

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION

IN THE MATTER OF:)
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Local Government Center, Inc., *et al.*)
)

Case No: C-2011000036

RESPONDENT JOHN ANDREWS' RESPONSE TO BSR'S OBJECTION TO MR. ANDREWS' MOTION TO PRECLUDE LEGAL CONCLUSION TESTIMONY

Respondent John Andrews, by and through his counsel, Orr & Reno, P.A., responds as follows to the BSR's Objection to Mr. Andrews' Motion to Preclude Legal Conclusion Testimony:

1. Mr. Andrews does not seek to preclude the BSR's "securities expert," Richard Djokic, from testifying about the workings of the securities industry in a general sense, provided such testimony is relevant. Nor does Mr. Andrews object to Mr. Djokic offering his opinion as to the meaning of unfamiliar terms and complex concepts that are used in the securities industry. Instead, Mr. Andrews seeks to exclude only legal conclusion testimony because it is not "relevant, material and reliable evidence." *See* RSA 421-B:26-a, XX.

2. The sole issue is that no retained expert witness – Mr. Djokic included – is qualified to define New Hampshire law, or to instruct the Presiding Officer about interpreting New Hampshire law. Because such testimony is outside the realm of securities industry expertise, it will not assist the Presiding Officer in discharging his responsibility to render factual findings and conclusions of law in this proceeding. Consequently, Mr. Djokic's opinions regarding the definition of "securities" within the

ambit of RSA 421-B and whether Mr. Andrews' conduct violated RSA 421-B are irrelevant, immaterial and unreliable.

3. Citing *United States v. Offill*, 2011 WL 6034788 (4th.Cir.), BSR urges that Mr. Djokic should be allowed to offer legal conclusion testimony at the adjudicatory hearing. However, consistent with Mr. Andrews' position, *Offill* only stands for the proposition that expert testimony may be admissible in a complex securities case to the extent that it may explain to the fact-finder "the general operation of securities law," *id.* at *5, and "unfamiliar terms and concepts [in the securities industry]." *Id.* (citing *U.S. v. Bilzerian*, 926 F.2d 1285, 1294 (2d.Cir.1991)). Mr. Andrews agrees that the Presiding Officer may allow such testimony from Mr. Djokic, provided the testimony is relevant. See Motion, ¶7 ("[i]n securities cases, expert testimony commonly is admitted to assist the trier of fact in understanding trading patterns, securities industry practice, securities industry regulations, and complicated terms and concepts." *Big Apple Consulting USA, Inc.*, 2011 WL 3753581, at *4 (M.D.Fla.)).

4. Mr. Andrews seeks only to exclude legal conclusions regarding New Hampshire law and the application of New Hampshire law to facts adduced at the adjudicatory hearing, including that: (a) certain of the products offered by LGC are investment contracts and thus securities within the ambit of RSA Chapter 421-B; and (b) Mr. Andrews' conduct violated certain provisions of RSA Chapter 421-B. *Offill* supports Mr. Andrews' request for relief. In *Offill*, the defendant filed a pretrial motion *in limine* to preclude the government's expert witnesses from offering legal conclusions at trial. The government responded that it would not "ask for any expert witnesses to give opinions as to conduct being illegal manipulation, or that a party has acted

unlawfully, or that an entity or individual is liable, and will not ask any question which goes to the intent of Mr. Offill.” *Id.* at *3.

5. The court lauded the government for its acknowledgment that expert testimony regarding legal conclusions would be impermissible. *Id.* (“the Government has properly drawn the line in stating that they will not ask for any expert witnesses to give opinions as to conduct being illegal manipulation, or that a party has acted unlawfully”). At trial, the government’s experts did not cross the line into impermissible legal conclusion testimony by instructing the jury how to apply the law to the facts. Rather, the experts opined as to the general operation of securities law, and as to the meaning of particular terms and concepts in the securities industry. *Id.* at *5. Again, Mr. Andrews has no objection to Mr. Djokic offering similar, relevant testimony.

6. Finally, Mr. Andrews’ motion is not premature. Particularly given the expedited schedule in this case, the expenditure of time, energy and money necessary to prepare for Mr. Djokic’s plainly inadmissible legal conclusion testimony, as well as the time and cost of retaining an expert to prepare to rebut opinion testimony that should be rendered inadmissible at the hearing, is counter-productive and wasteful. It is particularly inappropriate where, as here, BSR plans to seek reimbursement for its costs if it prevails at the adjudicatory hearing.

Prayer for Relief

For all the reasons articulated above and in his motion to exclude legal conclusion testimony, Mr. Andrews requests that Presiding Officer Mitchell enter an order barring Mr. Djokic from offering legal conclusions involving New Hampshire securities law, particularly: (1) that certain of the products offered by LGC are investment contracts and


thus securities within the ambit of RSA Chapter 421-B; and (2) that Mr. Andrews' conduct violated certain provisions of RSA Chapter 421-B.

Respectfully Submitted,

JOHN ANDREWS

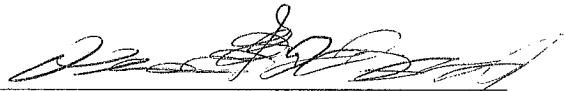
Date: January 25, 2012

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was forwarded this day via electronic mail to all counsel of record.


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