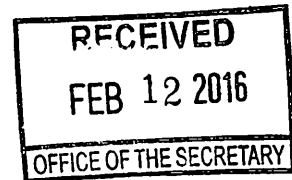


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**UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION**

**In the Matter of

GEORGE CHARLES CODY PRICE,

Respondent.**

**ADMINISTRATIVE PROCEEDING
FILE NO. 3-16946**

RESPONDENT'S MOTION FOR LEAVE TO FILE SURREPLY

Respondent George Charles Cody Price ("PRICE") files this Motion for Leave to File a Surreply (the "SURREPLY") to the Division of Enforcement's (the "DIVISION") Reply Memorandum in support of its' Motion for Summary Disposition (the "MOTION") in the above captioned Administrative Proceeding (the "PROCEEDING") initiated by the Securities and Exchange Commission (the "SEC") in its Order Initiating Proceeding (the "OIP") dated November 5, 2015.

Specifically, Respondent Price seeks to record his opposition to the supplemental declaration of Lynn M. Dean (the "SUPPLEMENTAL DECLARATION") as improper with regard to the assertions made at paragraphs 3, 4, 5, 6 and 7 therein which essentially amount to new facts, including several factually misleading assertions.

The decision to grant or deny leave to file a surreply is committed to the sound discretion of the court. *American Forest & Paper Ass'n, Inc., v. U.S. Environ. Protection Agency*, No. 93- cv- 0694 (RMU), 1996 WL 509601, *3 (D.D.C. 1996) (granting leave). Granting leave to file a surreply is appropriate when a reply leave a party unable to contest matters presented to the court for the first time. *Ben-Kotel v. Howard Univ.*, 319 F.3d 532, 536 (D.C. Cir. 2003) (citation omitted); *Alexander v. FBI*, 186 F.R.D. 71, 74 (D.D.C. 1998) (granting leave).

Additionally, a surreply may become necessary whether the new matter raises a new legal argument, or in this instance, new facts. See *American Forest & Paper*, 1996 WL 506601 at *3. standard. The Respondent's proposed Surreply, attached hereto as Exhibit A is appropriate under these circumstances.

I. ARGUMENT

The Reply includes several misstatements referenced throughout which are contained in the Supplemental Declaration by Lynn M Dean at paragraphs 3, 4, 5, 6 and 7. These misstatements include new allegations that Respondent Price engaged in subsequent misconduct and collectively imply that Price has ulterior motives in defending himself in this proceeding and in complying with the judgment entered in the underlying civil proceeding.

Essentially these new contentions fall into three categories of new arguments: (1) that Price committed additional misdeeds after the SEC initiated the underlying civil complaint (para. 3, 4 and 7); (2) that Price is – to this day – misleading investors (See, Supplemental Declaration paras. 4 and 7); and (3) that Price misled Morgan Stanley about loans extended to ABS Fund, LLC (See, Supplemental Declaration paras. 5 and 6).

In the Reply itself, these facts appear at page 7 where it states, “Recently, the Division was informed that Price told at least one investor that he was not obligated to pay the monetary relief ordered by the district court against him.” The Reply Memo goes on at footnote 6 to state: “Price’s conduct in this regard is consistent with his conduct throughout these offerings and the proceedings against him. He made misrepresentations to investors before the SEC action against him, made misrepresentations to Morgan Stanley in connection with the brokerage account in which he (sic) custodied fun assets, failed to disclose to investors the imminent threat the funds assets might be sold, and after preliminary injunctions were entered against him, told investors that if they cooperated with the SEC, they would not get their investment back.”

These contentions contain new factual information, not previously presented by the Division in its OIP or in its Motion. More troubling is these so-called “facts” distort the factual record of this proceeding by creating new information which Respondent Price, absent the opportunity to file a

Surreply has no ability to object to prior to the court's decision on the Division's Motion for Summary Disposition. The Respondent's Surreply is necessary to correct these errors and to raise evidentiary objections to the admissibility of this evidence for the record.

II. CONCLUSION

For the foregoing reasons, the Respondent respectfully requests the Court issue an order granting leave to the Respondent to file its proposed Surreply.

DATED: February 10, 2016

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John E. Dolkart, Jr.', written over a horizontal line.

John E. Dolkart, Jr., Esq.
Law Offices of John E. Dolkart, Jr.
1750 Kettner Blvd, Suite 416
San Diego, CA 92101
Tel: (702) 275-2181

COUNSEL FOR RESPONDENT GEORGE
CHARLES CODY PRICE

In the Matter of George Charles Cody Price
Administrative Proceeding File No. 3-16946

Service List

Pursuant to Commission Rule of Practice 151(17 C.F.R. § 201.151), I certify that the attached:

MOTION FOR LEAVE TO FILE SURREPLY BY RESPONDENT GEOREGE CHARLES CODY PRICE

On February 10, 2016.

By: Facsimile and Overnight Mail

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090
Facsimile: (202) 772-9324
(Original and three copies)

By: Email


Honorable Brenda P. Murray
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 2557
Washington, DC 20549-2557
Email: alj@sec.gov

By: Email and Overnight Mail

Lynn M. Dean, Esq.
Division of Enforcement, Los Angeles Regional Office Securities and Exchange Commission
444 S. Flower Street, Suite 900
Los Angeles, California 90071-9591
Email: deanl@sec.gov

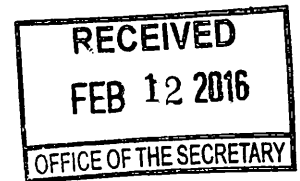
DATED: February 10, 2016

BY:



John E. Dolkart, Jr., Esq.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION



In the Matter of

GEORGE CHARLES CODY PRICE,

Respondent.

ADMINISTRATIVE PROCEEDING
FILE NO. 3-16946

RESPONDENT'S SURREPLY

The Division of Enforcement (the "DIVISION") has submitted a Reply (the "REPLY") that contains, at page 7 thereof, new factual allegations in support of its' Motion for Summary Disposition (the "MOTION") in the above captioned Administrative Proceeding (the "PROCEEDING"). The contentions appear for the first time in the Reply are and are not contained in the Division's Motion or in the underlying Order Instituting Administrative Proceedings (the "OIP") in the above captioned matter.

Specifically, these new contentions of fact are sourced from a supplemental declaration (the "SUPPLEMENTAL DECLARATION") by attorney Lynn M. Dean, filed in support of the Division's Motion at paragraphs 3, 4, 5, 6 and 7 contains new facts, including several factually misleading assertions.

This Surreply is necessary to make the appropriate evidentiary objections as part of the record in this proceeding and to respond accordingly with information, which further explains the factual context of the new contentions and clarifies their meaning. Accordingly, the Respondent moves to strike those portions of the Supplemental Declaration, as further identified below, to preserve the record from unverified heresy allegations which at the very least at misleading and perhaps more troubling, false entirely.

I. ARGUMENT

The Reply and Supplemental Declaration filed by Lynn M Dean at paragraphs 3, 4, 5, 6 and 7 on behalf of the Division contains several misstatements which amount to new allegations that Respondent Price engaged in subsequent misconduct and collectively imply that Price has ulterior motives in defending himself in this proceeding and in complying with the judgment entered in the underlying civil proceeding. There is no evidence, other than the declaration itself that any of these events actually took place. More troubling, is mischaracterization of certain events by the Division in the Supplemental Declaration to the extent it warrants this Surreply by the Respondent.

Essentially these new facts and contentions fall into three categories of new arguments: (1) that Price committed additional misdeeds after the SEC initiated the underlying civil complaint (para. 3, 4 and 7) ; (2) that Price is – to this day – misleading investors (See, Supplemental Declaration paras. 4 and 7); and (3) that Price misled Morgan Stanley about loans extended to ABS Fund, LLC (See, Supplemental Declaration paras. 5 and 6).

In the Reply itself, these facts appear at page 7 where it states, “Recently, the Division was informed that Price told at least one investor that he was not obligated to pay the monetary relief ordered by the district court against him.” The Reply Memo goes on at footnote 6 to state: “Price’s conduct in this regard is consistent with his conduct throughout these offerings and the proceedings against him. He made misrepresentations to investors before the SEC action against him, made misrepresentations to Morgan Stanley in connection with the brokerage account in which he (sic) custodied fund assets, failed to disclose to investors the imminent threat the funds assets might be sold, and after preliminary injunctions were entered against him, told investors that if they cooperated with the SEC, they would not get their investment back.”

These contentions contain new factual information, not previously presented by the Division in its OIP or in its Motion. More troubling is these so-called “facts” distort the factual record of this proceeding by creating new information which Respondent Price, absent the opportunity to file a Surreply has no ability to object to prior to the court’s decision on the Division’s Motion for Summary Disposition. The Respondent’s Surreply is necessary to correct these errors and to raise

evidentiary objections to the admissibility of this evidence for the record. In addition, the Respondent has provided a Declaration, attached hereto as Exhibit B, in support of this Surreply.

II. OBJECTIONS

The Respondent makes the following objections to the Supplemental Declaration:

Paragraph 3 – Hearsay; Speaker lacks personal knowledge of new assertions of fact.

Paragraph 4 – Misstates facts not in evidence. The Division does not include a copy of the actual letter and instead mischaracterizes its contents.

Paragraph 5 – This paragraph contains new facts/arguments, which are controverted by the transcript of the deposition of Respondent Price on this particular issue. The transcript at issue or relevant portions thereof have been omitted from the Division's Reply.

Paragraph 6 – This paragraph contains new facts/arguments about post-complaint conduct which has not previously been alleged in the OIP or Motion.

Paragraph 7 – This is a hearsay statement, which contains a new assertion of fact, not previously mentioned in the OIP or Motion.

III. CONCLUSION

For the foregoing reasons, the Respondent respectfully requests the Court consider the foregoing points in its decision to grant/deny the Division's Motion for Summary Disposition.

DATED: February 10, 2016

Respectfully submitted,



John E. Dolkart, Jr., Esq.
Law Offices of John E. Dolkart, Jr.
1750 Kettner Blvd, Suite 416
San Diego, CA 92101
Tel: (702) 275-2181

COUNSEL FOR RESPONDENT GEORGE
CHARLES CODY PRICE

In the Matter of George Charles Cody Price
Administrative Proceeding File No. 3-16946

Service List

Pursuant to Commission Rule of Practice 151(17 C.F.R. § 201.151), I certify that the attached:

SURREPLY BY RESPONDENT GEORGE CHARLES CODY PRICE; WITH SUPPLEMENATAL DECLARATION OF GEORGE CHARLES CODY PRICE IN SUPPORT THEREOF

On February 10, 2016.

By: Facsimile and Overnight Mail

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F. Street, N.E., Mail Stop 1090
Washington, DC 20549-1090
Facsimile: (202) 772-9324
(Original and three copies)

By: Email

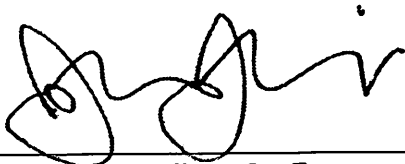
Honorable Brenda P. Murray
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 2557
Washington, DC 20549-2557
Email: alj@sec.gov

By: Email and Overnight Mail

Lynn M. Dean, Esq.
Division of Enforcement, Los Angeles Regional Office Securities and Exchange Commission
444 S. Flower Street, Suite 900
Los Angeles, California 90071-9591
Email: deanl@sec.gov

DATED: February 10, 2016

BY:



John E. Dolkart, Jr., Esq.

EXHIBIT B

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of

GEORGE CHARLES CODY PRICE,

Respondent.

ADMINISTRATIVE PROCEEDING
FILE NO. 3-16946

DECLARATION OF RESPONEDENT GEORGE CHARLES CODY PRICE

I, George Charles Cody Price, hereby declare pursuant to 28 U.S.C §1746, as follows:

1. I am the Respondent in the above captioned matter. I have personal knowledge of the facts underlying this proceeding, the facts underlying the prior civil proceeding, and the facts pertinent to the underlying events at issue due to my role as founder of the ABS Fund, LLC and Capital Access Fund, LLC and later due to my involvement therein as an individually named Defendant and Respondent.

2. I have personal knowledge of the facts set forth in this Declaration and if called upon to testify as a sworn witness, I could and would testify competently thereto.

3. The statement made in Lynn M. Dean's supplemental declaration at paragraph 3 is false. Ms. Dean is referring to a statement I made in my deposition where I was asked if I had told investor's about an SEC investigation in May of 2012. I had no knowledge of the investigation until I was informed via subpoena on July 25th, 2012. Ms. Dean is referring to voluntary informal and off the record phone call where I voluntarily participated in answering several questions for the Division prior to the commencement of any investigation I was made aware of. I did in fact only tell my brother about the call because I was subsequently visiting the town where he lives at the same time.

4. Attached hereto as Exhibit 1 are true and correct copies of deposition testimony regarding the opening of the ABS Manager, LLC account with Morgan Stanley Smith Barney, also note the Jeffery Prince deposition at page 112 lines 4-22.

5. Attached hereto as Exhibit 2 are true and correct copies of excerpts of my deposition taken by Lynn M. Dean on behalf of the Division in the underlying civil action. Due to the size of the full transcript (122 pages) it has not been provided, although it can be upon the request of this court. The deposition will show that I at all times made reference to the Morgan Stanley line of credit being used for real estate. Note Page 209, lines 1-12; also note Page 320, lines 14-21.

6. Attached hereto as Exhibit 3 are true and correct excerpts from the transcript of the deposition of Jeffrey L. Prince, an employee of Morgan Stanley Smith Barney with personal knowledge of the facts surrounding the liquidation of ABS Manager's account. The transcript shows that I was trying to move my account from MSSB prior to them asking me to move. This shows that I was in fact being truthful when I told investors we were trying to move the account during calls taken in January 2013 with all investors. Note Price deposition at page 51, lines 4-14.

7. I have not told any investors to not cooperate with the Division or not to cooperate with Lynn M. Dean personally. I have told investors to be truthful and forthright as possible at all times when talking to the SEC. Nor am I aware of any facts which would substantiate the claims made by her at paragraphs 4 and 7 of her declaration, that I told investors not to cooperate with the Division; that I told investors that they would not get their money back if they cooperated; or that I told investors that I did not have to pay civil fines and penalties as a result of the judgment.

8. I declare under penalty of perjury that the foregoing facts are true and correct, executed this 10th day of February 2016.

By: 

George Charles Cody Price

Exhibit 1 to Declaration

1 You don't know one way or the other if
 2 Mr. Krueger provided a reason why that Morgan Stanley
 3 was requesting this?
 4 A I don't recall that as part of the
 5 consideration.
 6 Q Okay. So, therefore, you don't recall hearing
 7 any type of explanation as to why Morgan Stanley was
 8 asking ABS Manager to move its account out of the firm?
 9 MR. WORDEN: Asked and answered.
 10 THE WITNESS: No.
 11 BY MR. CHESTER:
 12 Q Okay. Do you remember anything else that
 13 Mr. Price said during that phone call other than the
 14 fact that he didn't want to transition his account to
 15 another firm?
 16 A Really specifically it was just, you know, "Can
 17 you work with me? I'd like to stay," which is just what
 18 you're referring to now. That's all I remember.
 19 Q Okay. Do you remember if he offered to add
 20 cash to the account or to buy treasuries, Ginnie Mae
 21 securities, or things other than what were already in
 22 the account?
 23 A I believe that was part of the same thing I was
 24 just referring to working on.
 25 Q So during the conversation between you and

1 account to another firm?
 2 A No.
 3 MR. WORDEN: Can I hear the question one more
 4 time, please.
 5 (The record was read.)
 6 BY MR. CHESTER:
 7 Q After you spoke to someone from -- after
 8 speaking to somebody at risk and finding out that the
 9 answer was no, did you contact Mr. Price?
 10 A We called him right back, yes.
 11 Q Okay. And what did you tell Mr. Price?
 12 A That the answer was no.
 13 Q And, again, did he ask for an explanation?
 14 A I don't recall what he asked at that point.
 15 Q Did either you or Mr. Krueger provide him with
 16 an explanation as to why Morgan Stanley wanted him to
 17 transition his account to another firm even after
 18 offering to add cash or securities to the account?
 19 A Not that I recall.
 20 MR. CHESTER: Can we take a quick five-minute
 21 break.
 22 (A brief recess was taken.)
 23 BY MR. CHESTER:
 24 Q So, Mr. Prince, after informing Mr. Price that
 25 he would have to transition the ABS Manager account from

1 Mr. Krueger and Mr. Price in which Mr. Price was
 2 informed that Morgan Stanley wanted him to transition
 3 the account to another firm, Mr. Price asked if he were
 4 to add cash to the account or add other securities to
 5 the account, would Morgan Stanley reconsider its
 6 decision?
 7 A Yes.
 8 Q And did you or Mr. Krueger respond to that?
 9 A I believe we actually got the call, inquired,
 10 and then called him back with a response.
 11 Q Okay. Were you involved in that inquiry?
 12 A I believe so.
 13 Q And who did you speak with?
 14 A The regional risk people.
 15 Q Do you remember specifically who it might have
 16 been?
 17 A No.
 18 Q And can you tell us about the conversation that
 19 you had with the regional risk people after your
 20 conference with Mr. Price?
 21 A Very short lived as far as the call. Just
 22 basically stating the client -- we inquired if he did
 23 this, and the answer was no.
 24 Q At that point, did you come to understand why
 25 the firm was asking ABS Manager to transition its

1 Morgan Stanley to another firm, do you know if he made
 2 any attempts to transfer the account to another firm?
 3 A I believe he did.
 4 Q Okay. And what attempts are you aware of that
 5 Mr. Price made to transition the account from Morgan
 6 Stanley to another firm?
 7 A Specifically a firm that was associated with
 8 New York Bank, I believe -- or Bank of New York. I
 9 believe he mentioned that one, that he had several
 10 things lined up that he was trying to get approved.
 11 Q Okay. And over what time frame did you have
 12 discussions with him in which he informed you that he
 13 was attempting to transfer the account to another firm?
 14 A Through the rest of December, early January
 15 more than likely.
 16 Q And would he discuss this with you over the
 17 phone?
 18 A Possibly. I think via E mail as well.
 19 Q And do you recall Mr. Price asking you to speak
 20 with representatives from other firms that were
 21 contemplating transferring the account?
 22 A He did. He did.
 23 Q And do you recall who you may have had
 24 discussions with at other firms regarding the transfer
 25 of the ABS Manager account?

Exhibit 2 to Declaration

1 were discussed recently.
 2 **Q** When you say "recently" -- well, actually
 3 let me ask you this.
 4 Saturday, March 2nd at 10:00 a.m., you had
 5 a phone call with investors.
 6 When you said "discussed recently," are you
 7 talking about that phone call?
 8 A Yes.
 9 **Q** Okay. And then there was also a phone call
 10 in January, you say?
 11 A Multiple phone calls in January.
 12 **Q** And were they initiated in the same way
 13 with an e-mail invitation and then investors
 14 attended by telephone?
 15 A No.
 16 **Q** How were those calls initiated?
 17 A By myself calling them individually.
 18 **Q** Okay. So in January, you made individual
 19 calls to investors, correct?
 20 A That's correct.
 21 **Q** Did you actually speak to every one of your
 22 investors in January?
 23 A I did.
 24 **Q** In those January phone calls with Capital
 25 Access investors, did you inform them that Smith

1 **Barney had asked you to move the Capital Access**
 2 **assets from Smith Barney to another brokerage house?**
 3 A Not particularly.
 4 **Q** What did you tell them about your
 5 communications with Smith Barney in the January
 6 phone call?
 7 A Told them that --
 8 MR. CHESTER: You say "phone call."
 9 MS. DEAN: Calls. I'm sorry.
 10 THE WITNESS: I informed them generally
 11 that we were unhappy with Smith Barney, and they
 12 were no longer providing us any lending or lines of
 13 credit and that we were going to be moving our
 14 account to a prime brokerage firm.
 15 BY MS. DEAN:
 16 **Q** Did you tell clients that Smith Barney had
 17 actually asked you to move the assets?
 18 A I can't be certain.
 19 **Q** But you definitely recall telling your
 20 clients that you were unhappy with the service you
 21 were getting from Smith Barney?
 22 A Correct.
 23 **Q** When did Smith Barney stop providing the
 24 lending facility that it had previously provided to
 25 Capital Access investors?

1 A I believe it was somewhere in November
 2 2012.
 3 **Q** Did they inform you that they intended to
 4 stop providing that lending facility?
 5 A They did.
 6 **Q** How did they inform you of that fact?
 7 A Via phone call.
 8 **Q** Who did you speak to at Smith Barney on
 9 that subject?
 10 A Jeff Prince.
 11 **Q** During that call when Mr. Prince informed
 12 you that Morgan Stanley would no longer be provided
 13 the lending facility, did he also tell you that
 14 Morgan Stanley Smith Barney wanted you to move fund
 15 assets?
 16 A No.
 17 **Q** When did Morgan Stanley tell you they
 18 wanted to move the fund assets?
 19 A There was a phone call on December 16th
 20 that was a heated phone call, and a lot was said on
 21 it, but I don't remember them telling me that they
 22 wanted me to close my account. I was more
 23 expressing my displeasure for their service on that
 24 call.
 25 **Q** Let me go back and clean a couple things

1 up.
 2 **In the November call that you had with Jeff**
 3 **Prince, was anyone on the telephone line other than**
 4 **yourself and Mr. Prince?**
 5 A I don't believe so.
 6 **Q** Was there anyone from ABS Manager or any of
 7 the ABS Funds on the line other than you?
 8 A Just myself.
 9 **Q** The December 16th phone call that you
 10 described as a heated call, who was on that
 11 telephone call?
 12 A Brian Krueger.
 13 **Q** And that's Mr. Krueger from Morgan Stanley
 14 Smith Barney?
 15 A Correct.
 16 **Q** And you were on the call?
 17 A Correct.
 18 **Q** And was anyone on the call other than
 19 Mr. Krueger and yourself?
 20 A Jeffrey Prince.
 21 **Q** Who initiated that call?
 22 A I don't recall.
 23 **Q** Other than you expressing your
 24 dissatisfaction, can you remember what else was
 25 discussed in that December 16th telephone call with

1 assets under management at ABS Manager?
 2 A Correct.
 3 Q And if you look at the Excel spreadsheet
 4 that's attached here, there are five columns to
 5 it -- actually there's six, I guess.
 6 There's one that starts on the left side
 7 that says "SYM," but it's blank.
 8 Do you see that?
 9 A Yes.
 10 Q Then there's a column for name. To the
 11 right of that is a column for CUSIP, and to the
 12 immediate right of that is a column that says, "IDC
 13 Online Pricing."
 14 Do you see that?
 15 A Correct.
 16 Q Did you prepare this spreadsheet?
 17 A I downloaded it from Smith Barney's
 18 website.
 19 Q Okay. And in providing this spreadsheet to
 20 Mr. Hersch, was it your intention to provide him
 21 with asset values for assets held by ABS Manager for
 22 the benefit of ABS Fund investors?
 23 A Capital Access.
 24 Q ABS Fund and Capital Access?
 25 A Yes, but we didn't include every position.

1 Q So it was just a sample of the assets that
 2 were held, correct?
 3 A Correct.
 4 Q And are these assets that were only held by
 5 Capital Access or are there ABS Fund Arizona assets
 6 in here as well?
 7 A I can't be sure of that.
 8 Q When you were writing to Mr. Hersch, it was
 9 your intention to move all of the assets, including
 10 assets owned for the benefit of fund investors in
 11 ABS Arizona and Capital Access, correct?
 12 A Possibly. We hadn't made that
 13 determination yet.
 14 Q So it's possible that there are funds
 15 assets here for both funds, but you just can't be
 16 sure, as you sit here today?
 17 A I can't be sure.
 18 Q A couple questions about the e-mail that I
 19 wanted to ask you.
 20 If you look at the first page, there's a
 21 paragraph that starts "Our fund is now primed."
 22 Do you see that?
 23 A Yes.
 24 Q And then about two-thirds of the way across
 25 on that line, there's a reference to something

1 called Hedgerco?
 2 A Correct.
 3 Q What is Hedgerco?
 4 A They are one of the nation's leading
 5 providers of performance statistics for hedge funds,
 6 and they report returns. And if you get approved as
 7 an accredited investor with a secure log-in and
 8 password and gain access to Hedgerco, you can see how
 9 different hedge funds compare to others.
 10 Q As of January 14, 2013, had Hedgerco
 11 actually agreed to begin sending institutional
 12 clients to ABS Manager to invest in either ABS Fund
 13 Arizona or Capital Access Fund?
 14 A Yes, that commitment was made sometime in
 15 September.
 16 Q Who at Hedgerco made that commitment?
 17 A The president.
 18 Q What's his name?
 19 A Evan.
 20 Q What's his last name?
 21 A It may be Rappaport, but I may be mistaken.
 22 Q Another question about this e-mail in the
 23 second paragraph, the one that starts "Our structure
 24 currently," do you see that?
 25 A Yes.

1 Q The second sentence, there is a reference
 2 to using bonds as collateral for a line of credit,
 3 and it indicates that the line of credit was used to
 4 draw down funds to buy real estate.
 5 Do you see that?
 6 A Correct.
 7 Q Isn't it true that the line of credit that
 8 was being used by investors at Capital Access was
 9 being used for whatever purpose the investor wanted
 10 and not necessarily to buy real estate?
 11 A Real estate has been the primary reason
 12 typically.
 13 Q Aren't there investors in Capital Access
 14 who drew down the line of credit to do things other
 15 than buy real estate?
 16 A Well, it's a -- we classify it as a
 17 nonpurpose loan, the same way Smith Barney does. So
 18 we don't ask our clients what they're going to spend
 19 it on.
 20 Q So the clients have discretion to spend the
 21 money they take as part of a line of credit to spend
 22 it on anything they want, correct?
 23 A Correct.
 24 MS. DEAN: Let's go off the record.
 25 (Recess taken.)

1 Q. Sure.
 2 Who initiated the payments or, as you've called
 3 them, the dividends to the investors out of the ABS Fund
 4 checking account?
 5 A. Myself.
 6 Q. And you did that every month?
 7 A. With the exception of the business relationship
 8 manager from time to time.
 9 Q. Did -- once the money, then, hit -- once the
 10 money hit the ABS Manager checking account, how did you
 11 receive your compensation?
 12 A. Receiving money into the ABS Manager checking
 13 account actually was the form of compensation that I
 14 received.
 15 Q. Okay.
 16 A. So there wasn't a secondary step after that
 17 necessarily that needed to take place.
 18 Q. Okay. Did money flow from the ABS Manager
 19 checking account into your own personal accounts?
 20 A. At times it did.
 21 Q. Okay. And who initiated those transfers?
 22 A. I did.
 23 Q. Okay. And under what circumstances would money
 24 stay in the ABS Manager account or be transferred to
 25 your personal account?

1 MR. CHESTER: Objection. Vague, ambiguous.
 2 THE WITNESS: Can you -- can you be more
 3 specific on "circumstances"?
 4 BY MR. PUATHASNANON:
 5 Q. Sure. Let me go back for a second.
 6 Did you use the ABS Manager account to pay
 7 personal expenses or obligations?
 8 A. Yes.
 9 Q. Directly from that account?
 10 A. Yes.
 11 Q. Did you also pay personal expenses and
 12 obligations out of your personal accounts?
 13 A. Yes.
 14 Q. Okay. You mentioned that there are times in
 15 which money went from the ABS Manager account to your
 16 personal account; right?
 17 A. Yes.
 18 Q. Why would that happen if you were paying out of
 19 both?
 20 A. It had to do with real estate loan approvals
 21 for personal reasons.
 22 Q. What do you mean by "real estate loan
 23 approvals"?
 24 A. The underwriters, if you go to get a purchase
 25 on a primary residence, want to see if you're

1 self-employed, not just how much the company has made
 2 that you own but how much do you on a consistent track
 3 record over a period of time personally in your account
 4 make. Although I don't agree with that distinction,
 5 that's what most underwriters would like to see. So I
 6 followed that process over a period of time.
 7 Q. Were the transfers that were made from the
 8 ABS Manager account to your personal account, did they
 9 happen on a schedule?
 10 A. Can you define "schedule"?
 11 Q. Yeah.
 12 Was it -- were you -- did those transfers occur
 13 every two weeks? twice a month? every month? once a
 14 quarter?
 15 A. It was -- to my recollection, it was
 16 sporadically. I'm not sure if there was a set pattern.
 17 Q. There's been -- I know you've been present for,
 18 I think, many, if not all, of the depositions in this
 19 case, and there's been discussion in various
 20 depositions, including your last deposition, about a
 21 reserve fund that the funds maintain -- or that -- it's
 22 not clear to me. Was that -- strike that.
 23 Do you know what I'm referring to when I say
 24 "the reserve fund"?
 25 A. I think I know what you're referring to.

1 Q. Okay. What is it that -- what do you -- what
 2 do you think that that reserve fund refers to?
 3 A. In certain instances I would move money from
 4 ABS Manager checking to ABS Manager savings as a way of
 5 safekeeping some additional funds that weren't
 6 necessarily needed at the time, and that savings account
 7 would have an ongoing balance of accruing more -- more
 8 dollars in it over -- over time.
 9 Q. Okay. Was money transferred -- and is it okay
 10 if I refer to that savings account as "the reserve," or
 11 do you -- would you prefer that I refer to it as the
 12 checking -- the savings account?
 13 A. Well, I don't know that anything to do with ABS
 14 Manager can be called a fund account --
 15 Q. Okay.
 16 A. -- because ABS Manager was not a fund. The
 17 only funds were the funds that we've spoken of today.
 18 So it would just be a reserve account, not a fund
 19 account.
 20 Q. Fair enough.
 21 So if I reserve -- refer to it as "the reserve
 22 account," you'll know what I'm referring to?
 23 A. Or savings account, to be more specific.
 24 Q. Okay. When -- who decided how much money went
 25 into the reserve or savings account?

Exhibit 3 to Declaration

Brian M. Krueger
Executive Director
Complex Manager

Wealth Management
21650 Oxnard Street
Suite 2300
Woodland Hills, CA 91367
fax 818 713 0470
direct 818 713 4735
toll free 800 755 2550
brian.krueger@morganstanley.com

Morgan Stanley

December 17, 2012

George Charles Cody Price
ABS Manager LLC
10692 Vista Del Agua Way
San Diego, CA 92121

RE: Morgan Stanley Account Numbers [REDACTED] (ECL) for ABS Manager, LLC.

Dear Mr. Price,

Thank you for speaking with Jeff and I on Friday about your accounts. As discussed, this will confirm that you will immediately begin to transition your accounts to another firm, with that process being completed by the end of January 2013 at the latest. In the interim, your accounts will continue to be governed by the terms of all Agreements governing those accounts, including all agreements relating to the Express Credit Line (ECL) taken on your accounts. We will work with you as appropriate to effectuate market sensitive transactions pending the transfer out of the accounts. We appreciate your understanding and, as always, please feel free to contact me if I can be of assistance.

Cordially,



Brian Krueger
Complex Manager

cc: Jeff Prince

From: Charles Price [REDACTED]
Sent: Thursday, January 31, 2013 7:29 PM
To: brian.krueger@morganstanley.com
Subject: approval letter from Celadon
Attach: KMBT35020130131181332.pdf

This account is fully submitted and pre-approved. We have ben working with them for 3 weeks now to get the account set up. Please allow the time it takes to have them have the account transitioned. If I hear any more updates you will be the first to know. See attached.

--
Humbly Yours,

Chuck Price



ABS Manager, LLC
4225 Executive Square
Suite 600
La Jolla, Ca 92037

Attn : C. Price

Dear Mr. Price,

Subject to the terms and conditions previously discussed and the completion of our due diligence, Celadon Financial Group, LLC would be happy to assist your fund in its endeavors.

As previously discussed, Celadon will introduce your account to ICBCFS who will in turn provide clearing services. ICBCFS has also confirmed that they will offer 75% (seventy five) financing through repos on the portfolio that you provided at a rate of 2.50%.

Since you have already spoken with Stephen Bologna and James Davis, you are acquainted with the persons you will be dealing with on a daily basis.

Upon acceptance of the account, I will be happy to introduce you to the other persons you may have dealings with here at Celadon. We will of course, confirm with you upon approval of your account.

In the interim, should you have any questions or concerns, please feel free to contact us at your earliest convenience.

Welcome aboard.

Sincerely,

A handwritten signature in black ink, appearing to read "Daryl S. Hersch". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Daryl S. Hersch
Managing Member

Headquarters 19 Center Street, Chatham, New Jersey 07928

Phone 973-701-8033 Facsimile 973-701-8353 Email customerservice@celadonfinancial.com Web www.celadonfinancial.com

Members FINRA, SIPC, MSRB

MS-ABS-009242