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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of DELANEY EQUITY GROUP, LLC, DAVID C. DELANEY, AND IAN C. KASS, Respondents.	)	ADMINISTRATIVE PROCEEDING File No. 3-17398

RESPONDENTS DELANEY EQUITY GROUP, LLC'S AND DAVID DELANEY'S ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW Respondents, Delaney Equity Group, LLC ("**DEG**") and David Delaney ("**Delaney**") (collectively "**Respondents**"), by and through their undersigned counsel, and hereby answer the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("**OIP**") as follows:

INTRODUCTION

Daniel P. McKelvey ("**McKelvey**"), Alvin S. Mirman ("**Mirman**"), and Steven Sanders ("**Sanders**") (collectively the "**Perpetrators**") allegedly engaged in a sophisticated, fraudulent scheme with respect to certain companies registered with the Securities and Exchange Commission (the "**Commission**"). According to the Commission, the Perpetrators fraudulently manufactured and registered with the Commission as least 12 companies ("**Registered Companies**")[1] without

[1] The Perpetrators allegedly created 22 Registered Companies and Mirman participated in a separate scheme to manufacture at least 14 other undisclosed companies. In total, the Commission contends the Perpetrators sold 18 of these companies for a total of approximately $6 million. Notably, the Commission's action against the Perpetrators does not allege that any purchase or sale of the issuer's stock resulted in harm to the public as a result of the Perpetrators' alleged scheme.

disclosing to the public or the Commission their true purpose. The Commission contends "[t]he Forms S-1 (and subsequent Commission filings) falsely depicted the [Registered Companies] as actively pursuing business plans with the sole officer at the helm, when the only plan from the onset was to be sold as public vehicles primarily for the benefit of the [Perpetrators]." *See* OIP, ¶7. The Commission filed an enforcement action in the United States District Court for the Southern District of Florida against the Perpetrators and others alleging various violations of the securities laws, including the antifraud provisions. *See SEC v. McKelvey, et al.*, Case No. 15-80496-CIV-MARRA (S.D. Fla.) ("**McKelvey Action**"). The Perpetrators, without admitting or denying the allegations, consented to judgments in the McKelvey Action, which enjoined them from violating certain provisions of the securities laws and ordered other remedial measures. The Perpetrators also face up to five years in prison after agreeing to plead guilty to one count of conspiracy to commit securities fraud and certification fraud. *See e.g., U.S. v. McKelvey*, Case No. 16-20546-CR-SCOLA (S.D. Fla).

The Commission alleged, among other things, the following in the McKelvey Action: (1) each Registered Company began with the recruitment of a sole officer by one or more of the Perpetrators. *See* McKelvey Action, Second Amended Complaint ("**Complaint**") at ¶ 2; (2) in exchange for compensation ($10,000 or less), these individuals agreed to serve as the officer and provided their personal information, sample signatures in some instances, and opened a corporate bank account. *Id.* at ¶ 36; (3) the sole officer deposited funds into the corporate account, which he/she purportedly obtained from the Perpetrators. *Id.*; (4) the Perpetrators prepared bylaws, minutes of organizational meetings that never took place, and board resolutions that never were entered into by the sole officer in their capacities as directors or otherwise. Complaint at ¶ 41; (5) McKelvey superimposed the sample signatures of the sole officers without their knowledge on to

a series of documents, including letters to auditors, corporate resolutions, Commission filings, directives to transfer agents, and securities purchase agreements. *Id.* at ¶ 45; (6) McKelvey created and maintained at least 11 email accounts in the names of the sole officers without their knowledge or consent. *Id.* at ¶ 46. Indeed, the Commission asserts that McKelvey impersonated the sole officers from these emails accounts for correspondence with multiple persons and entities, including the Commission. *Id.*; (7) McKelvey and Mirman drafted the financials and provided supporting evidence to accountants for the Registered Companies' filings with the Commission, which contained various misrepresentations about the respective companies. *Id.* at ¶ 47; (8) the Perpetrators obtained false legal opinions, prepared false certifications and affidavits of the sole officers, and forged notarizations. *Id.* at ¶ 4; (9) after enlisting the sole officer, accountants, and lawyers, the Perpetrators prepared and filed false and misleading Form S-1 registration statements ("**Forms S-1**") for each Registered Company. *Id.* at ¶ 48; and (10) the Perpetrators recruited straw investors, including friends and family, to whom they also paid monies. *Id.* at ¶ 30. The Commission further alleged that the Perpetrators tightly controlled the roster of shareholders for each issuer "so as not to use the same investors all the time." *Id.* at ¶ 60. Plainly, the Perpetrators' scheme, as alleged by the Commission, was employed to maintain the façade to the Commission, gatekeepers, the public, and Financial Industry Regulatory Authority ("**FINRA**") that the issuers were in fact legitimate companies with legitimate business purposes and not "blank check" companies controlled by the Perpetrators.

Despite the assertion that the Perpetrators "developed a fine-tuned assembly line rife with fraud at each stage," the Commission has brought this action, through the benefit of hindsight, asserting that DEG failed to conduct the review required by Rule 15(c)2-11 under the Exchange

Act and that Delaney caused and aided and abetted DEG's violations.[2] Essentially, the Commission contends that DEG and Delaney should have conducted extensive due diligence to discover the Perpetrators' fraud and therefore not filed any of the Form 211 applications ("**Forms 211**") with FINRA. This allegation is made despite the fact that the Commission is charged with much more rigorous examination requirements, but failed on over 12 occasions to discover this alleged scheme or recognize any red flags. The Commission's position is simply untenable as the Commission and other industry rules do not contemplate such a burden on broker-dealers. Indeed, if the allegations within the McKelvey Action are true, then DEG and Delaney were also defrauded by the Perpetrators and by the sole officers involved in their purported scheme.

In order to comply with Rule 15(c)2-11, the broker dealer must first review the "paragraph (a) information." The paragraph (a) information consists of five independent and distinct categories of information that can be reviewed by the broker dealer, including, for example, Forms S-1 and periodic reports filed with the Commission. A broker-dealer need only review one of these five categories in satisfying his obligations under Rule 15(c)2-11. Next, the broker dealer should review the paragraph (a) information in the context of all other information about the issuer in its knowledge or possession (i.e., paragraph (b) information). Based upon that review, Rule 15(c)2-11 requires the broker-dealer to have a "reasonable basis under the circumstances for

[2] The Commission alleges that Respondent Kass also violated Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) under the Exchange Act and Rule 10b-5 thereunder. There are no allegations or claims against DEG or Delaney regarding these provisions of the securities laws. At no point was Delaney aware of any alleged fraud or any intentional acts to assist the Perpetrators with their alleged scheme. To the extent Kass engaged in the conduct as alleged by the Commission, it was without the knowledge and authority of Delaney and outside the scope of his agency with DEG.

believing that the paragraph (a) information is accurate in all material respects,[3] and that the sources of the paragraph (a) information are reliable." With respect to issuers that just completed a public offering, such as the Registered Companies, the scope of review is relatively straightforward. The broker-dealer would need to obtain and review the filings with the Commission (i.e., paragraph (a) information), in addition to any supplemental information (i.e., paragraph (b) information).[4] Filings obtained from the Commission's Electronic Data Gathering, Analysis, and Retrieval ("**EDGAR**") satisfy the source reliability requirement.

There is no requirement for a broker-dealer to conduct independent due diligence or even have a relationship with the issuer. *See* SEC Release No. 34-23094, p. 6. Generally, "the broker dealer need not take any further steps, *e.g.* there would be no requirement to look behind the financial statements or any other information required to be obtained." *Id.* Indeed, "[b]ecause of the liabilities attaching to documents filed with the Commission ..., a broker dealer generally could reasonably have stronger belief as to the accuracy of information contained in such documents

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[3] The phrase "in all material respects" was added to Rule 15(c)2-11 in 1991. The Commission clarified that "broker-dealers may have a reasonable basis for believing the paragraph (a) information is accurate despite the presence of insignificant errors or discrepancies in the information." *See* SEC Release No. 34-23094, fn. 31.

[4] Paragraph (b) requires the broker dealer to have in its records (1) a record of the circumstances involved in the submission of publication of such quotation, including the identity of the person or persons for whom the quotation is being submitted or published and any information regarding the transactions provided to the broker or dealer by such person or persons; (2) a copy of any trading suspension order issued by the Commission during the 12 months preceding the date of the publication or submission of the quotation, or a copy of the public release issued by the Commission announcing such trading suspension order; and (3) a copy or a written record of any other material information (including adverse information) regarding the issuer which comes to the broker's or dealer's knowledge or possession before the publication or submission of the quotation. Paragraph (b) does not require a broker-dealer to maintain trivial information or information from an uncertain source. *See* SEC Release No. 34-23094, fn 28. It also "does not require a broker-dealer routinely to affirmatively seek additional information about the issuer." *Id.*

than information in documents not so filed." *Id. at* fn. 29. Simply put, "paragraph (a) does not require the broker-dealer to question any information unless the information contains apparent material discrepancies, or other material information in the broker-dealers knowledge and possession (i.e., paragraph (b) information) reasonably indicate that the paragraph (a) information is materially inaccurate." *Id.* at p. 8. Respondents conducted the appropriate review required by Rule 15(c)2-11 with respect to the Registered Companies[5] and had a reasonable basis under the circumstances to believe the paragraph (a) information was accurate in all material respects.

Delaney completed Forms 211 for only two of the companies identified in the OIP – mBeach Software, Inc. ("**mBeach**") and MIB Digital Inc. ("**MIB Digital**"). Respondent Ian Kass ("**Kass**") was responsible for preparing the Forms 211 for the other eight companies identified in the OIP. Prior to each filing, Delaney gathered and reviewed the documents filed with the Commission, including Forms S-1, amendments thereto, and current periodic reports. Kass testified that he also reviewed the same information. Respondents obtained these filings from EDGAR, which unquestionably was a reliable source. Each of the S-1 registration statements provided full details about the Registered Companies, including business plans, product descriptions, competitor analysis, risk factors, and representations about the sole officers. Each of the Forms S-1 went through a detailed review and comment process conducted by the Commission's Division of Corporate Finance ("**Corp. Fin.**"). Indeed, in connection with the review process, Corp. Fin questioned whether certain issuers were in fact "blank check companies."[6]

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[5] DEG and Delaney did not have any involvement with Mobieyes Software, Inc. or FanSport, Inc.

[6] For example, on June 3, 2010, H. Christopher Owings, an Assistant Director at Corp. Fin., sent a letter to David Johnson, the sole officers of Hidden Ladder, regarding the company's disclosures contained in the Form S-1. Mr. Owings noted that "[y]our disclosure indicates that you are a

DEG also received documents and information from the sole officers.[7] For example, William Gaffney, the President and CEO of mBeach, executed a Form 211 Filing Agreement, which contained affirmations that, among other things, Mr. Gaffney (i) acknowledged providing complete true and accurate information related to the Form 211 application and any other information provided to DEG, and (ii) agreed to notify Delaney in the event of any material change in the information provided to DEG related to the preparation of the Form 211. The Filing Agreement also included a signed affidavit from Mr. Gaffney further attesting to the accuracy and truthfulness of the information provided to DEG. Specifically, Mr. Gaffney indicated that he was not aware of any information regarding the operations of mBeach or its corporate actions that were not accurately disclosed in all material aspects. Mr. Gaffney also signed a 211 Due Diligence Questionnaire that was provided to DEG, which contained various disclosures about the company.

While DEG received information from Sanders and/or McKelvey, including documents executed by the sole officers, there was nothing about their involvement that raised any issues. Delaney believed that they were assisting the officers and shareholders of some of the issuers with the registration process. Based upon their role as a shareholder, incorporator, and/or registered agent of the Respective Companies and as a result of communications with the issuers, including

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development stage company and still in the process of developing your business plan. We note you have a limited operating history, no customers, no revenues, and net operating loss of $3,600." He further noted that "it appears that your proposed business may be commensurate in scope with the uncertainty ordinarily associated with a blank check company." As a result, he requested the company to explain why "... Rule 419 of Regulation C does not apply to you. Alternatively, please revise your disclosure throughout your filing to comply with Rule 419." Thereafter, Hidden Ladder revised its disclosures confirming it was not a blank check company. Apparently satisfied with the updated disclosures, Corp Fin. declared the Form S-1 effective on August 19, 2010.

[7] All of the information from the sole officers and/or Perpetrators regarding the Registered Companies was submitted directly to Kass, except mBeach and MIB.

those represented by Kass, Delaney believed they had the authority to communicate on behalf of the issuers. Further, there was no information provided to Delaney or DEG by the sole officer, Sanders, or McKelvey that raised any "red flags" to suggest that the public filings were materially inaccurate. In fact, the information provided to Delaney by the sole officers, through McKelvey and/or Sanders, was consistent with the information contained in the Forms S-1. Moreover, with respect to the eight companies handled by Kass, he did not convey any information to Delaney that undermined his reasonable belief the paragraph (a) information was accurate in all material respects. Relying upon the information filed with the Commission and plainly not aware of any fraudulent scheme, DEG filed the respective applications with FINRA. DEG had a reasonable basis under the circumstances for believing that the paragraph (a) information was accurate in all material respects and the sources of the paragraph (a) information were reliable.

The Commission seeks a cease and-desist order against DEG and Delaney and further seeks civil penalties. There is no basis to seek these remedies, and they are inappropriate and unnecessary. DEG and Delaney complied with the requirements of Rule 15(c)2-11 and acted reasonably and in good faith at all times. While DEG hoped to achieve revenues from trading the stock or opening new retail accounts, Respondents did not make any money in connection with the Registered Companies. In fact, as a result of certain charges from the clearing firms and quotation mediums, DEG actually lost money. Moreover, they should not be sanctioned for the alleged misconduct of the Perpetrators, which if true, plainly deceived DEG, Delaney, the public, and the Commission. When DEG and Delaney later discovered questionable conduct regarding McKelvey and Sanders, including conduct relating to one of the Registered Companies, DEG and Delaney contacted the appropriate authorities. In short, there is no basis for any action against DEG and Delaney, and certainly no grounds for the relief sought by the Commission.

A. SUMMARY

1. The allegations of this paragraph are either allegations for which Respondents lack sufficient information and knowledge, or are allegations which are denied.

2. The allegations in paragraph 2 are not directed to Respondents and therefore no response is required. To the extent a response is necessary, Respondents are without knowledge as to the allegations contained in paragraph 2.

B. RESPONDENTS

3. Respondents admit the allegations contained in this paragraph.

4. Respondents admit the allegations contained in this paragraph.

5. Admitted that Kass was a registered representative associated with DEG from May 2010 to May 2011, and from July 2011 to December 2011. Respondents are otherwise without knowledge as to the remaining allegations contained in this paragraph.

C. THE UNDERLYING FRAUD

6-10. Respondents are without knowledge as to the allegations contained in paragraphs 6, 7, 8, 9, and 10 regarding the Perpetrators' alleged fraudulent scheme. The Forms S-1 referenced in these paragraphs speak for themselves.

As noted above, the Perpetrators allegedly carried out an intricate fraud over several years that the Commission concedes was designed to mislead the public and conceal the fact that the companies were designed to be sold as public vehicles by the Perpetrators. If true, Respondents were one of many other professionals who were duped by the "assembly line rife with fraud" operated by the Perpetrators, including forging officer signatures, impersonating company officers, creating fake email accounts, and providing false or misleading information regarding the companies and their operations. DEG, however, complied with Rule 15(c)2-11 and had a

reasonable basis under the circumstances for believing that the paragraph (a) information was accurate and that the source of the paragraph (a) information was reliable.

The Commission contends that the offering was "grossly inadequate to conduct the business described in the Forms S-1" and therefore Respondents should have inquired into this issue. Setting aside the fact that Rule 15(c)2-11 does not require Respondents to conduct due diligence or look beyond the company's financials, the Commission's contention ignores the fact that (1) multiple professionals, including lawyers and accountants, were involved in the preparation, filing, and review of the Forms S-1; (2) Corp. Fin. conducted an extensive review of each company in connection with the registration process; and (3) the Forms S-1 contained appropriate disclosures, including that the issuers would need to raise additional capital.

For example, in connection with the Form S-1 filed by BCS Solutions, the Assistant Director for Corp Fin. responded directly to Tyler Vorhies, the sole officer, and requested that the company update a variety of disclosures, including to clarify "that the proceeds from this offering will not be sufficient to 'develop and complete' your marketing and business plans." He further requested that "[g]iven the maximum net proceeds of this offering are $25,000, please refer to the Instruction 3 to Item 504 of Regulation S-K and disclose the amounts and sources of other funds needed to start and design your business and marketing plan." In connection with the Form S-1/As filed by the company, the company updated its disclosures to note the offering would not be sufficient and the company "will seek to raise the remaining funds (minimum of $125,000) to fund the future operations of the company through a subsequent financing from accredited investors." BCS Solutions S-1/A dated September 27, 2010, p. 13; *see also*, BlueFlash S-1/A dated April 13, 2011 at p. 7 ("the Company will need to secure additional financing to develop the product, attract customers, and start generating revenues."); mBeach Software S-1/A dated 11/24/2009 at p. 25

(sole officer agreed to provide the company with initial operating and loan capital to sustain the pertinent business plan over the ensuing twelve-month period through both the initial offering and by seeking alternative financing such as loans from institutions or private individuals).

Thus, not only did Corp. Fin. specifically review and comment on the purported discrepancy, but the company updated its disclosures to address the issue. Undeniably, Corp Fin. was satisfied with these updated disclosures as the Form S-1 became effective shortly thereafter. Nevertheless, the Commission now contends that DEG should have conducted an inquiry and questioned the Perpetrators about this alleged discrepancy regarding the business plan. Not only is the Commission's position incorrect as there were no material discrepancies, but Respondents acted reasonably in relying upon the information provided by the Registered Companies in the public filings reviewed by Corp. Fin.

D. THE FORMS 211 AND RULE 15(c)2-11

11. FINRA Rule 6432 and Rule 15(c)2-11 speak for themselves. Respondents are without knowledge as to the remaining allegations contained in this paragraph.

12. Respondents admit Forms 211 were filed for the Registered Companies identified in this paragraph, except Mobieyes Software, Inc. and FanSport, Inc. Respondents are without knowledge regarding the circumstances of these two companies. The remaining allegations contained in this paragraph are denied.

13-15. The allegations in paragraphs 13 - 15 are not directed to Respondents and therefore no response is required. To the extent a response is necessary, Respondents are without knowledge as to the allegations contained in paragraphs 13, 14 and 15 or are otherwise denied.

16. Except as so admitted herein, the allegations contained in this paragraph are denied.

Delaney prepared and signed the Form 211 for mBeach. In March 2010, Delaney was contacted by Juan Ferrera, a registered representative at Merrimac Corporate Securities. Mr. Ferrera indicated that a client was interested in having a Form 211 prepared for mBeach Software, Inc. He also introduced Sanders to Delaney. As noted above, Delaney received several documents executed by William Gaffney, the President and CEO of mBeach, including a Form 211 Filing Agreement, an affidavit attesting to the accuracy and truthfulness of the information provided to DEG, and a 211 Due Diligence Questionnaire, which contained various disclosures about the company. Delaney believes that he spoke with Mr. Gaffney (or someone purporting to be Mr. Gaffney) about the filing.

Prior to submitting the Form 211, Delaney gathered and reviewed information required pursuant to paragraph (a) of the Rule, including mBeach's most recent S-1 and S-1/A as well as the two Form 10-Qs filed to date. Delaney obtained these filings from EDGAR. According to the most recent Form S-1/A filed on November 9, 2009, mBeach was a development-stage entity with limited operating history, no customers, no revenues, and had an operating loss. The S-1/A provided full details about mBeach, including its business plans, product descriptions, and representations about the sole officer, Mr. Gaffney. mBeach disclosed that the funds the company had raised to date had been devoted to developing its business plan and market research, and any further completion and execution of the business plan would require the company to raise additional capital.

Delaney also reviewed the other documents executed by Mr. Gaffney. While this other information was provided to Delaney by Sanders and/or McKelvey, there was nothing about their involvement that raised any concerns. Delaney believed they were assisting the company with the

submission process and were authorized to communicate on its behalf. Moreover, the information provided by Mr. Gaffney, through McKelvey and/or Sanders, was consistent with the information disclosed in the public filings. Thus, Respondents had a reasonable basis under the circumstances for believing that the public filings were accurate in all material respects.

17. Except as so admitted herein, the allegations contained in this paragraph are denied.

DEG was retained to prepare the Form 211 for MIB Digital. Prior to submitting the Form 211, Delaney gathered and reviewed information required pursuant to paragraph (a) of Rule 15(c)2-11, including MIB Digital's most recent S-1, S-1/A and periodic filings. Delaney obtained these filings from EDGAR. The S-1/A provided full details about MIB, including its business plans, product descriptions, and representations about the sole officer, Mr. Hughes. MIB also disclosed that the company would need to raise additional capital to fund its ongoing operations.

Delaney also reviewed several documents executed by Mr. Hughes, the President and CEO of MIB Digital, including an affidavit attesting to the accuracy and truthfulness of the information provided to DEG and a 211 Due Diligence Questionnaire, which contained various disclosures about the company. Delaney also received signed correspondence from Mr. Hughes dated March 30, 2010, in which Mr. Hughes confirmed the restrictions surrounding MIB Digital shares. While this other information was provided to Delaney by McKelvey, there was nothing about his involvement that raised any concerns. Delaney believed he was assisting the company with the submission process and was authorized to communicate on its behalf. Moreover, the information provided by Mr. Hughes, through McKelvey, was consistent with the information disclosed in the public filings. Thus, Respondents had a reasonable basis under the circumstances for believing that the public filings were accurate in all material respects.

18. Admitted that DEG suffered a net capital deficit of approximately $800,000. Admitted that Mr. Delaney borrowed $25,000 from each of Sanders, McKelvey, and Mirman. Admitted that Mr. Delaney repaid these monies to them. Admitted that DEG processed Forms 211 after its net capital issues were resolved. The remaining allegations of this paragraph are denied.

19. All allegations of paragraph 19 are either allegations for which Respondents lack sufficient information and knowledge or are allegations which are denied.

The relevant filings reveal that MIB Digital did not undergo a change of control or business to a pharmaceutical company. MIB Digital filed a Form 8-K filed on August 24, 2010, disclosing its merger with Cahaba Pharmaceuticals, Inc. (**"Cahaba"**). Cahaba was a wholly-owned subsidiary of MIB Digital. The Form 8-K indicated that the purpose of the merger was to redomicile MIB Digital in Nevada and to recapitalize the company. There was no change in control or in the business of MIB Digital. As disclosed in the public filings, Mr. Hughes retained control after the merger. In reality, the new name of the entity was a misnomer as the Form 8-K provided that "the Merger [did] not result in any change in the business, management, location of principal executive offices, assets, liabilities, net worth, accounting practices, or control of the registrant." Moreover, FINRA had only approved an unpriced quotation. Meaning, shares of MIB Digital were not trading at the time of this merger and thus there were no concerns of any improper conduct with respect to the shares of the company.

20. Respondents deny the allegations of this paragraph.

21. Admitted that Kass was responsible for preparing the Forms 211 for the eight Registered Companies referenced in this paragraph. Respondents are without knowledge as to the remaining allegations contained in this paragraph.

22. Admitted that Mr. Delaney executed the Forms 211 as the registered principal of the firm. Respondents deny all remaining allegations of this paragraph.

23. Admitted that Mr. Delaney executed the Forms 211 as the registered principal of the firm. All remaining allegations of paragraph 23 are either allegations for which Respondents lack sufficient information and knowledge or are allegations which are denied.

24. Except as so admitted herein, the allegations contained in this paragraph are denied.

The Commission contends that Respondents had an obligation to conduct due diligence to "independently confirm" whether the Perpetrators were authorized to act for the Registered Companies and the information they provided was accurate. As noted above, Mr. Delaney believed that they were assisting the companies in connection with the registration process. He also believed that they had the authority to communicate on behalf of the issuers as a result of communications with the issuers and in light of their role as a shareholder, incorporator, and/or registered agent of the respective companies. As the Commission concedes, Kass received communications from the sole officers. With respect to the Form 211s he prepared, Kass confirmed that he communicated, via email and/or telephone, with an individual who identified themselves as the sole officer of the company. As a result, Delaney reasonably relied upon the information from the SEC filings, officers of the issuers, and the Perpetrators. He also reasonably relied upon Kass and the representations and information he provided in connection with these Forms 211.

Moreover, the information provided by the Perpetrators on behalf of the respective issuers was consistent with the information disclosed by these companies in the Form S-1s. Rule 15(c)2-11 is clear: "paragraph (a) does not require the broker-dealer to question any information unless the information contains apparent material discrepancies, or other material information in the

broker-dealers knowledge and possession (i.e., paragraph (b) information) reasonably indicate that the paragraph (a) information is materially inaccurate." *See* SEC Release No. 34-23094, p. 8. There were no "red flags" present at the time of the review of the public filings and submission of the Forms 211 and therefore no need to "independently confirm" any other information.

25-26. Except as so admitted herein, the allegations contained in these paragraphs are denied.

Once again, the Commission contends Respondents had an obligation to conduct diligence to "verify" the information received from the Perpetrators. Under the Commission's perspective, Respondents should have conducted extensive due diligence akin to that performed by an underwriter in questioning the merits of each company's business plan and inquiring into their present and future financing arrangements. Rule 15(c)2-11 places broker-dealers under no such obligation. If there is any fault to be laid here, it is on the Commission as it was aware of all the information it now alleges to be indicative of fraud, reviewed and commented on the disclosers of each Registered Company, and granted accelerated effectiveness to the issuer's registration statements. The Commission's own rules acknowledge that entities such as DEG will rely on this information. Indeed, "[b]ecause of the liabilities attaching to documents filed with the Commission ..., a broker dealer generally could reasonably have stronger belief as to the accuracy of information contained in such documents than information in documents not so filed." *See* SEC Release No. 34-23094 *at* fn. 29. In short, the Commission ignores its own failures in connection with its regulatory obligations, which led to the deception of Respondents and others, and attempts to pass blame to DEG.

Moreover, there would be no need to "verify" the information because there were no discrepancies with respect to the information provided and those contained in the public filings.

In support of its contention, the Commission references deficiency letters from FINRA, which requested more information about certain companies business plans. The Commission alleges that Kass and Delaney submitted a response to FINRA, which noted a budget ranging from $125,000 to $150,000 for each of the respective companies.[8] However, the registration statements disclosed the same or substantially same range of budgets. *See e.g.,* mBeach Software, Inc. Form S-1/A dated 11/4/2009, pp. 25-26; Teaching Time, Inc. Form S-1/A dated May 6, 2010, pp. 28-30; Hidden Ladder, Inc. Form S-1/A dated August 17, 2010, pp. 19-20; Benefit Solutions Outsourcing Corp. Form S-1/A dated September 28, 2010, pp. 23-24; and mLight Tech, Inc. Form S-1/A dated November 29, 2010, pp. 27-29. Furthermore, the purported discrepancy regarding the offering size was addressed by Corp. Fin. and the respective issuers in connection with their disclosures. *See e.g.,* BCS Solutions S-1/A dated September 27, 2010, p. 13 (the company "will seek to raise the remaining funds (minimum of $125,000) to fund the future operations of the company through a subsequent financing from accredited investors."); BlueFlash S-1/A, p. 7. ("the Company will need to secure additional financing to develop the product, attract customers, and start generating revenues."). Again, there was apparently nothing suspicious about the disclosures provided by these companies with respect to the offering size and budgets because the Forms S-1 were declared effective by Corp. Fin. Simply put, there was no requirement for Respondents to conduct the level of inquiry suggested by the Commission, especially in light of the fact that there were no material discrepancies.

[8] The Commission contends this information was false "because each of the [Registered Companies] had no intention to further its purported business plan." Respondents, however, were not involved in their alleged fraudulent scheme and therefore are without knowledge as to the Perpetrators' purported intent.

27. Respondents admit the Registered Companies filed periodic reports between the time of their Form S-1 effectiveness and Form 211 clearance. The periodic reports speak for themselves. The remaining allegations of this paragraph are denied.

28-29. Respondents admit that shareholder information was submitted to FINRA. Except as so admitted herein, the remaining allegations contained in these paragraphs are denied.

It is undisputed that Respondents gathered and reviewed the required information under paragraph (a) of Rule 15(c)2-11, including Forms S-1. There was nothing about the shareholder lists that caused Respondents not to have a reasonable basis under the circumstances to believe that the paragraph (a) information was accurate in all material respects and the paragraph (a) information came from a reliable source. The shareholder lists for each issuer were provided to DEG, primarily through Kass, along with a certificate from the transfer agent, who certified the accuracy of the information therein. Respondents also received subscription agreements for the shareholders of each issuer. The Forms S-1 disclosed that the companies would attempt to sell securities in $500 increments; thus, it was unremarkable that shareholders owned the same or similar amount of shares of a development stage company.

As alleged by the Commission in the McKelvey Action, the Perpetrators instructed the shareholders to sign a two-page subscription agreement, a blank stock power, and send the checks and documents to the Perpetrators. *See* McKelvey Action, Complaint, ¶ 59. The Commission alleges that McKelvey forged the signatures of the sole officers as having accepted the subscription agreements on behalf of the companies. *Id.* The Commission further alleges that the Perpetrators tightly controlled the roster of shareholders "so as not to use the same investors all the time." *Id.* at 60. Respondents were not aware of this information, but assuming the allegations are true, they were clearly deceived by the Perpetrators in connection with their scheme. With the benefit of

hindsight, however, the Commission contends that Respondents should have conducted a detailed inquiry of the relationships between the shareholders of different Registered Companies, as well as the underlying circumstances surrounding the solicitation of each shareholder. Again, Rule 15(c)2-11 does not impose this type of inquiry upon broker-dealers. Respondents were not aware of any "red flags" that would indicate that the paragraph (a) information was materially inaccurate.

30. Admit that Delaney relied upon Kass' representations in connection with the Forms 211 and communications with FINRA. All remaining allegation of this paragraph are either allegations for which Respondents lack sufficient information and knowledge, or are allegations which are denied.

31. All allegation of this paragraph are either allegations for which Respondents lack sufficient information and knowledge, or are allegations which are denied.

32. All allegation of this paragraph are either allegations for which Respondents lack sufficient information and knowledge, or are allegations which are denied.

33. Admit that Delaney discussed with Kass the business justifications for DEG to file the Forms 211. Admit that Delaney relied upon Kass' representations in connection with the Forms 211 and communications with FINRA. Respondents deny the remaining allegations contained in this paragraph.

E. KASS' OTHER INVOLVEMENT IN THE FRAUD

34-42. The allegations in paragraphs 34-42 are not directed to Respondents and therefore no response is required. To the extent a response is necessary, Respondents are without knowledge as to the allegations contained in paragraphs 34-42 other than to note that the entirety of the alleged fraudulent activity purportedly conducted by Kass transpired after he was terminated from DEG.

F. VIOLATIONS

43. Respondents deny the allegations contained in this paragraph.

44. Respondents deny the allegations contained in this paragraph.

45 - 48. The allegations in paragraphs 45 - 48 are not directed to Respondents and therefore no response is required. To the extent a response is necessary, Respondents are without knowledge as to the allegations contained in paragraphs 45 – 48 or are otherwise denied.

Respondents deny that it is necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted or that any penalties are appropriate.

AFFIRMATIVE DEFENSES

The foregoing matters do not support the relief sought by the Commission against Respondents. In addition, the following affirmative defenses nullify any potential liability.

First Affirmative Defense

There is no basis to support a cease-and-desist order against the Respondents. There is no risk of a future violation of the federal securities laws to warrant such an imposition. No remedial purpose exists that would be served by the imposition of a cease-and-desist order against the Respondents.

Second Affirmative Defense

The Commission's claims and the remedial action sought are neither necessary nor appropriate, and they are not in the public interest.

Third Affirmative Defense

Remedial action is neither necessary nor appropriate in light of the fact that Respondents were responsible for bringing the irregularities regarding the Perpetrators' activities to the attention of the Commission.

Fourth Affirmative Defense

Respondents were not willing or knowledgeable, let alone culpable, participants in any of the alleged misconduct.

Fifth Affirmative Defense

The Commission's allegations and any relief sought thereby are barred by the applicable statutes of limitations. No relief may be sought for any activity which forms the basis of the Commission's allegations that occurred more than five years prior to the institution of this proceeding on August 16, 2016.

Sixth Affirmative Defense

DEG did not willfully violate, nor did Delaney willfully aid and abet or cause DEG's violations of, Section 15(c)(2) of the Exchange Act and Rule 15(c)2-11 promulgated thereunder. Respondents had no intent to deceive, manipulate, or defraud in connection with the filing of the Form 211 applications.

Seventh Affirmative Defense

Any misrepresentations or omissions which form the basis of the claims asserted against the Respondents by the Commission were inadvertent or not material.

Eighth Affirmative Defense

Respondents did not act with the requisite scienter.

Ninth Affirmative Defense

DEG cannot be held liable for the fraudulent conduct of its registered representatives under common law agency principles. Respondeat superior does not apply because the fraudulent acts were not committed in the scope of the registered representative's employment with DEG. To the extent Respondent Kass engaged in fraudulent or wrongful conduct, those actions were not taken with the intent to benefit DEG, nor were those acts committed in furtherance of DEG's business. At no time were Respondents aware that Kass was familiar with the true extent of the fraud being perpetrated by the Perpetrators or their future plans with any of the Registered Companies, and Respondents reasonably relied on Kass to act lawfully in the exercise of his duties.

Tenth Affirmative Defense

Respondents' violations, if any, of the Exchange Act were proximately caused and contributed by the improper conduct of intervening acts of other third persons.

Eleventh Affirmative Defense

The Commission cannot meet the applicable standards for any of the relief they are seeking against Respondents in the Order.

Twelfth Affirmative Defense

Respondents reasonably relied on professionals that had previously exercised their duties and judgment in connection with the Registered Companies and that those professionals did so in good faith. For example, Respondents reasonably relied on the professionals that provided services to the Registered Companies in the preparation of initial filings and certification of financial information in connection with submission of those filings to the Commission, including but not limited to law firms and accountants. Respondents also reasonably relied on the Commission, specifically the Division of Corporate Finance, which acted as the initial gatekeeper in receiving, reviewing, and approving

filings submitted by the Registered Companies. Respondents reasonably relied on the sufficiency and legality of those duties being exercised.

Thirteenth Affirmative Defense

The Commission's claims are barred by the doctrine of unclean hands and/or bad faith. If there is any fault, it is on the Commission as it was aware of all the information it now alleges to be indicative of fraud, reviewed and commented on the disclosers of each Registered Company, and granted accelerated effectiveness to the issuer's registration statements. The Commission failed in its duties to effectively review the registration statements of the Registered Companies, which were relied upon by Respondents.

Fourteenth Affirmative Defense

Respondents allege such other affirmative defenses as may be determined to be applicable during discovery.

Respectfully Submitted,

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ATTORNEYS FOR RESPONDENTS DELANEY EQUITY GROUP LLC AND DAVID C. DELANEY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th[th] day of September, 2016, a true and correct copy of the foregoing was served on the following parties and other persons entitled to notice as follows:

Securities and Exchange
Commission
Office of the Secretary
100 F Street, N.E.
Washington, D.C. 20549-9303
(By facsimile and original and three copies by U.S. Mail)

Honorable Jason S. Patil
Administrative Law Judge
Securities and Exchange
Commission
100 F Street, N.E., Room 2557
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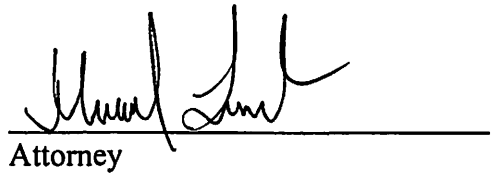
Counsel for Respondent Kass
(Via U.S. Mail and Email)



Attorney