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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,	)	ADMINISTRATIVE PROCEEDING File No. 3-17398
	)	
	)	
Respondents.	)	
	)	

RESPONDENTS DELANEY EQUITY GROUP LLC AND DAVID C. DELANEY'S REPLY IN SUPPORT OF MOTION FOR ISSUANCE OF SUBPOENA *DUCES TECUM* WITHOUT DEPOSITION TO THE SECURITIES AND EXCHANGE COMMISSION

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Respondents Delaney Equity Group LLC and David C. Delaney (collectively, "**Respondents**"), by and through the undersigned counsel and pursuant to Rules 154 and 232 of the Commission's Rules of Practice, hereby file this Reply in Support of Motion for Issuance of Subpoena *Duces Tecum* Without Deposition to the Securities and Exchange Commission ("**Commission**").

I. Introduction

The Commission alleges, among other things, that internal discrepancies existed in registration statements ("**Forms S-1**") filed by the Registered Companies.[1] *See* OIP, ¶¶ 7, 26. The Commission contends that Respondents should have conducted further inquiry regarding these purported discrepancies before assisting certain Registered Companies with the filing of Form 211 applications with FINRA. Since Respondents did not discover these and other alleged red flags, according to the Commission, DEG failed to conduct the review required by Rule 15(c)2-11 of the Exchange Act and did not have a reasonable basis under the circumstance for believing that the paragraph (a) information (i.e., Forms S-1s) were accurate in all material respects. 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.

The Commission's position ignores the fact that the Division of Corporate Finance ("**Corp. Fin.**") had already conducted a detailed review of almost all of the registration statements submitted by the Registered Companies. This review was conducted by skilled Commission

[1] The term "Registered Companies" and "Perpetrators" shall have the same meaning as set forth in Respondents' Motion for Issuance of Subpoena.

employees trained to analyze disclosures in company filings. Indeed, according to the Opposition (1) Corp. Fin. staff prepared examination reports that addressed apparent deficiencies and recommend possible comments; (2) a second-level reviewer in Corp. Fin. evaluated the report and made a determination about the comments to issue to the company; (3) Corp. Fin. staff often discuss these issues internally; and (4) Corp. Fin. sent letters to the companies to address the apparent deficiencies and other questions to the company. Despite the ability to refuse to permit any registration statements from becoming effective if the registration statement is "incomplete or inaccurate in any material respect" (*see* 15 U.S.C. 77h(b)), Corp. Fin., after giving due regard to the adequacy of the information, the public interest, and protection of investors granted accelerated effectiveness for virtually all of the relevant Forms S-1. *See* 17 C.F.R. 230.461(b).[2] Thus, the staff was aware of the same facts it now alleges to be indicative of wrongdoing on the part of Respondents, but nevertheless elected to allow the companies to proceed with the transactions. Respondents reasonably relied upon the public filings of the Registered Companies, including the review conducted by Corp. Fin.

As a result, Respondents seek relevant documents, including all documents relating to the Commission's review of the respective registration statements, policies and procedures relating to its review and decision to grant accelerated effectiveness, and internal and external

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[2] This section provides in relevant part, "[h]aving due regard to the adequacy of information respecting the registrant theretofore available to the public, to the facility with which the nature of the securities to be registered, their relationship to the capital structure of the registrant issuer and the rights of holders thereof can be understood, and to the public interest and the protection of investors, as provided in section 8(a) of the Act, it is the general policy of the Commission, upon request, as provided in paragraph (a) of this section, to permit acceleration of the effective date of the registration statement as soon as possible after the filing of appropriate amendments, if any...." Notably, the Commission should refuse to accelerate the effective date "where the form of the preliminary prospectus ... is found to be inaccurate or inadequate in any material respect." *See* 17 C.F.R. 230.461(b)(2).

communications. These documents may lead to the discovery of admissible evidence that there were no material discrepancies in the public filings and/or that no further inquiry by Respondents was necessary. Plainly, if there were no material deficiencies or those deficiencies were already addressed by Corp. Fin. and the companies, there would be no need for a broker-dealer to undertake its own analysis and investigation into the same issues. This is especially true considering 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. The Commission has also recognized that, "because of the liabilities attaching to documents filed with the Commission...a broker-dealer could generally have stronger belief as to the accuracy of information contained in such documents than information in documents not so filed." *Id.* at fn. 29. Simply put, the Commission's own documents may undermine its allegations that Respondents were required to inquire into the purported discrepancies in the registration statements. Moreover, the Commission's own decision to grant acceleration when the staff was aware of the same facts the Commission now alleges are indicative of wrongdoing on the part of Respondents is preclusive on this issue with respect to those known facts.

The Commission has asserted a blanket objection that all responsive documents to the proposed subpoena "are either privileged or publicly available" or the subpoena is overbroad. *See* Opposition, p.1. The Commission's objections are without merit. While certain information is available on EDGAR, the Commission has additional information in its possession that is not privileged or publicly available. For example, any entity wishing to electronically submit a registration statement to the Commission must first become an EDGAR filer by submitting a Form ID. This Form ID contains relevant information about the filer, including the nature of the filer

and contact information for any filing agent assisting the filer. This document submitted by an issuer is not privileged or publicly available.

Moreover, the deliberative process privilege does not apply to the case at hand. As discussed below, not only is the Commission's assertion of the privilege procedurally insufficient and subject to denial on that basis alone, but it does not apply to Corp. Fin.'s review of registration statements and underlying factual matters. The actions of Corp. Fin. in reviewing registration statements are nothing more than a staff review to determine that the filings meet form requirements and are clear in their disclosures for investors. The idea that each review of the thousands of offerings handled by the staff of Corp. Fin. involves some deliberative, high-level policy consideration should be rejected.

Assuming *arguendo* the qualified privilege applied, Respondents have a substantial need to obtain the documents that outweighs the purported privilege. It would be fundamentally unfair and prejudicial to allow the Commission to raise allegations that Respondents should have conducted further inquiry, but at the same time allow the Commission to shield its review of the same information. Accordingly, the Commission's objections should be overruled.

II. The Commission Has Insufficiently Invoked The Deliberative Process Privilege

As an initial matter, the Commission failed to satisfy the three procedural requirements necessary to make a threshold showing that the deliberative process privilege applies. *See S.E.C. v. Sentinel Mgmt. Group, Inc.*, 2010 WL 4977220, *4 (N.D. Ill. 2010). First, "the department head with control over the matter must make a formal claim of privilege, after personal consideration of the matter." *Id.* This invocation of the privilege may not be asserted by government counsel but rather by the department head. *Pac. Gas & Elec. Co. v. United States*, 70 Fed. Cl. 128, 135 (2006); *see Kaufman v. City of New York*, 1999 WL 239698, *5 (S.D.N.Y. 1999) (assertion of

privilege through counsel and failure to provide affidavit by agency head or designee who reviewed withheld documents failed to establish deliberative process privilege.) Second, "the responsible official must demonstrate, typically by affidavit, precise and certain reasons for preserving confidentiality of the documents in question." *Id.* A blanket assertion of the privilege does not meet this requirement. *Id.* at *4; *S.E.C. v. Yorkville Advisors, LLC*, 300 F.R.D. 152, 161 (S.D.N.Y. 2014). Finally, that official must "specifically identify and describe the documents." *Id.* The failure to satisfy these procedural requirements is alone a basis to overturn the invocation of the privilege. *Pac. Gas & Elec. Co.*, 70 Fed. Cl. at 136-37.

Even a cursory review of the Opposition and the accompanying Declaration of Jay S. Mumford (the "**Declaration**") demonstrates that the Commission has failed to meet these requirements. For example, the Declaration is defective because it is signed by an Attorney-Advisor and thus does not come from an agency head or designee. The Declaration not only fails to state that the declarant personally reviewed any documents at issue, but also does not specifically identify or describe the documents potentially subject to the privilege. The Declaration attached to the Opposition does not even reference the deliberative process privilege; rather, it solely discusses Corp. Fin's review process.

III. The Documents Requested In The Subpoena Are Not Subject To The Deliberative Process Privilege

To fall within the deliberative process privilege, a document must be both (1) pre-decisional and (2) part of the agency's deliberative process. *S.E.C. v. Goldstone*, 2014 WL 4349507, *36 (D.N.M. 2014). The document "must be a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters." *United W. Bank v. Office of Thrift Supervision*, 853 F. Supp. 2d 12, 15 (D.D.C. 2012); *Parker v. U.S. Dept. of Agr.*, 2006 WL 4109672, *4 (D.N.M. 2006) (a document is deliberative when "it is actually related to

the process by which policies are formulated and decisions are made.") "[P]re-decisional materials are not exempt merely because they are pre-decisional; they must also be part of the agency give-and-take of the deliberative process by which the decision itself is made." *Sentinel Management Group, Inc.*, 2010 WL 4977220 at *3 (citing *Vaughn v. Rosen,* 523 F.2d 1136, 1144 (D.C.Cir.1975)). Notably, "even if the document is predecisional at the time it is prepared, it can lose that status if it is adopted, formally or informally, as the agency position on an issue or is used by the agency in its dealings with the public." *Id.* "The privilege does not protect a document which is merely peripheral to actual policy formation; the record must bear on the formulation or exercise of policy-oriented judgment." *Yorkville Advisors, LLC,* 300 F.R.D. at 160. Indeed, "routine operating decisions are not transformed into the high-level policy determinations that the governmental deliberative process privilege seeks to protect simply because the routine decisions are made at government agencies." *Kaufman,* 1999 WL 239698 at * 4; *Scott v. Bd. of Educ. of City of E. Orange,* 219 F.R.D. 333, 337 (D.N.J. 2004) ("privilege is not designed to shield all communications that support any decision made by a government agency"); *Mitchell v. Fishbein,* 227 F.R.D. 239, 251 (S.D.N.Y. 2005) (decisions to certify or decertify an attorney were best characterized as "routine" decisions that could not qualify for the deliberative process privilege).

While the Commission has failed to precisely identify which documents it seeks to withhold, the privilege is inapplicable because the requested categories of documents in the subpoena are neither pre-decisional nor deliberative. There is no policy formation or discussion involved in the review of factual information submitted to the Commission by an outside party, let alone one which "reflects the give-and-take" of the consultative process. *S.E.C. v. Nacchio*, 72 Fed. R. Serv. 3d 809 (D. Colo. 2009). Indeed, the Commission concedes that "CorpFin reviews Securities Act registration statements primarily to monitor compliance with applicable regulatory

requirements...." This type of review is not privileged. *See e.g., New York City Bd. Of Educ.*, 233 F.R.D. at 292 (interpretation of or compliance with an existing policy is not predecisional and thus not privileged); *Velez v. City of New York*, 2010 WL 2265443, *3 (S.D.N.Y. 2010) (same). In fact, the Commission has not cited any authority for the proposition that Corp. Fin.'s review process is somehow subject to and governed by the deliberative process privilege. This is not surprising given that there is no deliberative aspect of the review process of registration statements. Rather, a review of the Opposition demonstrates that Corp. Fin.'s review process is more akin to a routine operating decision rather than the "high-level policy determinations" that the deliberative process seeks to protect. *See Kaufman*, 1999 WL 239698 at * 4.[3]

Moreover, to the extent some documents contain opinions or recommendations regarding the registration statements, the privilege does not apply as the Commission ultimately adopted and included them in its comment letters and granting effectiveness of the registration statements. "This type of information is not protected by the deliberative process privilege since the privilege is limited to recommendations, proposals, suggestions, draft documents, and other materials that reflect the personal opinions of the writer rather than the policy of the agency." *Sentinel Management Group, Inc.*, 2010 WL 4977220 at *3 (privilege does not protect opinions and recommendations that were adopted as the agency's final position). Here, as set forth in the Opposition, "CorpFin ultimately communicates its comments to companies in the form of a letter

[3] While the Commission's Opposition focuses entirely on documents reviewed by Corp. Fin. that it seeks to withhold as privileged, it fails to offer any argument regarding other categories of documents sought in the Subpoena, including policies and procedures relating to the review and determination to grant acceleration of effectiveness of registration statements. Manuals and procedures used to examine registrations statements clearly are not deliberative documents. They merely describe what is to be done and what information is to be considered. Those procedures will demonstrate that the staff focused on the very factors and information that the Commission now charges Respondents ignored.

that reflects the final decision about apparently deficiencies and questions to pose to the company." Thus, the invocation of the privilege is inapplicable to the instant situation.

IV. The Privilege Is Inapplicable Because The Requested Documents Form The Basis For The Allegations Against Respondents

The deliberative process privilege is also inapplicable because the purported documents it seeks to protect, (i.e., the Commission's internal review of the same registration statements that are the basis for the allegations against Respondents), are "among the central issues in the case." *Burbar v. Incorporated Village of Garden City*, 303 F.R.D. 9, 14 (E.D.N.Y. 2014). "When the decision making process is itself at issue...the deliberative process privilege and other privileges designed to shield that process from public scrutiny may not be raised as a bar against disclosure of relevant information..." *ACORN v. County of Nassau*, 2008 WL 708551, *4 (E.D.N.Y. 2008).

The case of *Dep't of Econ. Dev. v. Arthur Anderson & Co. (U.S.A.)*, 139 F.R.D. 295, 299 (S.D.N.Y. 1991) is instructive. There, a governmental entity raised the privilege after an auditor being sued for fraud sought documents related to that governmental entity's own knowledge of the alleged fraud. The court denied the invocation of the deliberative process privilege reasoning that the assertion of the fraud claims "necessarily places at issue questions of knowledge, justifiable reliance and causation" and that "direct evidence of the deliberative process is irreplaceable." *Id.*; *see also Brock v. Weiser*, 1987 WL 12686, *3 (N.D. Ill. 1987) ("[t]he Secretary's decision-making process itself has become an issue in this case, and therefore, the deliberative process privilege may not be raised as a bar to discovery"); *Burka v. New York City Transit Authority*, 110 F.R.D. 660, 667 (S.D.N.Y. 1986) (same). Here, the Commission's review process involving the Registered Companies and the purported discrepancies identified in the Form S-1s as well as its procedures and communications is central to the allegations and Respondents' defenses thereto.

Given the central nature of these allegations, the deliberative process privilege cannot now shield those topics from discovery.

V. The Requested Documents Are Factual In Nature And Thus Not Subject To The Deliberative Process Privilege

The deliberative process privilege is also inapplicable because the requested documents and information contained in the review process are purely factual or investigative in nature and do not reveal the Commission's policy or decision-making processes. *See MacNamara v. City of New York*, 249 F.R.D. 70, 78 (S.D.N.Y. 2008) ("a document is not 'deliberative' where it concerns 'purely factual' information regarding, for example, investigative matters or factual observations"); *Burbar*, 303 F.R.D. at 13 ("Materials that are purely factual and not reflective of the agency's deliberative process are not protected"). "Thus, factual findings and conclusions, as opposed to opinions and recommendations, are not protected." *E.B. v. New York City Bd. Of Educ.*, 233 F.R.D. 289, 292 (E.D.N.Y. 2005). Chief Administrative Judge Murray has previously recognized this distinction, denying the Commission's invocation of the deliberative process privilege where a document was "of a factual, investigative nature, yet all the cases the Division cites discuss treatment of deliberative or policy-making documents." *In the Matter of Thorn, Welch & Co., Inc., John E. Thorn, Jr., & Derryl W. Peden*, Release No. 465 (Mar. 28, 1995). The same holds true for documents consisting of a compilation of facts discovered during an investigation. *Dobyns v. United States*, 123 Fed. Cl. 481, 488 (Fed. Cl. Ct. 2015).

Here, the Subpoena seeks, *inter alia*, documents of a factual or investigative nature related to the Commission's review of the filings submitted by the Registered Companies. The subpoena also included any submissions that would not be publicly-available on EDGAR, including, for example, the Form ID that each Registered Company was required to submit before beginning the registration process. Additionally, whether the Commission compiled factual information

concerning the number of companies that had similar discrepancies within their registration statements would be factual in nature and highly relevant to Respondents' defenses. *Id.* at 488. Any argument that such a review involves the express formation or adoption of policy is nonsensical. Similarly, any existing policies or procedures followed by the Commission in evaluating this information that did not predate any agency policy decision would also not qualify for the privilege. *See Otterson v. National R.R. Passenger Corp.*, 228 F.R.D. 205, 208 (S.D.N.Y. 2005) (agency policies and procedures didn't qualify for deliberative process privilege as agency could not point to policy decision the document supposedly predated). Thus, because the documents sought in the subpoena are purely factual and/or investigative in nature and do not involve issues of policy formation or adoption, the deliberative process privilege is inapplicable.

VI. Respondents Have Demonstrated A Substantial Need To Warrant Production Of The Requested Documents Over The Commission's Privilege Objection

The deliberative process privilege is not absolute. *Sentinel Management Group, Inc.*, 2010 WL 4977220 at *3.[4] As a qualified privilege, the deliberative process privilege may be overcome by a showing that a party's need for the material outweighs the objecting party's interest in nondisclosure. *Brock*, 1987 WL 12686 at *1. Courts also carefully scrutinize the government's assertion of the privilege when it is a party and stake in the litigation to "ensure that the privilege retains its proper narrow scope." *Sikorsky Aircraft Corp. v. United States*, 106 Fed. Cl. 571, 579 (2012). The privilege will yield to the plaintiff's evidentiary need if it "outweighs the harm that disclosure of such information may cause to the defendant." *Id.* Courts consider several factors in

[4] The Commission instituted this action and is seeking affirmative relief, which some Courts have found in and of itself is a basis to waive any assertion of the deliberative process privilege. *Brock*, 1987 WL 12686 at *2; *Compagnie Francaise D'Assurance v. Phillips Petro.*, 105 F.R.D. 16, 25 n.2 (S.D.N.Y. 1984); *Ghana Supply Com'n v. New England Power Co.*, 83 F.R.D. 586, 594 (D. Mass. 1979).

balancing a party's need for disclosure with an agency's need for secrecy, including (1) the relevance of the evidence sought, (2) the availability of other evidence, (3) the government's role in the litigation, (4) and the extent to which disclosure would hinder frank and independent discussion regarding contemplated policies and decisions. *Brock*, 1987 WL 12686 at *1.

Each of the above factors weighs in favor of Respondents and demonstrates sufficient need for any otherwise-privileged requested documents. The relevance of the requested documents cannot be understated as they are intertwined with the claims and defenses in this proceeding. The Commission's review of the Registered Companies identified some of the same issues, which Respondents are now accused of failing to address. In fact, it appears the highly trained and skilled professionals of Corp. Fin. apparently found no material discrepancies with the same issues that it now seeks to hold Respondents accountable for in this proceeding. The Commission's procedures utilized in connection with the decision to grant effectiveness, its awareness of the purported issues and any discussion or steps taken to address these issues, are certainly relevant to their current attempt to hold Respondents accountable. *See Goldstone*, 2014 WL 4349507 at *40 (finding relevant defendant's attempt to discredit the Commission through its own actions to illustrate that the Commissions' allegations lacked merit, reasoning that "if the SEC could not predict the downturn, the defendants may argue that the SEC should not criticize the defendants for not foreseeing certain things"). Plainly, there is no substitute for the internal documents maintained by the Commission. *See Evans v. City of Chicago*, 231 F.R.D. 302, 317 (N.D. Ill. 2005) ("Thus, both the relevance of the documents and the unavailability of the precise information in question from other sources weighs in favor of a finding of particularized need"). Moreover, disclosure of the requested documents would have no "chilling" effect on internal discussion regarding policy making as it is clear that no such policy making or formulation occurred in the review of factual

information contained in the Registered Companies' registration statements. In short, Respondents have demonstrated a sufficient need to override any deliberative process privilege.

VII. The Subpoena Is Not Overbroad

The Commission also argues that the Subpoena is "facially overbroad" in seeking documents relating to the Registered Companies. The Commission contends that (1) the requests are phrased broadly but regardless would be exempt from production pursuant to Rule of Practice 230(b); and (2) the Subpoena improperly seeks documents related to companies not named or implicated in this proceeding. As discussed below, these arguments are also without merit.

The Subpoena is narrowly tailored to seek documents responsive to the claims and defenses in this proceeding. Unfortunately, the Commission, like the Respondents, is a piece of the puzzle connected to the Perpetrators' alleged scheme.[5] Given the Commission's interactions with the Registered Companies, this is not a situation where Respondents seek a significant and burdensome production of documents spanning a lengthy time period. Further, these limited interactions are directly relevant to the instant allegations considering that Respondents are being accused of failing to detect purported anomalies with various registration statements that were previously reviewed and approved by Corp. Fin. Quite simply, if the Commission were a private party, it would be required to produce the documents relating to the Registered Companies, the Perpetrators, and any inquiry relating to purported discrepancies. Documents relating to the review and approval process conducted by Corp. Fin. with respect to the Registered Companies may undermine the Commission's allegations that Respondents violated Rule 15(c)2-11.

[5] In fact, Respondents were responsible for bringing the irregularities regarding certain of the Perpetrators' activities to the attention of the Commission.

The Commission's overbreadth argument also contains an assertion that the Rules of Practice allow it to shield an expansive panoply of internal relevant documents from disclosure. Rule of Practice 230(b)(1)(ii) provides that the Division of Enforcement may withhold a document from production if it is an internal memorandum, note, or writing prepared by a Commission employee. The permissive nature of the rule is understandable where the documents are not relevant to the Commission's allegations; where, like here, the documents are demonstrably relevant they should be produced.

The requested documents may also contain material exculpatory evidence of the type set forth in *Brady v. Maryland* which are explicitly exempted from withholding by Rule of Practice 230(b)(2). The Commission's review of the Registered Companies and decision to grant effectiveness occurred just prior to the Registered Companies' retention of Respondents to assist with the Form 211 applications. Given that a broker-dealer has no obligation to conduct independent due diligence in performing its duties under Rule 15(c)2-11, the Commission has recognized that a broker dealer could reasonably have stronger belief as to the accuracy of information contained in the public filings. Thus, whether Corp. Fin. or any other division noted any discrepancies with any registration statements submitted by the Registered Companies, including those discrepancies at the heart of this matter, and was satisfied enough to declare the registration statements effective, would clearly be material exculpatory information that would be both favorable and material to Respondents' defenses. Given the relevance to the claims and defenses herein, the documents should be produced.[6]

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[6] At a minimum, the Hearing Officer should require the Commission to submit for review a list of documents or the documents themselves that are being withheld pursuant to these provisions pursuant to Rule of Practice 230(c). *See In the Matter of Orlando Joseph Jett, and Melvin Mullin*, Release No. 503, 1996 WL 271638, * 2 (May 14, 1996) (rejecting Commission's argument, "essentially, that Rule 230(c) is bad policy," and ordering *in camera* review of documents withheld

The Opposition also takes issue with the definition of Registered Companies, arguing that the Perpetrators' creation of numerous additional companies has no bearing on Respondents' performance of the required analysis for the 10 companies at issue.[7] The Commission's objection misses the point. The Commission alleges that Respondents should have conducted further inquiry as a result of purported discrepancies in the Forms S-1 of a handful of companies. The Commission, however, reviewed at least 30 Registered Companies, which were all allegedly created and controlled by the Perpetrators, and subsequently declared those Forms S-1 effective. Thus, despite the review of a significantly greater number of companies, the Commission was not aware of any fraudulent conduct or even any material discrepancies in the registration statements.[8] In other words, the Commission's apparent lack of action or recognition of any purported red flags with respect to at least 20 other companies submitted by the same fraudfeasors supports Respondents' defenses that it was not aware of any red flags and therefore it was unnecessary for them to conduct further inquiry of the public filings. As a result, this evidence is centrally relevant to Respondents' defense that they did not violate Rule 15(c)2-11. Moreover, the fact that Respondents were not involved in 24 other companies does not change the scope of the underlying fraud. The scope and depth of the fraud is relevant to this proceeding, including the fact that the

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under Rule of Practice 230(b)(1) given the "specter of uncertainty and misunderstanding [that] has arisen.").

[7] The OIP identifies 12 companies, but Respondents has no involvement with Mobieyes Software, Inc. and FanSport, Inc. All allegations relating to these companies concern Respondent Kass.

[8] Further, the relevance of these documents is demonstrated by the close proximity in time between the Commission's grant of effectiveness and Respondents' retention. *See Sentinel Management Corp., Inc.*, 2010 WL 4977220 at *2 ("Given the closeness in time between the 2002 examination and the alleged wrongful conduct, the Court is unwilling to deny Bloom's motion based on the SEC's view that nothing in the withheld documents is relevant.")

Perpetrators apparently utilized other professionals and broker-dealers who did not discover any red flags.

VIII. Conclusion

Since the documents sought are relevant to the claims and issues raised as well as Respondents' defense of those claims, Respondents respectfully request that the subpoena to the Commission be issued in its current form.

CERTIFICATE OF COMPLIANCE WITH RULE OF PRACTICE 154(C)

The undersigned certifies that this document complies with the length limitation set forth in Rule of Practice 154(c), and states that this document contains 4,844 words according to the word count function of the word-processing program used to prepare this document.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of October, 2016, a true and correct copy of the foregoing was served on the following parties and other persons entitled to notice as follows:

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