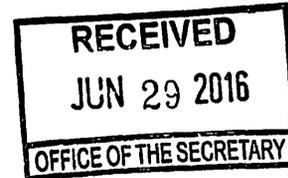


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UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-16463



In the Matter of

AEGIS CAPITAL, LLC,  
CIRCLE ONE WEALTH  
MANAGEMENT, LLC,  
DIANE W. LAMM,  
STRATEGIC CONSULTING  
ADVISORS, LLC, and  
DAVID I. OSUNKWO,

Respondents.

DIVISION'S OPPOSITION TO EXPEDITED  
MOTION FOR PREHEARING CONFERENCE,  
POSTPONEMENT AND/OR EXTENSION OF  
TIME BY RESPONDENTS STRATEGIC  
CONSULTING ADVISORS, LLC AND DAVID I.  
OSUNKWO

Pursuant to Rule of Practice 154(b) [17 C.F.R. § 201.154(b)], as well as the Court's June 27, 2016 Order Scheduling Prehearing Conference, the Division of Enforcement ("Division") respectfully files this Opposition to the Expedited Motion for Prehearing Conference, Postponement and/or Extension of Time ("Respondents' Motion") filed by Respondents Strategic Consulting Advisors, LLC ("SCA") and David I. Osunkwo ("Osunkwo") (collectively, "Respondents").

Respondents' Motion focuses on the Division's production pursuant to Rule 230 of a certain hard drive. The Division has complied with its obligations under Rule 230 in that it made the investigative file available to Respondents' prior counsel. Moreover, after being alerted to the existence of the hard drive, prior counsel conceded to this Court that the Division had satisfied its obligations. Indeed, because Respondent's then-counsel expressed his acceptance of

the Division's Rule 230 production on the record before the Court, Respondents have waived the right to now complain about the substance of the files.

The production of the files in raw data form is not, however, what Respondents object to. In reality, Respondents' complaint is that it is taking longer than they would like for the Division to decrypt and turn over unknown data from the hard drive, in what amounts to the Division sharing its work product with Respondents. While the Division intends to continue so sharing, Respondents are not entitled to such data on any specific timeframe.<sup>1</sup>

The Division has been transparent about the existence (and the availability to Respondents) of the hard drive since the inception of this case. Indeed, in their Motion, Respondents do not assert that the Division has acted in bad faith, and indeed appear to agree that the Division has tried to provide the information on the hard drive to Respondents at the earliest opportunity, despite "circumstances beyond the Division's control." Respondents' Motion, p. 5, ¶12. Those circumstances are detailed herein, and in the June 28, 2016 Declaration of W. Shawn Murnahan ("Murnahan Dec."), which is being filed in support of this Opposition. But the key is that the hard drive was made available to Respondents along with the remainder of the Division's investigative file in April 2015.

While encrypted data remains on the hard drive, it is impossible to predict whether any of it is relevant to any of the facts at issue. At this point, both sides have the investigative file developed by the Division, which constitutes the information considered by the Division when

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<sup>1</sup> The Division learned yesterday, June 27, 2016, that with the assistance of the producing party, additional email files have just been decrypted. The Division is in the process of preparing those for production to Respondents as quickly as possible.

bringing these proceedings. For these reasons, the Respondents' request that the Court postpone the hearing should be denied.

## **I. FACTUAL BACKGROUND REGARDING THE HARD DRIVE**

### **A. Production of the Hard Drive to the Division of Enforcement**

The hard drive at issue was produced to the staff by Mr. Alan Boyer, former owner of Capital L Group, on November 21, 2012.<sup>2</sup> See Murnahan Dec., ¶4. Mr. Boyer acquired Capital L Group in December 2011. At the time of the acquisition, Capital L Group ceased operations. What was left of Capital L Group's assets were moved to another firm acquired by Boyer at the same time, Capital Guardian LLC. At that point, Capital L became defunct. Mr. Boyer subsequently left Capital Guardian in 2014. Id.

In the cover note accompanying his production, Mr. Boyer represented that the hard drive contained a copy of the server for Capital L Group's computer system. He also included a password for the files. See Murnahan Dec., ¶5. Mr. Boyer advised the Division staff that he had not inspected the hard drive personally, and made no representation as to what volume or types of information it contained. He did state, however, his presumption that it contained a copy of Capital L Group's corporate email files (or some portion thereof). The Division staff working on the investigation that led to this enforcement proceeding did not attempt to open the contents of the hard drive. As of the issuance of the Order Instituting Proceedings in this case, the Division staff was not aware of the contents of the hard drive, other than that it contained 165 gigabytes of information.

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<sup>2</sup> During the period relevant to this proceeding, Capital L Group was the holding company parent of both Aegis Capital, LLC and Circle One Wealth Management, LLC.

## **B. Institution of Proceedings and Rule 230 Production in March/April 2015**

This proceeding was instituted on March 30, 2015. On April 29, 2015, by agreement with Mr. Robert Heim, who at the time was counsel for Respondents Strategic Consulting Advisors, LLC (“SCA”) and David I. Osunkwo (“Osunkwo”), counsel for the Division provided Mr. Heim with access to the Division’s investigative file and other documents called for by Rule of Practice 230(a) via a secure internet portal, along with an index of that file. See Murnahan Dec., ¶6. In the body of the email, Division counsel alerted Mr. Heim to the existence of the hard drive, stating:

. . . the Division received a copy of an email server of Capital L from Alan Boyer. The server is approximately 165GB and thus is too large to be produced without a hard drive, which is beyond the resources we have available. If you are interested in obtaining a copy of the server, please work with my paralegal Buffy Lochmandy to provide us with a hard drive of suitable size.

Id. At the time, Division counsel was unaware that the hard drive was inaccessible without special software. Mr. Heim never responded to that part of the email. Id.

During the prehearing conference in May 2015, this Court asked Mr. Heim whether he had been provided with the Division’s investigative file, and Mr. Heim confirmed that he had, and stated that he had no problems with the production. See Murnahan Dec., ¶7. By so stating, Mr. Heim waived any objections to the substance of the Division’s Rule 230 production.

## **C. Respondents Finally Request the Hard Drive in April 2016**

On June 10, 2015, the Court granted a stay of the proceedings pursuant to Rule 210(c)(3). On March 2, 2016, after the stay was lifted, Mr. Heim contacted Division counsel, indicating that he did not have the investigative testimony transcripts. Through the conversation, it became apparent that Mr. Heim had not downloaded any of the files made available in April 2015. See Murnahan Dec., ¶8. Division counsel arranged for the secure internet portal to be re-opened. In the email sent at that time, Division counsel reminded Mr. Heim of the availability of the hard

drive: “Please note also the point at the end of the message about the email server – if you want to receive that, you will need to provide a hard drive of suitable size.” Id.

On or about April 4, 2016, Division counsel received a hard drive from Mr. Heim. Division counsel delivered Mr. Heim’s hard drive to the IT department of the Commission’s Atlanta Regional Office and asked that the Boyer hard drive be copied to the one provided by Mr. Heim. See Murnahan Dec., ¶9.

**D. The Division Encounters Obstacles Attempting to Access the Hard Drive**

After delivery of Mr. Heim’s hard drive in April 2016, Division counsel was subsequently informed by IT staff that the Atlanta office did not possess the proper software to open the file format on the Boyer hard drive (an older Microsoft format named “VHD”), and that the Boyer hard drive would have to be sent to the IT department at Commission headquarters in Washington, D.C. See Murnahan Dec., ¶10. Division counsel asked the Atlanta IT staff to do that as soon as possible. Id.

Division counsel was again subsequently informed, this time by the Commission’s IT department in headquarters, that they were having difficulty accessing the contents of the Boyer hard drive because, even with the proper software to open it, most of the files were encrypted, and the password provided by Mr. Boyer in his production cover note did not work. See Murnahan Dec., ¶11. At the request of Division counsel, the Commission’s IT staff continued its attempts to decrypt the hard drive. Id.

**E. The Division Communicates the Problems to Respondents, and Respondents Agree to Wait for Updated Info from SEC IT rather than Receive Raw Data**

On or about May 5, 2016, Mr. Heim withdrew as counsel in this case. That same day, Sidney Wigfall, an attorney and principal of Strategic Consulting Advisors, Inc., messaged

Division counsel to enquire about the hard drive. On May 11, 2016, Division counsel responded, explaining that the hard drive was close to being sent out, but that the parties should discuss it first. See Murnahan Dec., ¶12. When Division counsel subsequently spoke to Mr. Wigfall, counsel advised that the Commission IT staff was having difficulty decrypting the hard drive, and at that time, the Division had no accessible, substantive information to deliver. Mr. Wigfall agreed to wait for the Commission IT staff to make more progress, and Division counsel agreed to send Wigfall any documents or information from the hard drive that became available. Id.

Division counsel did not immediately contact Mr. Boyer after learning of the problems with the hard drive. Mr. Boyer had produced the hard drive several years ago and was no longer with Capital Guardian, LLC, and thus it seemed unlikely he would have access to the original files and/or would remember much about the production. However, Division counsel made multiple attempts to contact Mr. Boyer immediately after it became clear that the Commission's IT group needed help. Division counsel was eventually successful in reaching Mr. Boyer on May 24, 2016. See Murnahan Dec., ¶13. Mr. Boyer agreed to work with Commission staff to try to access the hard drive.

On June 2, 2016, Mr. Wigfall again enquired about the status of the hard drive. On June 3, 2016, Division counsel responded as follows:

Unfortunately, the email server is still being worked on by our IT group. We have concluded that much of the data is encrypted and are trying to break into it. If you like, I can send you right now a copy of the drive itself that you or an IT person might be able to open. If you would prefer to wait, that's also fine and I will keep you updated.

See Murnahan Dec., ¶14.

On June 7, 2016, having received no response from Mr. Wigfall, Division counsel directed the Commission's IT Staff to copy the VHD files on the Boyer hard drive to

Respondents' hard drive, along with the files that had been extracted to that point. See Murnahan Dec., ¶15. These extracted files included a few email files, but they were, at the time, still password protected. The hard drive that Mr. Heim had provided was prepared as described above and went out by UPS Overnight Delivery on June 9, 2016. Id.

On June 13, 2016, Mr. Wigfall responded to Division counsel's message of June 2, 2016, stating "[r]egarding email server, thanks for update. And will wait for your further updates." See Murnahan Dec., ¶16. On June 14, 2016, Division counsel replied and informed Mr. Wigfall that the hard drive had already been sent. Id. Although the package was originally unable to be delivered to Mr. Wigfall at the address we had on file for Strategic Consulting Advisors, LLC, Mr. Wigfall was able to claim the package from UPS on or about June 17, 2016. Id.

On June 23, 2016, the Commission IT department provided Division counsel with passwords for the email files that had been produced to Respondents, and Division counsel offered via email to communicate them to Mr. Wigfall.<sup>3</sup> See Murnahan Dec., ¶17. That represented the first time the staff was able to access any of the email files on the Boyer hard drive. On June 24, 2016, having received no response to that offer, Division counsel sent the passwords to Mr. Wigfall via email. Id.

## **II. Respondents' Request to Postpone the Hearing is Unwarranted under These Circumstances**

As stated above, Rule 230 requires only that the Division make the investigative file available to Respondents for inspection and copying. The Division made the hard drive available for copying in April 2015. See Murnahan Dec., ¶6. Respondents' prior counsel, after

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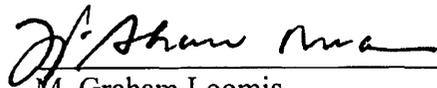
<sup>3</sup> These passwords were different from the ones that Mr. Boyer had created when producing the hard drive to the staff. The new passwords were created by the Commission IT staff for purposes of shipping secure files to Respondents.

having been alerted to the existence of the hard drive, advised this Court that he had no problems with the Division's production of its investigative file. Murnahan Dec., ¶7. Accordingly, Respondents have already waived this objection. There has been no violation of the Rules of Practice that would justify a delay in the hearing.

And while it is possible that the hard drive yet contains evidence, it is impossible to know whether the evidence will be relevant or how long it will take to access it. The parties have the investigative file, on the basis of which this matter can, and should, be decided. For these reasons, the Respondents' request that the Court postpone the hearing should be denied.

Dated: June 28, 2016

Respectfully submitted,



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CERTIFICATE OF SERVICE

Undersigned Counsel for the Division of Enforcement hereby certifies that he has served a copy of this DIVISION'S OPPOSITION TO EXPEDITED MOTION FOR PREHEARING CONFERENCE, POSTPONEMENT AND/OR EXTENSION OF TIME BY RESPONDENTS STRATEGIC CONSULTING ADVISORS, LLC AND DAVID I. OSUNKWO by electronic mail and by United Parcel Service addressed as follows:

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Office of the Secretary  
Securities and Exchange Commission  
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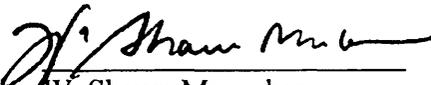
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