange Commission
Division of Enforcement
Senior Paralegal
444 South Flower Street, Suite 900
Los Angeles, CA 90071
323.965.3966
kassabguir@sec.gov

EXHIBIT 5

Kassabgui, Ramy I.

From:	AltaVista Capital Markets [redacted]
Sent:	Friday, January 08, 2016 10:36 AM
To:	Kassabgui, Ramy I.; Searles, Donald; ALJ; Perlman, Benjamin; Jasper, Lance; Orwat, Robert; Shields, Kathy Moore
Subject:	Re: In the Matter of Steven J. Muehler et al AP File No. 3-16836

I am in receipt of the External Hard Drive today, and am able to access the files.

On Thu, Jan 7, 2016 at 5:16 PM, [redacted] wrote:
Got, if you have a direct dial for the IT guy, I can call him as soon as it arrives.

Sent from my iPhone

On Jan 7, 2016, at 4:47 PM, Kassabgui, Ramy I. <KassabguiR@sec.gov> wrote:

> Mr. Muehler:
>
> Please reference the attached letter. The tracking number for the enclosed hard drive is 1Z A37 5F9 01 9683 2547. It should arrive tomorrow via UPS. Thank you.
>
> **Ramy Kassabgui**
>
> U.S. Securities and Exchange Commission
>
> Division of Enforcement
>
> Senior Paralegal
>
> 444 South Flower Street, Suite 900
>
> Los Angeles, CA 90071
>
> 323.965.3966
>
> kassabguir@sec.gov
>
> <Muehler re HDD prod 01-07-16.pdf>

CERTIFICATE OF SERVICE

I certify that on January 12, 2016, I caused the foregoing to be served on the following persons by the method of delivery indicated below.

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 1090
Washington, DC 20549
Fax: (703) 813-9793

(by Facsimile; and by UPS Original and 3 copies)

The Honorable Jason S. Patil
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 2557
Washington, DC 20549
Email: alj@sec.gov

(by Email)

Mr. Steven J. Muehler
[redacted]
Marina Del Rey, CA [redacted]
Emails: [redacted]
legal@alternativesecuritiesmarket.com

(by Email)

Alternative Securities Markets Group Corp.
c/o Steven J. Muehler
[redacted]
Marina Del Rey, CA 9[redacted]
Email: legal@alternativesecuritiesmarket.com

(by Email)

Blue Coast Securities Corp.
c/o Steven J. Muehler
[redacted]
Los Angeles, CA [redacted]
Email: legal@bluecoastbanc.com

(by UPS)

Ramy Kassabgui