

Mr. Steven J. Muehler

Marina Del Rey, California

Phone



UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER OF:

STEVEN J. MUEHLER,
ALTERNATIVE SECURITIES MARKETS
GROUP CORPORATION, AND BLUE COAST
SECURITIES CORPORATION, DBA
GLOBALCROWDTV, AND BLUE COAST BANC.

ADMINISTRATIVE PROCEEDING.: FILE NO. 3-16836

REPLY TO THE UNITED STATES
SECURITIES AND EXCHANGE
COMMISSIONS REPLY TO MOTION FOR
SUMMARY JUDGMENT

Mr. Steven J. Muehler, in his individual capacity and as the sole shareholder of Alternative Securities Markets Group Corporation and Blue Coast Securities Corporation (aka: "GlobalCrowdTV" and "Blue Coast Banc") each provide this response to the Commission's Response to MUEHLER's request for Summary Judgment.

RESPONSES

The Commission argues that MUEHLER's various Constitutional Challenges to this Administrative Proceeding should be Rejected, and that MUEHLER's Forum Challenge Lacks Merit.

The Commissions Response: 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

1 various considerations that are specific to each case. *In re Harding Advisory LLC*,
2 No. 3- 15574, 2014 SEC LEXIS 4546, at *26 (Mar. 14, 2014). Respondent s'
3 argument cannot be reconciled with those fundamental principles.
4

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6 MUEHLER'S RESPONSE: The United States District Court for the Southern District of New York
7 issued a ruling in August of 2015 in *Barbara Duka v U.S. Securities and Exchange Commission*,
8 stating that:

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10 *The court had reviewed Plaintiff Barbara Duka's complaint, which alleged that Administrative*
11 *Proceedings conducted by the Securities and Exchange Commission violate Article II of the*
12 *Constitution because the SEC Administrative Law Judges who are responsible for adjudicating those*
13 *proceedings "enjoy at least two layers of tenure protection" (Compl., dated Jan 16, 2015 ("Compl."),*
14 *¶ 3); (ii) the Court's Decision & Order, dated April 15, 2015, which found that the Court has subject*
15 *matter jurisdiction "to examine Duka's pleas that the SEC Administrative Proceedings against her be*
16 *halted but [also]..... that Duka is not entitled to preliminary enjoin the SEC proceedings because she is*
17 *'unlikely to succeed on the merits' of her constitutional claim," (Decision & Order at 2-3); (iii)*
18 *Plaintiff's Amended Complaint, filed June 10, 2015, which included a (newly-asserted) claim that*
19 *"[i]n contravention of the Appointments Clause [of Article II of the Constitution], SEC ALJs have not*
20 *been appointed by the SEC Commissioners," (Am. Compl., dated 10, 2015 ¶5); (iv) the SEC's motion*
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25 *July 22, 2015 (Government's Reply Br., dated July 22, 2015); (vii) Plaintiff's letter to the Court, dated*
26 *July 27, 2015, which stated that "Chief ALJ Murrar.... Was appointed as Chief Administrative Law*
27 *Judge by the Commission on March 20, 1994" (Letter to the Court, dated July 27, 2015, at 2); and*
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1 (viii) applicable legal authorities, THE COURT HEREBY DENIES THE SEC'S MOTION TO
2 DISMISS.
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4 This Court confirms the reasoning and conclusions set forth in its Decision & Order. The Court
5 perceives no new facts or legal authorities that would warrant reconsideration, including, most
6 respectfully, two recent decisions in the Southern District of New York in TILTON v SEC, No 15-CV-
7 2472 RA, 2015 WL 4006165 (S.D.N.Y June 29, 2015). The Court finds persuasive the reasoning in
8 HILL v SEC, No. 1:15-CV-1801-LMM, 2015 WL 4307088, at *6 (N.D. Ga. June 8, 2015) ("Congress
9 did not intend to prevent Plaintiff from raising his collateral constitutional claims in the district
10 court.").

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12 The Court has subject matter jurisdiction to evaluate Plaintiff's application for (declaratory and
13 injunctive) relief. Among other reasons, Plaintiff has no opportunity for meaningful judicial review.
14 See Decision & Order at 10; see also HILL, 2015 WL 4307088, at *8 ("[w]aiting until the harm
15 Plaintiff alleges cannot be remedied is not meaningful judicial review."). Duka's claim is that these
16 "Administrative Proceedings are unconstitutional in all instances." (Decision & Order at 13.) Seeking
17 to halt ALJ proceedings based upon alleged constitutional violations cannot reasonably be
18 characterized as the "regular" or "routine" business of the SEC Administrative Proceedings and is, in
19 any case, unrelated to the Securities violations underlying Duka's Administrative Proceeding.
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21 The Court stated in its Decision & Order that "[t]he Supreme Court's decision in FREYTAG v
22 COMMISSIONER, 501 U.S. 868 (1991), which held that a Special Trial Judge of the Tax Court was an
23 'inferior officer' under Article II, would appear to support the conclusion that SEC ALJs are also
24 inferior officers. (Decision & Order, at 16) The Court here concludes that SEC ALJs are "inferior
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7 *The Appointments Clause in Article II provides: "[T]he Congress may by Law vest the Appointment of*
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13 *language of Art. II, s 2, cl. 2, and unless the method it provides comports with the latter, the holders of*
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15 *only..... in an area sufficiently removed from the administration and enforcement of the public law as*
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17 *Appointments Clause, the SEC is a "Department" of the Executive Branch, and the Commissioners*
18 *function as the "Head" of that Department. See FREE ENTERPRISE FUND v. PUB CO*
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24 *"[b]ased on [her] knowledge of the Commission's ALJ hiring process, [SEC] ALJ [Cameron] Elliot*
25 *was not hired through a process involving the approval of the individual members of the Commission."*
26 *IN THE MATTER OF TIMBERVEST, LLC ET AL., Admin. Proc. File No. 3-15519 (attached as Ex. 1*
27 *to Am. Compl., dated June 10, 2015).*

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22 *TO PROCEED WITH DUKA'A SEC PROCEEDING IN THE INTERIM.*

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24 *Mr. Richard M. Berman, U.S.D.J.*
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1 **The Commission argues that the Appointment and Removal of Commission ALJs is NOT Unconstitutional.**

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3 The Commission's Reply: Respondents also contend that this proceeding violates Article II of the
4 Constitution because the presiding ALJ was not properly appointed and is protected by two layers of for-
5 cause removal. See Mot. 2-3, 33. But as the Commission found in *In re David F. Bandimere*, No. 3-
6 15124, 2015 SEC LEXIS 4472, at *68-86 (Oct. 29, 2015), *In re Timbervest, LLC*, No. 3-15519, 2015
7 SEC LEXIS 3854, at *89-118 (Sept. 17, 2015), and *In re Raymond J Lucia Cos.*, No. 3-15006, 2015 SEC
8 LEXIS 3628, at *76-90 (Sept. 3, 2015), Commission ALJs are employees, not constitutional officers, and
9 thus they are not subject to Article II's requirements.
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Mr. Richard M. Berman, U.S.D.J.

1 **The Commission argues that MUEHLER's other Constitutional Challenges Lack Merit.**

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3 The Commission's Reply: Respondent's other constitutional challenges are equally without merit.

4
5 Equal Protection. Respondents appear to argue that the Commission's decision to proceed
6 administratively, rather than in federal court, violates the Equal Protection Clause. Mot. 3-4.
7 But the Commission has rejected analogous challenges, explaining that a "class- of-
8 one"equal-protection claim – in which a respondent alleges that he or she was
9 intentionally treated differently from others similarly situated and that there is no rational
10 basis for the difference in treatment – is not legally cognizable in the context of an
11 inherently discretionary governmental decision to bring charges in one forum rather than
12 another." *Bandimere*, 2015 SEC LEXIS 4472, at *68. Respondents' class-of-one
13 argument, moreover, is precisely the sort that the Supreme Court has found meritless: that
14 an inherently "subjective, individualized decision" was in fact made in a "subjective and
15 individualized" manner. *Engquist v. Oregon Dep 't of Ag.*, 553 U.S. 591, 604 (2008).
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18 Indeed, as the Commission has explained, the selection of the forum in which to bring a
19 case necessarily reflects "a highly individualized assessment of the facts and circumstances
20 of[that] case." *In re Timbervest*, No. 3-15519, 2015 SEC LEXIS 3854, at * 115. That
21 Respondents would prefer the Commission to have made a different choice does not render
22 its decision an equal protection violation.
23

24 The Seventh Amendment. Respondent s similarly err in asserting that the pending action is
25 unconstitutional because they have been improperly denied ajury trial. Mot. 4. It is well
26 established that Congress "may assign th[e] adjudication" of cases involving so- called
27 "public rights" to "an administrative agency with which ajury trial would be incompatible[]
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1 without violating the Seventh Amendment[] . . . even if the Seventh Amendment would have
2 required a jury where the adjudication of those rights is assigned instead to a federal court of
3 law." *Atlas Roofing Co. v. Occupational Safety & Health Review Comm'n*, 430 U.S. 442,
4 455 (1977). Here, in pursuing civil penalties against Respondents, the Commission is acting
5 in the government's "sovereign capacity under an otherwise valid statute creating enforceable
6 public rights," *id.* at 458, and thus, Congress' decision to give the Commission the authority
7 to choose the administrative forum is proper.
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10 Due Process. To the extent Respondents suggest that the Commission's Rules improperly
11 constrain the ALJ in violation of their due process rights (Mot. 4, 18-20), that argument also
12 fails. As the Commission recently observed, "[s]uch broad attacks on the procedures of the
13 administrative process have been repeatedly rejected by the courts." *In re Harding Advisory*
14 *LLC*, No. 3-15574, 2014 SEC LEXIS 4546, at *34. Those courts have correctly recognized
15 that to accept such challenges "would do considerable violence to Congress' purposes in
16 establishing" specialized administrative agencies and would "work a revolution in
17 administrative (not to mention constitutional) law." *Blinder, Robinson & Co. v. SEC*, 837
18 F.2d 1099, 1107 (D.C. Cir. 1988). Due process requires only "the opportunity to be heard 'at a
19 meaningful time and in a meaningful manner,' "*Mathews*
20 *v. Eldridge*, 424 U.S. 319, 333 (1976), and Respondents have been afforded such
21 opportunity.
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24 Accordingly, for all these reasons, Respondents' various constitutional challenges to this
25 administrative proceeding should be rejected.
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The Appointments Clause in Article II provides: “[T]he Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.” Constitution, Art. II § 2, cl. 2. It is well-settled that the Appointment Clause provides the exclusive means by which inferior officers may be appointed. See Buckley v. Valeo, 424 U.S. 1, 138-9 (1976) (“Congress may undoubtedly.... Provide such method of appointment to those ‘offices’ as it chooses. But Congress’ power under that clause is inevitably bounded by the express language of Art. II, s 2, cl. 2, and unless the method it provides comports with the latter, the holders of those offices will not be ‘Officers of the United States.’ They may, therefore, properly perform duties only..... in an area sufficiently removed from the administration and enforcement of the public law as to permit their being performed by persons not ‘Officers of the United States.’”). For purposes of the Appointments Clause, the SEC is a “Department” of the Executive Branch, and the Commissioners function as the “Head” of that Department. See FREE ENTERPRISE FUND v. PUB CO ACCOUNTING OVERSIGHT BD., 561 U.S. 477, 512-513 (2010).

There appears to be no dispute that ALJs at issue in this case are NOT appointed by the SEC Commissioners. Indeed, in an Affidavit, dated June 4, 2015 that was taken in IN THE MATTER OF TIMBERVEST, LLC ET AL, Janyne L. Seidman, Deputy Operating Officer of the SEC, stated that, “[b]ased on [her] knowledge of the Commission’s ALJ hiring process, [SEC] ALJ [Cameron] Elliot was not hired through a process involving the approval of the individual members of the Commission.” IN THE MATTER OF TIMBERVEST, LLC ET AL., Admin. Proc. File No. 3-15519 (attached as Ex. 1 to Am. Compl., dated June 10, 2015).

As noted above, after thoroughly reviewing facts quite similar to those presented here, United States District Judge Leigh Martin May concluded that “Freytag mandates a finding that the SEC ALJs exercise ‘significant authority’ and are thus inferior officers” and that, because SEC ALJs are “not appropriately appointed pursuant to Article II, [their] appointment is likely unconstitutional in

1 violation of the Appointments Clause.” HILL, 2015 WL 4307088, at *18-19, Judge May granted the
2 Plaintiff’s motion to enjoin the Plaintiff’s SEC Administrative Proceeding (Id. at 43.).

3
4 Judge May also determined that “the ALJ’s appointment could be easily cured by having the SEC
5 Commissioners issue an appointment or preside over the matter themselves.” (Id. at 44.) Plaintiff’s
6 counsel in the instant case reached the same conclusion at a conference held on June 17, 2015, stating
7 that “I think that [having the Commissioners appoint the ALJs] is one of [the easy cures].” (See TR.
8 Of Proceedings, dated June 17, 2015, at 4.) And, it appears that the Commission is reviewing its
9 options regarding potential “cures” of any Appointment Clause violation(s). (See TR. of Proceedings,
10 dated June 17, 2015, at 10.)

11
12 FOR THE FOREGOING REASONS, THE COURT DENIES THE SEC’S MOTION TO DISMISS. The
13 Court reserves judgment on Plaintiff’s application for a preliminary injunction and/or imposition of
14 such an injunction for seven days from the date hereof to allow the SEC the opportunity to notify the
15 Court of its intention to cure any violation of the Appointment Clause. The parties are directed NOT
16 TO PROCEED WITH DUKA’S SEC PROCEEDING IN THE INTERIM.

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18 Mr. Richard M. Berman, U.S.D.J.
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1 **The Commission argues that MUEHLER's Claim that he was not Promptly Provided with Discovery is Both**
2 **Meritless and Moot**
3

4 The Commission's Response: The OIP was served on Respondents on September 29, 2015.
5 Thereafter, by letter dated October 5, 2015, the Division advised Respondent Muehler that,
6 pursuant to Rule 230 of the Commission's Rules of Practice, it was making available for
7 inspection and copying documents and materials from its investigation. *See* Ex. 1, attached
8 hereto.
9

10
11 Thereafter, by letter dated October 16, 2016, the Division provided an encrypted hard drive,
12 containing electronic copies of all documents required to be produced by Rule 230 and, by
13 email on the same date, provided Respondent Muehler with the password to that hard drive. *See*
14 Exs. 2, 3 attached hereto. Thereafter, in the parties' joint prehearing conference statement, filed
15 on November 16, 2015, Respondent Muehler acknowledged and agreed that the Division's
16 "[p]roduction of documents set forth in Rule 230 is complete."
17

18 At the January 4, 2016 prehearing conference Muehler asserted that he was unable to access
19 the electronic documents that the Division had previously provided him, claiming that he did
20 not have the password to the encrypted hard drive. Roughly one hour after the prehearing
21 conference was concluded, the Division re-forwarded its October 16, 2015 email, containing
22 the password, to Muehler. Ex. 4, attached hereto. The following day, Muehler filed a motion
23 to compel the Division to respond to discovery, asserting he was still unable to gain access to
24 the documents on the hard drive. On January 7, 2016, the administrative law judge ordered
25 the parties to confer to provide Muehler with access to the electronic documents by January
26 8, 2016, and that if Muehler were still unable to access the documents by that date, the
27
28

1 Division should provide Muehler with an unencrypted (and non-password protected) hard
2 drive no later than January 12, 2016.
3

4
5 To avoid any further issues, the Division elected to send Muehler an unencrypted copy
6 of the hard drive. Muehler received that hard drive on January 8, 2016, and reported that
7 he was able to access the files thereon. Ex. 5, attached hereto.
8

9 Accordingly, regardless of the reasons why Muehler was not aware that the Division had
10 provided him with the password to the encrypted hard drive on October 16, 2015, and
11 regardless of his belated discovery that he was not able to use that password to gain
12 access to the contents of the encrypted drive, this discovery issue is now moot.
13

14
15 MUEHLER's RESPONSE:

16 On September 28th, 2015, the United States Securities and Exchange Commission (the
17 "Commission") formally alleged that Mr. Steven J. Muehler engaged in: (i) a Fraudulent Scheme
18 and Unlawful Broker-Dealer Activity pursuant to Section 15(b) and 21C of the Securities
19 Exchange Act of 1934 with an Order Instituting Cease-and-Desist Proceedings pursuant to Section
20 21C of the Securities and Exchange Act of 1934 (the "OIP") (*In the Matter of Steven J. Muehler,*
21 *Alternative Securities Markets Group Corporation, and Blue Coast Securities Corporation, dba*
22 *GlobalCrowdTV, Inc. and Blue Coast Banc, Administrative Proceeding File Number 3-16836*)
23 before an SEC Administrative Law Judge ("SEC ALJ") at the Commission to determine, inter
24 alia, whether Mr. Muehler should be ordered to pay a civil penalty pursuant to Section 21B(a) of
25 the Exchange Act and whether Mr. Muehler should be ordered to pay disgorgement pursuant to
26 Sections 21B(e) and 21C(e) of the Act.
27
28

1 Upon receipt of the OIP, MUEHLER received an email from a Member of the United States
2 Securities and Exchange Commission inviting MUEHLER to the Los Angeles Offices of the
3 Securities and Exchange Commission to copy any and all discovery documents in support of the
4 Securities and Exchange Commission's claims against MUEHLER.

5
6 MUEHLER responded to the email, an email that was copied to Mr. Searles, stating that
7 MUEHLER had two available dates that met the Commission's dates of availability, as stated in
8 the email from the Member of the Securities and Exchange Commission, for MUEHLER to come
9 to the Los Angeles offices of the Securities and Exchange Commission to copy the discovery
10 documents that were gathered during the Securities and Exchange Commission's investigation of
11 MUEHLER, discovery documents that are allegedly in support of the SEC's claims against
12 MUEHLER.

13
14 In the first Meet and Confer between MUEHLER and Mr. Searles & Mr. Jasper, not having gotten
15 a reply to the email sent to the Securities and Exchange Commission and Mr. Searles about dates
16 when MUEHLER would be able to come to the Los Angeles Office of the Securities and
17 Exchange Commission to copy the discovery documents, MUEHLER stated to Mr. Searles and
18 Mr. Jasper that he (MUEHLER) again had the two open dates in which he (MUEHLER) was
19 available to come to the Los Angeles Office of the Securities and Exchange Commission to copy
20 the discovery documents. Mr. Searles stated that was not necessary, as he (Mr. Searles) and Mr.
21 Jasper would have copies of the related discovery documents delivered to MUEHLER

22
23 On or about the 15th day of October, MUEHLER received via UPS Delivery, a Computer External
24 Hard Drive, which allegedly contains all of the Securities and Exchange Commission's gathered
25 discovery documents supporting its Claim(s) against MUEHLER.
26
27
28

1 The External Hard Drive received by MUEHLER is Passcode Protected, and no Passcode(s) were
2 received with the External Hard Drive delivered to MUEHLER.

3
4 In MUEHLER's first reply to the complaint, MUEHLER informed the ALJ, Mr. Searles and Mr.
5 Jasper that he (MUEHLER) was not in possession of the passcode(s) for the received External
6 Hard Drive, and he (MUEHLER) was replying to the complaint without having had access to the
7 discovery documents on the received External Hard Drive.

8
9 In a November Pre-Hearing Conference Call between MUEHLER and Mr. Searles & Mr. Jasper
10 of the United Securities and Exchange Commission, MUEHER again stated he had not received
11 the passcode(s) to the received External Hard Drive. Mr. Searles, while searching his computer
12 emails during the call, responded to MUEHLER that an email was sent to MUEHLER on October
13 15th, 2015 that allegedly contained the passcode(s) for access to the received External Hard Drive,
14 and that he (Mr. Searles) has evidence that MUEHLER opened the alleged email on October 15th,
15 2015, and that MUEHLER should search his emails for this alleged email.

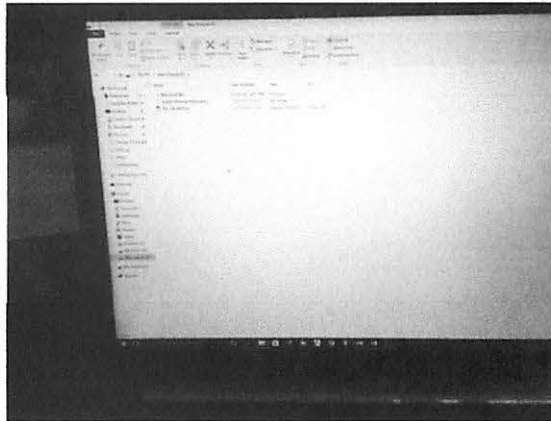
16
17 After a search of MUEHLER's Gmail Inbox, Spam Folder and Deleted Items Box, no email sent
18 by any of the Members of the United States Securities and Exchange Commission could be found
19 that contained any Passcode(s).

20
21 MUEHLER routinely receives countless letters mailed to him by Mr. Searles, Mr. Jasper, Mr.
22 Kassabgui, other Members of the United States Securities and Exchange Commission, as well as
23 mail sent by members of the ALJ. MUEHLER never received any stamped mail delivered to him
24 that contained any passcode(s) for access to the External Hard Drive, nor have any of the Member
25 of the United States Securities and Exchange Commission ever confirmed that one was delivered
26 or mailed.

1 During a Pre-Hearing Conference call between MUEHLER, the Members of the United States
2 Securities and Exchange Commission (Mr. Jasper & Mr. Searles), and the ALJ, where the ALJ
3 verbally issued an order for Mr. Jasper and Mr. Commission to issue to MUEHLER the
4 Passcode(s) for the External Hard Drive. The Formal Written Order was received by MUEHLER
5 on January 5th, 2016.

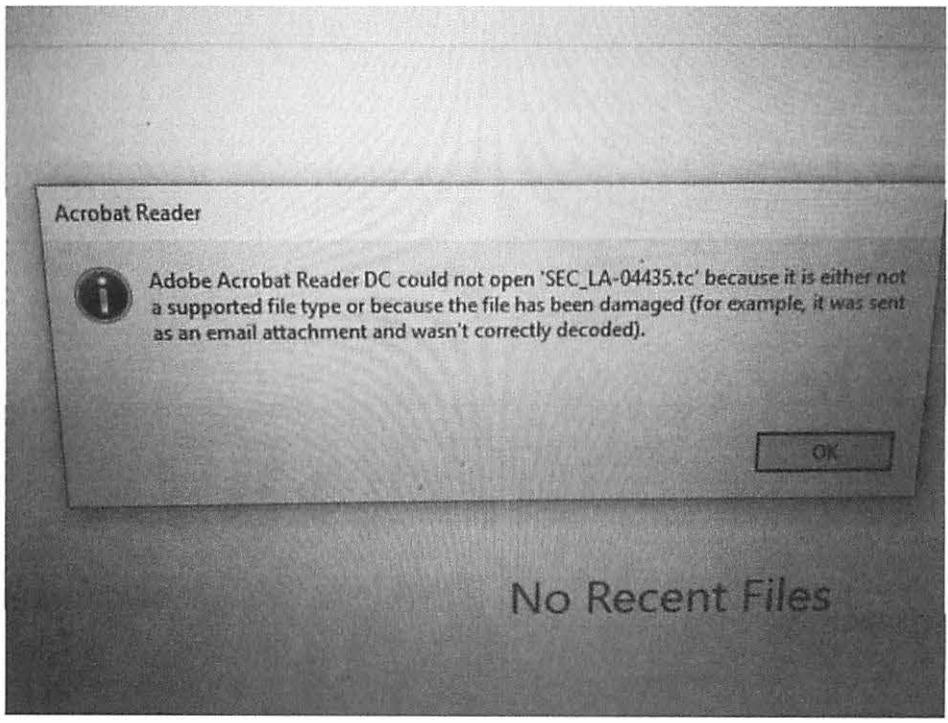
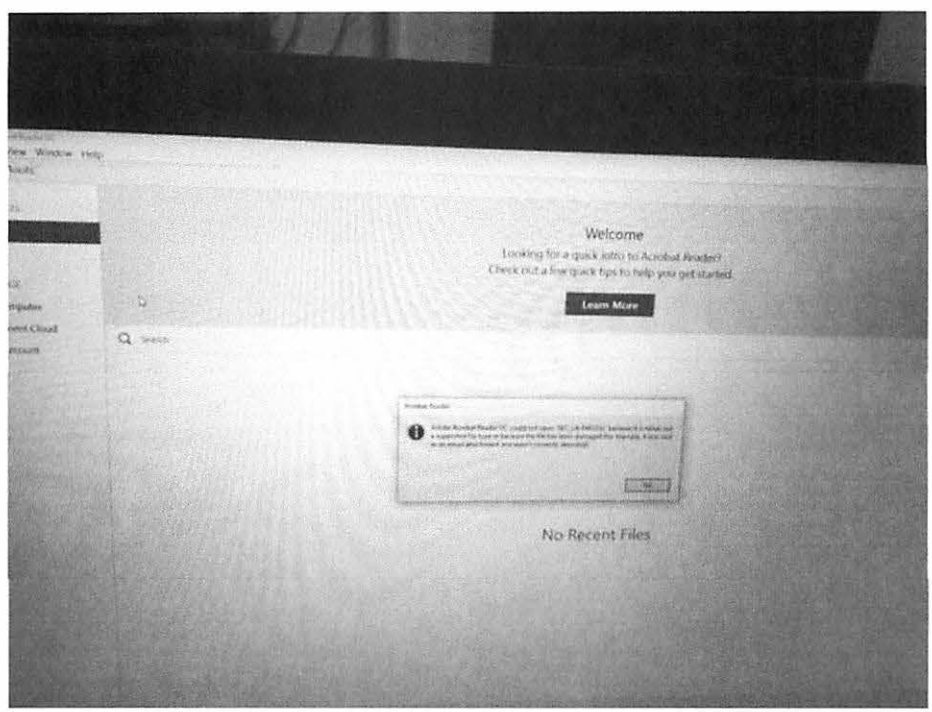
6
7 On the Afternoon of Monday, January 4th, 2016, MUEHLER was in receipt of an email from Mr.
8 Searles with the Passcode [REDACTED]

9
10 Upon MUEHLER accessing the External Hard Drive for the first time on the evening of January
11 4th, 2016, there are three documents on the Hard Drive, "Recycle Bin", "System Volume
12 Information" and "SEC_LA-04435.tc".



21
22 The "Recycle Bin" and "System Volume Information" are empty folders with no documents.
23 Upon attempting to open SEC_LA-04435.tc the following error message is displayed: "ADOBE
24 ACROBAT READER DC COULD NOT OPEN 'SEC_LA-04435.tc' BECAUSE IT IS EITHER
25 NOT A SUPPORTED FILE TYPE OR BECAUSE THE FILE HAS BEEN DAMAGED (FOR
26 EXAMPLE, IT WAS SENT AS AN EMAIL ATTACHMENT AND WASN'T CORRECTLY
27 DECODED".
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MUEHLER finally received an un-encrypted hard drive from the Commission on January 8th, 2016,
which contains more than TWENTY THOUSAND ITEMS!

1 **The Commission argues that MUEHLER's Claim that the Commission Lacks Subject Matter Jurisdiction**
2 **Over the Alleged Conduct is also Meritless**
3

4 The Commission's Response: A motion for summary disposition may be granted if there is
5 no genuine issue with regard to any material fact and the party making the motion is
6 entitled to summary disposition as a matter of law. 17 C.F.R. § 20.1.250(b). Here, in
7 wholly conclusory fashion, Respondents claim that the SEC lacks subject matter
8 jurisdiction, asserting that all of their alleged conduct falls outside the scope of the
9 federal securities laws. But on a motion for summary disposition, the facts of the
10 pleadings against whom the motion is made shall be taken as true, except as modified by
11 stipulations or admissions made by that party, by uncontested affidavits, or by facts officially
12 noted pursuant to Rule 323.
13

14
15 As an initial matter, it should be noted that the parties, in their joint prehearing conference
16 statement, agreed that this matter is not appropriate for summary disposition. And for good
17 reason. The OIP alleges antifraud violations, which involve issues such as scienter that are
18 generally not susceptible to summary disposition. *In re Arthur F Jacob*, Admin. No. 3-16883,
19 2015 SEC LEXIS 4945 (Dec. 4, 2015), at *4; *see also Commission Rules of Practice*, 60
20 Fed Reg. 32738, 32768 (June 23, 1995) (final rules rel.) ("Typically, Commission proceedings
21 that reach litigation involve basic disagreement as to material facts. Based on past experience,
22 the circumstances when summary disposition prior to hearing could be appropriately sought
23 or granted will be comparatively rare.").

24
25 In any event, Respondents' argument that their conduct is beyond the scope of the federal securities
26 laws because they never offered for sale, or sold, any securities (Mot. 34), misapprehends the law as
27 well as the alleged facts.
28

1 MUEHLER'S RESPONSE: The United States Securities and Exchange Commission is a Federal
2 Agency primarily responsible for administering and enforcing Federal Securities Laws. The SEC
3 strives to protect investors by ensuring that the securities markets are honest and fair. When necessary,
4 the SEC enforces securities laws through a variety of means, including finds, referral for criminal
5 prosecution, revocation or suspension of licenses, and injunctions.
6

7
8 MUEHLER has not acquired, purchased, sold, marketed any securities, nor has MUEHLER solicited
9 any investments for any Securities. The Commission cannot provide ONE SINGLE INVESTOR that
10 has purchased a security marketed by MUEHLER, no can the Commission provide ONE SINGLE
11 INVESTOR who has spoken to MUEHLER about a potential investment.
12

13 MUEHLER (MUEHLER also for Alternative Securities Markets Group Corporation, Blue Coast
14 Securities Corporation, GlobalCrowdTV and Blue Coast Banc) restates that the Members of the
15 United States Securities and Exchange Commission failed show its jurisdiction over its claims against
16 MUEHLER (MUEHLER also for Alternative Securities Markets Group Corporation, Blue Coast
17 Securities Corporation, GlobalCrowdTV and Blue Coast Banc).
18

19 MUEHLER (MUEHLER also for Alternative Securities Markets Group Corporation, Blue Coast
20 Securities Corporation, GlobalCrowdTV and Blue Coast Banc) never offered for sale a security during
21 the dates stated in the OIP, and MUEHLER has not sold any securities during the dates stated in the
22 OIP, and the Commission has not provided any evidence that any securities were ever sold, or even
23 offered for sale by MUEHLER (MUEHLER also for Alternative Securities Markets Group
24 Corporation, Blue Coast Securities Corporation, GlobalCrowdTV and Blue Coast Banc), and the
25 Commission has not provided any evidence of any investors holdings any securities who are now, or
26 may in the future, be in any jeopardy.
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1 Any Issuer who retained any of MUEHLER's (MUEHLER also for Alternative Securities Markets
2 Group Corporation, Blue Coast Securities Corporation, GlobalCrowdTV and Blue Coast Banc) Private
3 or Public Offering Documentation Preparation Services (*a service that does not require any state of*
4 *federal securities licensing, nor does it involve being part of any private or public offering of*
5 *securities*) or any of MUEHLER's (MUEHLER also for Alternative Securities Markets Group
6 Corporation, Blue Coast Securities Corporation, GlobalCrowdTV and Blue Coast Banc) SEC
7 Registration Services, who may feel they have been damaged in any way by MUEHLER (MUEHLER
8 also for Alternative Securities Markets Group Corporation, Blue Coast Securities Corporation,
9 GlobalCrowdTV and Blue Coast Banc), **have proper venue in the State or Federal Courts, not as**
10 **part of the Securities and Exchange Commission's Enforcement Divisions, and certainly not part of**
11 **the Securities and Exchange Commission's Administrative Law Proceedings.**
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1 **The Commission Argues that the Shares of Preferred Stock Marketed to Investors and the Shares of Issuer**
2 **Common Stock Acquired from Issuer Customers are Securities.**
3

4 The Commission's Response: The OIP alleges that since at least August 2013, Muehler and his
5 companies, Blue Coast and ASMG, have offered to help small businesses raise money from investors,
6 by offering to structure and prepare securities offerings, shepherd the offerings through the
7 Commission review process, and then market the securities to the public. Although none of them
8 were registered as, or associated with, a broker-dealer, they offered and agreed to effect securities
9 actions for customers over the Internet, primarily under Regulation A. OIP, II. B. 1, 4-10. In
10 addition, through their "Listing & Direct Public Offering and Marketing Agreements" with customers,
11 Respondents offered their broker-dealer services in return for upfront fees, monthly fees, a
12 percentage of the funds raised, and an equity stake in each issuer. *Id.*, II. B. 11. In some instances,
13 Respondents took an additional stake in an offering's success by agreeing to purchase any of the
14 customer's newly issued securities not sold to investors. *Id.*
15

16
17 The shares of preferred stock that the Respondents offered to help customers issue and sell to investors
18 are the securities underlying the Division's Section 15(a) charges because the Respondents agreed to
19 effect transactions in those securities for their customers. The shares of issuer common stock that
20 Respondents contracted to acquire from their issuer customers underlie the Division's Section 10(b)
21 and Rule 10b-5 charges because Respondents contracted to acquire those securities in connection with
22 their fraudulent solicitation of issuer customers. ¹ Both the preferred stock and the issuer common
23 stock are "securities" under Section 3(a)(10) of the Exchange Act, which defines "security" to include
24 "stock" and "any interest or instrument commonly known as a security." *See Landreth Timber Co. v.*
25 *Landreth*, 471 U.S. 681, 687 & n.2 (1985) (holding common stock to be within definition and noting
26 that preferred stock could also satisfy definition); *Briggs v. Sterner*, 529 F. Supp. 1155, 1166 (S.D.
27 Iowa 1981) (holding that debentures that were convertible to common stock were securities because they
28

1 were akin to an option or entitlement to purchase shares). In addition, Muehler has repeatedly described
2 both the preferred stock and the issuer common stock as "securities." OIP, II.
3

4 Respondents' contention that they never sold a security through the ASMG website, even if
5 true, is simply beside the point. Section 3(a)(13) of the Exchange Act defines a "purchase" of
6 securities to include "any contract to buy, purchase, or otherwise acquire" securities. *See also*
7 *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 750-51 (1975) ("contract to purchase
8 or sell securities is expressly defined by § 3(a) of the 1934 Act ... as a purchase or sale of
9 securities for the purposes of that Act."); *Wharf (Holdings) Ltd. v. United Int'l Holdings, Inc.*,
10 532 U.S. 588, 594-95 (2001) (contractual right to acquire stock was "security" for purposes of
11 Rule 10b-5). Here, Respondents convinced prospective customers to sign contracts through
12 which Respondents acquired the right to a portion of the issuer's common stock based on the
13 success of the proposed offering. OIP, B. II. 11. In some instances, ASMG also acquired a
14 vested right to a portion of the issuer's common stock upon the execution of the contract
15 itself. Because they made misrepresentations and omissions in connection with contracts to
16 acquire securities, they made them in connection with the purchase of securities.
17

18
19 Similarly, because Section 15(a) applies to those who "attempt to induce the purchase or sale" of
20 securities, the solicitation of investors and issuers to buy and sell securities may constitute broker
21 activity even if no transactions are consummated. *See Salvani et al*, No. 3-10298, Exchange Act
22 Rel. No. 44590 (July 26, 2001); *accord ABC & S, Inc. v. MacFarlane Group, Inc.*, No. 13 C
23 07480, 2015 U.S. Dist. LEXIS 8383, at *7 (N.D. Ill. Jan. 22, 2015) (promise to help issuer raise
24 money from investors was "attempt to induce the purchase or sale" of securities in violation of
25 Section 15(a)). Here, the OIP alleges that Respondent solicited both investors and issuers to buy
26 and sell securities. For example, a press release that Muehler circulated on the Internet in July 2014,
27 listed twenty-seven "IPOs" scheduled for the Alternative Securities Market in August and
28

1 September 2014, and states that ASMG "expects the securities of Companies listed on the
2 Alternative Securities Market to become quoted on the OTCQB, OTCQX or the NASDAQ
3 Capital Markets within approximately one to four years of IPO or Listing on the Alternative
4 Securities Market." OIP, II . B. 8. The version of the website that was available to the public in July
5 2014, and which Muehler marketed to investors over the Internet, provided a webpage for each
6 customer that listed the terms of the proposed offering, included a link to the customer's offering
7 statement, and included an "INVEST" button that led to an investor login page. *Id.* As of at least
8 June 2015, the website listed eighteen companies as purportedly available for "trading" on the
9 Alternative Securities Market. *Id.* Respondents have also marketed their customers ' securities in
10 promotional videos made available to the public on the website and YouTube, in which Muehler
11 recommended specific offerings to potential investors and directed them to the website to invest.
12 *Id.*, II. B. 9. In a video for at least one customer, Muehler stated that the
13 customer's securities were already available for sale on the Alternative Securities Market to
14 accredited investors. *Id.* These allegations, amongst others, clearly allege a violation of
15 Section 15(a).
16

17
18 MUEHLER'S RESPONSE: The United States Securities and Exchange Commission is a Federal
19 Agency primarily responsible for administering and enforcing Federal Securities Laws. The SEC
20 strives to protect investors by ensuring that the securities markets are honest and fair. When necessary,
21 the SEC enforces securities laws through a variety of means, including finds, referral for criminal
22 prosecution, revocation or suspension of licenses, and injunctions.
23

24 MUEHLER has not acquired, purchased, sold, marketed any securities, nor has MUEHLER solicited
25 any investments for any Securities. The Commission cannot provide ONE SINGLE INVESTOR that
26 has purchased a security marketed by MUEHLER, no can the Commission provide ONE SINGLE
27 INVESTOR who has spoken to MUEHLER about a potential investment.
28

1
2 MUEHLER (MUEHLER also for Alternative Securities Markets Group Corporation, Blue Coast
3 Securities Corporation, GlobalCrowdTV and Blue Coast Banc) restates that the Members of the
4 United States Securities and Exchange Commission failed show its jurisdiction over its claims against
5 MUEHLER (MUEHLER also for Alternative Securities Markets Group Corporation, Blue Coast
6 Securities Corporation, GlobalCrowdTV and Blue Coast Banc).

7
8 MUEHLER (MUEHLER also for Alternative Securities Markets Group Corporation, Blue Coast
9 Securities Corporation, GlobalCrowdTV and Blue Coast Banc) never offered for sale a security during
10 the dates stated in the OIP, and MUEHLER has not sold any securities during the dates stated in the
11 OIP, and the Commission has not provided any evidence that any securities were ever sold, or even
12 offered for sale by MUEHLER (MUEHLER also for Alternative Securities Markets Group
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22 Corporation, Blue Coast Securities Corporation, GlobalCrowdTV and Blue Coast Banc) SEC
23 Registration Services, who may feel they have been damaged in any way by MUEHLER (MUEHLER
24 also for Alternative Securities Markets Group Corporation, Blue Coast Securities Corporation,
25 GlobalCrowdTV and Blue Coast Banc), **have proper venue in the State or Federal Courts, not as**
26 **part of the Securities and Exchange Commission's Enforcement Divisions, and certainly not part of**
27 **the Securities and Exchange Commission's Administrative Law Proceedings.**
28

1 **The Commission Argues that MUEHLER violated the Antifraud Provisions of Section 10(b) and Rule 10b-**
2 **s(b) through False Statements and Omissions**
3

4 The Commissions Response: Section 10(b) of the Exchange Act and Rule 10b-5(b) prohibit any
5 person from making any untrue statement of material fact or misleading omissions in connection
6 with the purchase or sale of any security. The OIP alleges that Respondents violated those provisions
7 by using false statements and misleading omissions to acquire issuer common stock from their
8 customers. Those alleged false statements and omissions include:
9

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

26 OIP, II. B. 12. The OIP also alleges that Respondents misled prospective customers by
27 emphasizing their experience raising millions of dollars for small businesses through exempt
28 offerings, and promising to do the same for prospective customers, without disclosing that

1 Muehler's experience includes being disciplined by state securities regulators for promoting
2 unregistered securities and defrauding the issuers of those securities. *Id.*, IL B.13.
3

4 MUEHLER'S RESPONSE: The United States Securities and Exchange Commission is a Federal
5 Agency primarily responsible for administering and enforcing Federal Securities Laws. The SEC
6 strives to protect investors by ensuring that the securities markets are honest and fair. When necessary,
7 the SEC enforces securities laws through a variety of means, including finds, referral for criminal
8 prosecution, revocation or suspension of licenses, and injunctions.
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13 has purchased a security marketed by MUEHLER, no can the Commission provide ONE SINGLE
14 INVESTOR who has spoken to MUEHLER about a potential investment.
15

16 MUEHLER is not required by any law to disclose any enforcement action against him by the States of
17 Minnesota or California, as it is not required to draft and file a securities registration on behalf of any
18 issuer, and MUEHLER NEVER solicited, sold, acquired, marketed or held any securities of any
19 issuer, nor did MUEHLER provide any legal or investment advice to any issuer at any time.
20

21 MUEHLER (MUEHLER also for Alternative Securities Markets Group Corporation, Blue Coast
22 Securities Corporation, GlobalCrowdTV and Blue Coast Banc) restates that the Members of the
23 United States Securities and Exchange Commission failed show its jurisdiction over its claims against
24 MUEHLER (MUEHLER also for Alternative Securities Markets Group Corporation, Blue Coast
25 Securities Corporation, GlobalCrowdTV and Blue Coast Banc).
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2 Securities Corporation, GlobalCrowdTV and Blue Coast Banc) never offered for sale a security during
3 the dates stated in the OIP, and MUEHLER has not sold any securities during the dates stated in the
4 OIP, and the Commission has not provided any evidence that any securities were ever sold, or even
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6 Corporation, Blue Coast Securities Corporation, GlobalCrowdTV and Blue Coast Banc), and the
7 Commission has not provided any evidence of any investors holdings any securities who are now, or
8 may in the future, be in any jeopardy.

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10 Any Issuer who retained any of MUEHLER's (MUEHLER also for Alternative Securities Markets
11 Group Corporation, Blue Coast Securities Corporation, GlobalCrowdTV and Blue Coast Banc) Private
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16 Registration Services, who may feel they have been damaged in any way by MUEHLER (MUEHLER
17 also for Alternative Securities Markets Group Corporation, Blue Coast Securities Corporation,
18 GlobalCrowdTV and Blue Coast Banc), **have proper venue in the State or Federal Courts, not as**
19 **part of the Securities and Exchange Commission's Enforcement Divisions, and certainly not part of**
20 **the Securities and Exchange Commission's Administrative Law Proceedings.**

1 **The Commission Argues that MUEHLER Made the False Statements and Omissions.**

2
3 The Commissions Response: in Janus Capital Group, Inc. v. First Derivative Traders, U.S., 131 S. Ct.
4 2296, 2302 (2011), The Supreme Court held that the “maker” of a statement for the purposes of Section
5 10(b) and Rule 10b-5 is "the person or entity with ultimate authority over the statement, including its
6 content and whether and how to communicate it." Here, Muehler made numerous false statements
7 and omissions personally and as the person with ultimate control over statements made by Blue
8 Coast and ASMG. He falsely told prospective customers by telephone and email that his companies
9 had helped raise millions of dollars from investors and that they were working with securities
10 counsel on the offerings. OIP, II. B. 12. He created ASMG's website, which falsely described
11 ASMG as, among other things, an established financial services company with the ability to make
12 multi-million-dollar loans. *Id.* He signed contracts in which Respondents agreed to purchase
13 securities not sold to investors without disclosing that they lacked sufficient assets to do so. *Id.* He told
14 prospective customers by telephone and email that the fees he charged were mandatory SEC filing
15 fees, and that the SEC planned to increase those fees in the near future. *Id.* He failed to disclose the
16 California and Minnesota Orders when personally emphasizing his experience with exempt offerings
17 and promising to conduct exempt offerings for new customers. *Id.*, II. B. 13. Accordingly, he and
18 the entity Respondents made false statements and omissions.
19

20
21 MUEHLER'S RESPONSE: The United States Securities and Exchange Commission is a Federal
22 Agency primarily responsible for administering and enforcing Federal Securities Laws. The SEC
23 strives to protect investors by ensuring that the securities markets are honest and fair. When necessary,
24 the SEC enforces securities laws through a variety of means, including finds, referral for criminal
25 prosecution, revocation or suspension of licenses, and injunctions.
26

27 MUEHLER has not acquired, purchased, sold, marketed any securities, nor has MUEHLER solicited
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7 Minnesota or California, as it is not required to draft and file a securities registration on behalf of any
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7 part of the Securities and Exchange Commission's Enforcement Divisions, and certainly **not** part of
8 the Securities and Exchange Commission's Administrative Law Proceedings.
9

1 **The Commission Argues that the Misrepresentations and Omissions were Material**

2
3
4 The Commission's Response: To be actionable under the antifraud provisions of the Exchange
5 Act, misrepresentations and omissions must be material. *Basic Inc. v. Levinson*, 485 U.S. 224,
6 231-32 (1988); *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976). A statement or
7 omission is considered material if there is a substantial likelihood that a reasonable investor
8 would consider it important in deciding whether to buy or sell securities. *Basic*, 485 U.S. at
9 299; see also *Brody v. Transitional Hosps. Corp.*, 280 F.3d 997, 1006 (9th Cir. 2002) (to be
10 actionable, a false statement or omission must be more than incomplete, it must
11 "affirmatively create an impression of a state of affairs that differs in a material way from the
12 one that actually exists.").

13
14 The alleged misrepresentations and omissions were material because they went to the heart of what
15 Respondents promised to do for their customers. Misrepresentations about past success raising
16 investor funds suggested that Respondents would succeed in raising funds for new customers going
17 forward. OIP, II. B. 12. Misrepresentations that Respondents were working with legal counsel,
18 particularly when combined with representations that Respondents had determined the proposed
19 offerings to be lawful under all applicable securities laws, suggested that the offerings were lawful
20 and would go effective within a reasonable time. *Id.* Misrepresentations about their ability to make
21 multi-million-dollar loans suggested that Respondents were financially sound; not merely a fly-by-
22 night scheme. *Id.* Misrepresentations about SEC filing fees misled customers about the use of their
23 funds and pressured customers to sign without further diligence. *Id.* Promises to use ASMG-controlled
24 funds to purchase any securities not sold to investors, without disclosing the lack of sufficient assets to
25 do so, misled customers into believing that they were guaranteed to raise funds and that Respondents
26 had skin in the game.
27
28

1 Respondents' failure to disclose the California and Minnesota Orders hid Muehler's history of
2 misconduct in offerings like those proposed to his customers, including a substantially similar
3 scheme in which he was found to have defrauded small business owners and unlawfully engaged in
4 unregistered broker-dealer activity. *Id.*, II. B. 13. The Division expects that multiple issuer customers
5 will testify that these false statements and omissions were important to their decision to do business
6 with Respondents, and that they would not have signed customer agreements had they known the
7 truth.
8

9
10 MUEHLER'S RESPONSE: The United States Securities and Exchange Commission is a Federal
11 Agency primarily responsible for administering and enforcing Federal Securities Laws. The SEC
12 strives to protect investors by ensuring that the securities markets are honest and fair. When necessary,
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23 **part of the Securities and Exchange Commission's Enforcement Divisions, and certainly not part of**
24 **the Securities and Exchange Commission's Administrative Law Proceedings.**

1 **The SEC Argues that MUEHLER acted with “Scienter”**

2
3 The Commission’s Response: Violations of Section 10(b) of the Exchange Act and Rule
4 10b-5(b) require a showing of scienter. *Aaron v. SEC*, 446 U.S. 680, 701-02 (1980). In
5 the Ninth Circuit, scienter may be established by proof of intent or knowledge. *In re*
6 *VeriFone Holdings, Inc. Securities Litig.*, 704 F.3d 694, 702 (9th Cir. 2012). Scienter may
7 also be established by a showing of recklessness, which the Ninth Circuit has defined as
8 “an extreme departure from the standards of ordinary care, and which presents a danger of
9 misleading buyers or sellers that is either known to the defendant or is so obvious that the
10 actor must have been aware of it.” *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1569-
11 70 (9th Cir. 1990) (*en banc*). The Ninth Circuit further clarified the “reckless” standard in
12 *SEC v. Platforms Wireless Int’l Corp.*, 617 F.3d 1072, 1093 (9th Cir. 2010), where it held
13 that scienter requires either “deliberate recklessness” or “conscious recklessness” – a “form
14 of intent rather than a greater degree of negligence.” As their founder and sole operator,
15 Muehler’s scienter is imputed to Blue Coast and ASMG. *See, e.g., SEC v. Manor Nursing*
16 *Centers, Inc.*, 458 F.2d 1082, 1089 n.3 (2d Cir. 1972); *In re Ponder Indus., Inc. et al.*, No.
17 3-9349, 1997 SEC LEXIS 1515 at *6 (July 22, 1997).
18

19
20 The OIP alleges that Muehler –and, thus, Blue Coast and ASMG – acted with a high degree
21 of scienter by repeatedly making material misrepresentations while knowing that the
22 statements were not true. Muehler knew he had not helped customers raise investor capital
23 in the past, and in his motion for summary disposition admits as much. Mot. at 10, r 39
24 (“Because MUEHLER has only prepared Private Placement offerings for Issuers as part of a
25 services agreement, the amount of capital raised by these companies is not known by Mr.
26 Muehler.”). Muehler also knew Respondents were not working with legal counsel. He knew
27 ASMG was not an established enterprise with the ability to make multi-million-dollar loans.
28

1 Since there are no Regulation A filing fees, he also had no reasonable basis for
2 representing otherwise. Muehler also knew about the Minnesota and California Orders
3 while soliciting customers, and he knew, or was reckless in not knowing, that issuers
4 would want to know about his prior misconduct involving offerings similar to those that he
5 proposed to facilitate for them. *In re VeriFone Holdings, Inc. Securities Litig.*, 704 F.3d at
6 702; *see also In re Elan Corp. Securities Litig.*, 543 F. Supp. 2d 187,221 (S.D.N.Y. 2008)
7 (evidence of similar schemes properly considered proof of unlawful intent); *SEC v.*
8 *Kimmes*, 799 F. Supp. 852, 858 (N.D. Ill. 1992), *aff'd* 997 F.2d 287 (7th Cir. 1993).
9

10
11 **MUEHLER'S RESPONSE:** The United States Securities and Exchange Commission is a Federal
12 Agency primarily responsible for administering and enforcing Federal Securities Laws. The SEC
13 strives to protect investors by ensuring that the securities markets are honest and fair. When necessary,
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25 **part of the Securities and Exchange Commission's Enforcement Divisions, and certainly not part of**
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27
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1 **The Commission Argues that MUEHLER violated the Antifraud Provision of Section 10(b) and**
2 **Rules 10b-s(a) and (c) Through their Fraudulent Sheme.**
3

4
5 The Commission's Response: Section 10(b) of the Exchange Act and Rules 10b-5(a) and
6 (c) make it unlawful for any person in connection with the purchase or sale of securities
7 to employ any device, scheme or artifice to defraud, or to engage in any act, practice, or
8 course of business which operates or would operate as a fraud or deceit upon any person.
9 Courts have explained that a "'scheme to defraud' is merely a plan or means to obtain
10 something of value by trick or deceit." *Kimmes*, 799 F. Supp. at 858. Proof of scienter
11 is required. *Aaron*, 446 U.S. at 701-02.² The OIP alleges that Respondents engaged in a
12 fraudulent scheme to solicit issuer customers, charge fees, and acquire issuer common
13 stock through the misrepresentations and omissions discussed above. They also
14 employed deceptive devices, acts, and practices, including: (i) using email addresses like
15 legal@asmmarketsgroup.com and legal@bluecoastsecurities.com (along with references
16 to ASMG's "Legal Dept.") to falsely suggest that Respondents had an in-house legal
17 team working on the Regulation A filings; (ii) directing prospective customers to the
18 AMMSG website and other marketing materials designed by Muehler to create the
19 misimpression that Respondents are stable and sophisticated players in the securities
20 industry; and (iii) assuring customers that they would soon qualify under Regulation A
21 despite notice of uncured deficiencies in the offering statements. The OIP alleges that
22 Respondents engaged in that conduct knowingly and/or recklessly in furtherance of their
23 scheme and are thus liable under Section 10(b) and Rules 10b-5(a) and (c).
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1 MUEHLER'S RESPONSE: The United States Securities and Exchange Commission is a Federal
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1 **The Commission Argues that MUEHLER Acted as an Unregistered Broker-Dealer**

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3 The Commission's Response: Section 3(a)(4) of the Exchange Act defines "broker" as any person
4 "engaged in the business of effecting transactions in securities for the accounts of others." A person
5 "effects transactions in securities" if he or she participates in transactions at key points in the chain of
6 distribution. *Mass. Fin. Servs., Inc. v. SIPC*, 411 F. Supp. 411, 415 (D. Mass. 1976), *aff'd*, 545 F.2d
7 754 (1st Cir. 1976); *see also SEC v. Nat'l Exec. Planners, Ltd.*, 503 F. Supp. 1066, 1073 (M.D.N.C.
8 1980).

9
10 The statute does not define "engaged in the business," but courts have interpreted the phrase to require
11 "a certain regularity of participation in securities transactions." *SEC v. Hansen*, No. 83 Civ. 3602,
12 1984 U.S. Dist. LEXIS 17835, at *25 (S.D.N.Y. Apr. 6, 1984) (quoting *Mass. Fin. Servs., Inc.*, 411
13 F. Supp. at 415). Holding oneself out as a broker-dealer may be sufficient to establish that a person
14 has engaged in the business with regularity. *SEC v. Schmidt*, No. 71 Civ 2008, 1971 U.S. Dist. LEXIS
15 11384, at *3 (S.D.N.Y. Aug. 26, 1971).³ Other factors indicating that a person is engaged in the
16 business include, among others, receiving transaction-based compensation, soliciting securities
17 transactions, advertising for customers, and possessing customer funds and securities The
18 Commission has explained that "solicitation" includes efforts to induce a single transaction or to
19 develop an ongoing securities business relationship. *See Registration Requirements for Foreign*
20 *Broker-Dealers*, Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013, 30017-18 (July
21 18, 1989). A broker "solicits" securities transactions by, among other things, "advertising one's
22 function as a broker or market maker" and "recommending the purchase or sale of particular
23 securities with the anticipation that the customer will execute the transaction through the broker-
24 dealer." *Id.*; *see also Pinter v Dahl*, 486 U.S. 622, 646 (1988) ("The solicitation of a buyer is
25 perhaps the most critical stage of the selling transaction. It is the first stage of a traditional securities
26 sale to involve the buyer, and it is directed at producing the sale.").

27 Under these standards, the OIP adequately alleges that Respondents have engaged in the business of a
28

1 broker-dealer by holding themselves out as broker-dealers and by offering and providing broker-dealer
2 services with the expectation of receiving transaction- based compensation. They have done so with
3 regularity by soliciting numerous issuers to offer securities, signing dozens of customers to offer
4 securities, advertising the proposed offerings, and soliciting investors. OIP, II. B. 4-11. Muehler
5 personally provided many of these services, including by running Blue Coast and ASMG, and by offering
6 his personal recommendations about investments in promotional videos. That he attempted to induce
7 securities transactions in earlier schemes is further evidence that he has engaged in the business of a
8 broker-dealer with sufficient regularity. *Id.*, II.B. 9. Regardless of whether Respondents completed any
9 securities transactions, Respondents attempted to do so for purposes of Section 15(a). *In re Salvani et al.*,
10 No. 3-10293, Exchange Act Rel. No. 44590 at *2-4; *accord ABC & S, Inc.*, 2015 U.S. Dist. LEXIS 8383,
11 at *7. Since they have engaged in those activities using interstate commerce, for the accounts of others,
12 and without registering as broker-dealers . the OIP adequately alleges that Respondents violated Section
13 15(a).⁵

14
15 In short, the Commission clearly has subject matter jurisdiction over Respondents' alleged conduct.

16
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18 Agency primarily responsible for administering and enforcing Federal Securities Laws. The SEC
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1 WHEREFORE AND AGAIN, MUEHLER, ALTERNATIVE SECURITIES MARKETS GROUP
2 CORPORATION, BLUE COAST SECURITIES CORPORATION, GLOBALCROWDTV AND BLUE
3 COAST BANC each prays for Summary Judgment from the ALJ as follows:
4

- 5 A. An order of Summary Judgment in favor of MUEHLER (MUEHLER also for Alternative
6 Securities Markets Group Corporation, Blue Coast Securities Corporation, GlobalCrowdTV
7 and Blue Coast Banc) declaring unconstitutional the statutory and regulatory provisions
8 providing for the position and tenure of the SEC ALJ.
- 9 B. An order of Summary Judgment in favor of MUEHLER (MUEHLER also for Alternative
10 Securities Markets Group Corporation, Blue Coast Securities Corporation, GlobalCrowdTV
11 and Blue Coast Banc) enjoining the Commission from carrying out an administrative
12 proceeding against MUEHLER (MUEHLER also for Alternative Securities Markets Group
13 Corporation, Blue Coast Securities Corporation, GlobalCrowdTV and Blue Coast Banc).
- 14 C. Proper Sanctions against Members of the United States Securities and Exchange Commission
15 for the willful and intentional withholding of discovery items from MUEHLER (MUEHLER
16 also for Alternative Securities Markets Group Corporation, Blue Coast Securities
17 Corporation, GlobalCrowdTV and Blue Coast Banc), in clear violation of the Administrative
18 Proceedings Rules.
- 19 D. Such other further relief as the ALJ may deem just and proper.
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23 Dated this 18th Day of January 2016

24 
25 _____
26 Mr. Steven Joseph Muehler for himself, Alternative
27 Securities Markets Group Corporation, Blue Coast
28 Securities Corporation, GlobalCrowdTV and Blue
Coast Banc.