

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 20-cv-81205-RAR

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

COMPLETE BUSINESS SOLUTIONS GROUP,
INC. d/b/a PAR FUNDING, *et al.*,

Defendants.

**DEFENDANTS' NOTICE OF FILING AMENDED JOINT STATEMENT OF
UNDISPUTED FACTS AND REDACTED EXHIBITS IN SUPPORT OF (1)
DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND
INCORPORATED MEMORANDUM OF LAW AND (2) DEFENDANTS'
AMENDED JOINT STATEMENT OF UNDISPUTED FACTS.**

Defendants, Joseph LaForte, Lisa McElhone, and Joseph Cole Barleta hereby file this Notice of Filing an Amended Joint Statement of Undisputed Facts (DE 822) and Redacted Exhibits in support of their (1) Motion for Partial Summary Judgment and Incorporated Memorandum of Law (DE 804) and (2) Amended Joint Statement of Undisputed Facts. Defendants inadvertently filed copies of exhibits that required redactions in accordance with Southern District of Florida Local Rule 5.3(b)(2) and Federal Rules of Civil Procedure Rule 5.2(a).

Dated: October 6, 2021

Respectfully submitted,

FRIDMAN FELS & SOTO, PLLC
2525 Ponce de Leon Boulevard, Suite 750
Coral Gables, FL 33134
Telephone: 305-569-7701
asoto@ffslawfirm.com
Attorneys for Joseph W. LaForte

/s/ Alejandro O. Soto

ALEJANDRO O, SOTO, ESQ
Florida Bar No. 172847

**KOPELOWITZ OSTROW
FERGUSON WEISELBERG GILBERT**

One W. Las Olas Blvd., Suite 500
Fort Lauderdale, Florida 33301
Attorneys for Joseph W. LaForte

/s/ David L. Ferguson

DAVID L. FERGUSON
Florida Bar Number: 0981737
Ferguson@kolawyers.com
JOSHUA R. LEVINE
Florida Bar Number: 91807
Levine@kolawyers.com

LAW OFFICES OF ALAN S. FUTERFAS

565 Fifth Avenue, 7th Floor
New York, New York 10017
Telephone: 212-684-8400
asfuterfas@futerfaslaw.com
Attorneys for Lisa McElhone

/s/ Alan S. Futerfas

ALAN S. FUTERFAS, ESQ.
Admitted Pro Hac Vice

LAW OFFICES OF BETTINA SCHEIN

565 Fifth Avenue, 7th Floor
New York, New York 10017
Telephone: 212-880-9417
bschein@bettinascheinlaw.com
Attorneys for Joseph Cole Barleta

/s/ Bettina Schein

BETTINA SCHEIN, ESQ.
Admitted Pro Hac Vice

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on all counsel of record via the Court's CM/ECF Filing Portal on this 6th day of October, 2021.

/s/ Alejandro O. Soto _____
ALEJANDRO O, SOTO, ESQ

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
vs.)
COMPLETE BUSINESS SOLUTIONS)
GROUP, INC., d/b/a PAR)
FUNDING, et al.,)
)
Defendants, and)
)
L.M.E 2017 FAMILY TRUST,)
)
Relief Defendant.)
_____)

CASE NO. :
20-CV-81205-RAR

VIDEO DEPOSITION OF
GEORGE PHILIP RUTLEDGE
VIA VIDEOCONFERENCE
Friday, July 16, 2021

Reported by:
Brigitte Rothstein, Stenographer
JOB NO. 210716BGR

10:20 1 BY MS. BERLIN:

10:20 2 Q Good morning, Mr. Rutledge. I'm Amie
10:21 3 Riggle Berlin from the US Securities and Exchange
10:21 4 Commission. If you need a break at any time today, or
10:21 5 if you'd like me to ask or restate a question, just let
10:21 6 me know.

10:21 7 In what year did you graduate from law
10:21 8 school, Mr. Rutledge?

10:21 9 A You broke up a little bit. Could you
10:21 10 repeat the question?

10:21 11 Q Sure.

10:21 12 In what year did you graduate from law
10:21 13 school?

10:21 14 A Oh, 1978.

10:21 15 Q And can you just briefly go through your
10:21 16 work experience since 1978.

10:21 17 A For twenty-five years, approximately, I
10:21 18 worked for the Commonwealth of Pennsylvania first with
10:21 19 the Legislative Budget and Finance Committee for about
10:21 20 eighteen months, and then the rest of that tenure was
10:22 21 at the Pennsylvania Securities Commission.

10:22 22 After I retired from state government, I
10:22 23 entered private practice and still am in private
10:22 24 practice.

10:22 25 Q Okay.

10:22 1 And what did you do at the Pennsylvania
10:22 2 Securities Commission?

10:22 3 A I started as a staff attorney, became
10:22 4 Director of the Division of Corporate Finance, and
10:22 5 ended up as Deputy Chief Counsel and then as Chief
10:22 6 Counsel to the Commission, which in, I believe, was
10:22 7 2012 was combined with the Pennsylvania Department of
10:22 8 Banking to create the Pennsylvania Department of
10:22 9 Banking and Securities.

10:22 10 Q At a certain point during your career in
10:22 11 private practice, were you retained by Complete
10:22 12 Business Solutions Group?

10:22 13 A Yes.

10:22 14 Q And, approximately, when was that?

10:23 15 A January of 2018.

10:23 16 Q And how did it come about that you were
10:23 17 retained by Complete Business Solutions Group?

10:23 18 A I received a call from a Norman Valz,
10:23 19 V-A-L-Z, who said that he was acting -- although he was
10:23 20 in private practice himself, he represented that he
10:23 21 provided general counsel type advice to -- can I use
10:23 22 CBSG as kind of an acronym for Complete Business
10:23 23 Solutions?

10:23 24 Q Certainly.

10:23 25 A Okay.

10:23 1 And they had received a subpoena from the
10:23 2 Pennsylvania Department of Banking and Securities and
10:23 3 wanted to know whether I would be able to assist them
10:24 4 in complying with the subpoena.

10:24 5 Q And did your work concerning the subpoena
10:24 6 from the Pennsylvania state regulators begin in
10:24 7 January of 2018?

10:24 8 A Again, you broke up. Could you repeat
10:24 9 that, please?

10:24 10 Q Sure.

10:24 11 Did your work concerning -- did your work
10:24 12 for Complete Business Solutions Group concerning the
10:24 13 subpoena from Pennsylvania state regulators, did that
10:24 14 work begin in about January of 2018?

10:24 15 A Yeah. It began in January of '18, because
10:24 16 I believe the subpoena was due in February.

10:24 17 Q And, approximately, when did your work in
10:24 18 connection with that -- for CBSG in connection with
10:24 19 that subpoena, when did it conclude?

10:25 20 A It, basically, concluded with a settlement
10:25 21 with the Department of Banking and Securities, a
10:25 22 settlement agreement. They call it a settlement
10:25 23 agreement and order, which I believe was finalized at
10:25 24 the end of November 2018.

10:25 25 Q During the eleven-month period when you

10:25 1 were working for CBSG concerning the subpoena from
10:25 2 Pennsylvania state regulators, who was your primary
10:25 3 client contact at CBSG?

10:25 4 A Well, my point of contact was initially
10:25 5 Joe Cole, who was -- said he was the CFO, the Chief
10:26 6 Financial Officer, for CBSG. And during that time,
10:26 7 Mr. Valz -- I was informed that Mr. Valz had withdrawn
10:26 8 his relationship, whatever that was, with CBSG, and a
10:26 9 Cynthia Clark, I dealt with her as general counsel to
10:26 10 CBSG, in-house counsel. Those were the only two people
10:26 11 I dealt with at CBSG.

10:26 12 Q Did you have any conference calls or
10:26 13 discussions with Mr. LaForte during that eleven-month
10:27 14 time period?

10:27 15 A No.

10:27 16 Q What about an individual named Joe Mack?

10:27 17 A No.

10:27 18 THE COURT REPORTER: What was that last
10:27 19 question? I'm sorry.

10:27 20 MS. BERLIN: I asked if he -- the last
10:27 21 question was, what about Joe Mack, which M-A-C-K is
10:27 22 the last name.

10:27 23 THE COURT REPORTER: Thank you.

10:27 24 BY MS. BERLIN:

10:27 25 Q Have you ever represented anyone at CBSG

11:13 1 correct?

11:13 2 A Correct.

11:13 3 Q And did you communicate to the

11:13 4 Pennsylvania state regulators that Complete Business

11:13 5 Solutions Group was determining after the fact, meaning

11:13 6 after individuals had already purchased the promissory

11:13 7 notes, whether or not the investors were accredited?

11:13 8 MR. SOTO: This is Alex Soto. Objection

11:13 9 to form.

11:13 10 THE WITNESS: My recollection is after I

11:13 11 received a return of what CBSG provided in context of

11:13 12 the questionnaire and produced that to the Department

11:13 13 pursuant to the subpoena, I was able to argue to the

11:13 14 Department that the -- that all of the purchasers,

11:14 15 based on that information, were accredited investors.

11:14 16 BY MS. BERLIN:

11:14 17 Q Right. My question is a little different.

11:14 18 It's, did you tell the Pennsylvania state regulators

11:14 19 that Par Funding was determining after the investments

11:14 20 had already occurred, that they were determining after

11:14 21 the investments occurred whether or not the investors

11:14 22 were accredited?

11:14 23 A So you're saying after the sale?

11:14 24 Q Yes.

11:14 25 A Okay. I -- I think that was self-evident.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

SECURITIES AND EXCHANGE)
COMMISSION,)
)
Plaintiff,)
)
v.) Case No. 20-CV-81205-RAR
)
COMPLETE BUSINESS SOLUTIONS)
GROUP, INC. d/b/a PAR)
FUNDING, et al.,)
)
Defendants.)
_____)

REMOTE VIDEOTAPED DEPOSITION OF
GEORGE PHILIP RUTLEDGE, ESQUIRE, VOLUME 2,
called by the Defendant for examination, taken by
and before Ann Medis, Registered Professional
Reporter and Notary Public in and for the
Commonwealth of Pennsylvania, via Webex
videoconference, on Thursday, August 19, 2021,
commencing at 10:35 a.m.

JOB No. 210819AME

1 A. Approximately 24, 25 years.

2 Q. And just what positions did you hold with
3 that agency?

4 A. I started as a staff attorney, then became
5 director of corporation finance and deputy chief
6 counsel, then chief counsel.

7 Q. And what was the mission of that agency
8 when you were working for them?

9 A. The mission of the agency is to promote
10 legitimate capital formation and provide investor
11 protection.

12 Q. What did you do after you left the
13 Pennsylvania securities agency?

14 A. I entered private practice.

15 Q. Okay. Did you specialize in a particular
16 area of the law?

17 A. Securities and the corporate, and the area
18 of securities dealing with broker dealers and
19 investment advisors.

20 Q. In addition to this work experience, do
21 you teach anywhere in connection with this practice?

22 A. Yes. I have taught, yes.

23 Q. You have taught? Can you tell us about
24 that?

25 A. I taught a course on state securities

1 regulation at the Dickinson School of Law as well as
2 a course on federal securities regulation for the
3 professor who was on sabbatical from here. Then I
4 thought securities regulation at Weidner. I believe
5 it's now called Weidner Commonwealth. I taught in a
6 compliance program sponsored by FINRA, the Financial
7 Industry Regulatory Authority, at the Wharton School
8 at the University of Pennsylvania. And I've taught
9 at BPP University Law School and also University of
10 London.

11 Q. Listen, I'm struggling to understand some
12 of the things you're saying. I heard you say BPB?

13 A. B as in boy, P as in Paul, P as in Paul.
14 That's the BPP University.

15 Q. And after that -- if you could just speak
16 up just a little bit more, I think it would be
17 useful. I'm just noticing the court reporter is
18 having some trouble occasionally. The last place
19 that you taught was?

20 A. University of London.

21 Q. What did you teach there and during what
22 time period?

23 A. I teach a distance learning course in
24 internet banking and electronic finance.

25 Q. Did there come a time when you were hired

1 Q. Norman Valz is also a recipient of this
2 email?

3 A. Yes.

4 Q. And you write, "Joe and Norm, as
5 requested, attached is a matrix for CBS to follow in
6 producing documentation covered by the subpoena
7 issued by PADOBS issued by the Department."

8 Do you see that?

9 A. Yeah.

10 Q. The due date is February 5, 2018. So this
11 was the due date for the response by CBSG to the
12 Department's subpoena?

13 A. Yes.

14 Q. Let me ask you first: Do you recognize
15 this email?

16 A. I recognize the email.

17 Q. I didn't hear you, sir.

18 A. I said I recognize the email.

19 Q. So the purpose of their hiring you was
20 what? Was it to respond to the subpoena and deal
21 with the investigation thereafter?

22 A. It was to assist them in the production of
23 the requested documents in the subpoena.

24 Q. And at least at the time as of the time of
25 this letter, it appears that you believed the

1 Department's focus was on the payment by CBS of
2 finders' fees in connection with the sale of notes.
3 Do you see that in paragraph 2?

4 A. Yes.

5 Q. In paragraph 3 you gave them what you
6 referred to as strong legal advice. Do you see
7 that?

8 A. Yes.

9 Q. That advice was that CBS immediately
10 desist from paying any finders' fees?

11 A. Correct.

12 Q. That language is in bold and underlined?

13 A. Correct.

14 Q. Why did you feel it necessary to include
15 that language, bold that language and underline it?

16 A. To stress the importance from -- stress
17 the importance for them to desist from paying
18 finders' fees since that is what I thought was going
19 to be the focus of any potential Department action.

20 Q. And at the very -- the last paragraph, you
21 write, "Regarding a potential action by the
22 Department, I think where this is heading is to a
23 consent order, an agreement wherein CBS without
24 admitting or denying any allegations of paying
25 compensation to unregistered persons in violation of

1 the PA Securities Act, it will agree to a finding
2 and payment of a fine. This will be a public order
3 and searchable on the internet."

4 Do you see that?

5 A. Yes.

6 Q. And so why did you include in that final
7 paragraph that this would be a public order and
8 searchable on the internet?

9 A. I wanted them to be aware that if the
10 production resulted in a Department action where
11 that would be an order, that orders of the
12 Department are made public.

13 Q. Made public and available to be viewed by
14 whom?

15 A. Anybody who has an internet connection.

16 Q. Including investors?

17 A. Anybody who has an internet connection.

18 Q. That would include investors, correct,
19 assuming they have an internet connection?

20 A. Assuming --

21 MS. BERLIN: Objection. Form.

22 BY MR. SOTO:

23 Q. Sir, I'm sorry. I didn't hear your
24 answer.

25 A. Assuming they had an internet connection

1 subpoena."

2 Is that what you're referring to?

3 A. Yes, it is.

4 Q. Let's go to page 4. And there's a
5 subsection there that says Availability of Rule
6 506(b) Exemption. Do you see that?

7 A. Yes.

8 Q. And in this subsection, essentially you
9 are making the argument that even if the notes were
10 not securities, the exemption provided under the
11 Rule 506(b) of SEC Regulation D would be available
12 to the company; correct?

13 A. If the notes were securities.

14 Q. Even if the notes were securities. I may
15 have misspoken.

16 A. And Joe actually sent -- in order to make
17 that representation, in January Joe sent a letter to
18 all the noteholders where he said in order to comply
19 with state and federal securities laws, we want to
20 ask you are you an accredited investor. And I had
21 previously sent him a template.

22 He kind of recreated his own from what I
23 sent to him and got them back. And I believe these
24 were also part of the production. Because the
25 argument I wanted to make to the Department was that

1 of all these noteholders were accredited investors
2 because my concern was the Department -- they also
3 tried to allege that CBSG violated the securities
4 registration provisions of the 1972 Act, which is
5 the Pennsylvania Securities act. This was the
6 argument that if the notes were securities, there
7 was no securities registration violation.

8 Q. The notes were exempt under Rule 506(b)?

9 A. Because they would be exempt under Rule
10 506(b) and operates under Rule 506(b), state law is
11 preempted from requiring registration of Rule 506(b)
12 offerings. They're eligible to receive a copy of
13 the Form D that was filed by the Rule 506(b) issuer,
14 but they cannot condition that offering or require
15 any things that the federal government does not
16 require.

17 Q. And if they were exempt under Rule 506,
18 they would be free from registration requirements;
19 correct?

20 A. Yeah, but it's an exemption from
21 registration. So they would have to comply with the
22 conditions set form in Rule 506(B) for the exemption
23 to be available, which means they would not have
24 to -- they're exempt from registering or filing a
25 registration statement under Section 5 of the

1 federal securities act.

2 Q. Right. Did you have a discussion with
3 Mr. Cole about this exemption?

4 A. Yes, because that's why I thought it very
5 important for him to reach out to the noteholders so
6 that we could represent to the Department that they
7 were all accredited investors and provide that
8 information to the Department.

9 Q. And so you explained to him that if the
10 company -- if the notes were exempt under Rule
11 506(b), then there would not be a requirement that
12 CBSG register the notes?

13 MS. BERLIN: Objection to form.

14 THE WITNESS: It's important to understand
15 the structure of the securities laws. In this
16 regard, every offer and sale of securities must be
17 registered. Let's use the federal example. You
18 want offer and sell a security. It must be
19 registered with the SEC unless an exemption is
20 available.

21 So there is always a registration
22 requirement unless an exemption is filed. So in
23 this case, there is a registration requirement.
24 However, CBSG doesn't have to register with the SEC
25 by filing a registration statement under Section 5

1 because we rely upon an exemption of Rule 506(b).

2 BY MR. SOTO:

3 Q. Right. That was your position in this
4 letter?

5 A. Correct.

6 Q. And you had a conversation with Mr. Cole
7 about exactly that?

8 A. Yes.

9 Q. And did you have a conversation with
10 Mr. Valz about that as well?

11 A. I can't recall whether he was in on those
12 conversations or not. He was not in on every
13 conversation.

14 Q. But you did ask Mr. Cole, I believe you
15 said, to write a letter to their noteholders with
16 respect to their accreditation status?

17 A. I prepared a letter which he turned into
18 his own letter. And, yes, he wrote to the existing
19 noteholders seeking information from them whereby we
20 could represent to the Department that he had a
21 reasonable belief that these people, that the
22 current noteholders were accredited investors.

23 Q. You made it a point to say that he turned
24 it into his own letter. Did you see that letter
25 before it went out?

1 little thin.

2 Q. So the question is: Do you recall the
3 request that you were referencing and that he was
4 responding to?

5 A. Yes.

6 Q. And what was that request?

7 A. My recollection is it was a request for
8 additional information from the Department received
9 I believe in -- it was in September. I can't recall
10 the exact date. But it was a supplementary request
11 for information after we submitted the subpoena
12 production.

13 Q. Do you recall what that request was for?

14 A. I don't recall. It would have been in the
15 letter that we received from the Department.

16 Q. So let's look at the second paragraph of
17 Mr. Cole's email to you, dated September 21, 2018 at
18 11:33 wherein he says, "I'm waiting on the PPM funds
19 we work with to produce documentation and will
20 organize this in a background check of sorts for our
21 policies and procedures."

22 My question you to is: What did you
23 understand him to mean when he said the PPM funds?

24 MS. BERLIN: Objection. Form.

25 THE WITNESS: I believe that it was, as we

1 discussed way back in March, that it might be
2 selling notes to what I called in my prior
3 depositions a pooled investment vehicle.

4 BY MR. SOTO:

5 Q. So what do you mean by a pooled investment
6 vehicle?

7 A. A pooled investment vehicle can go by many
8 names, hedge, investment funds, private equity
9 funds, but it basically is a pool of capital
10 contributed by individuals or it could be pension
11 funds or life insurance companies. But it's a pool
12 of capital that is used usually to invest in
13 illiquid securities. And they're usually managed by
14 a manager, and they make investments in all sorts of
15 things.

16 They could be limited, say they're only
17 going to invest in one thing or just give me your
18 money and I'll invest it however I feel it's
19 appropriate.

20 And when we talked back in March, said you
21 can sell to those pooled investment vehicles, but
22 you can't be involved in setting them up, promoting
23 them, marketing them, sending investors to them or
24 in any way participating in them.

25 Q. So you understood as of September 21, 2018

1 what we need for this request."

2 Now, earlier you testified that this
3 statement by Mr. Cole and your earlier statement
4 related to a request for information by the
5 Department; right?

6 A. Correct.

7 Q. And so in the second paragraph, when he
8 says, "I'm waiting on the PPM funds we work with to
9 produce documentation," that would be documentation
10 in response to the request by the Department;
11 correct?

12 MS. BERLIN: Objection as to form. And I
13 also believe that it might have misstated his
14 testimony.

15 MR. SOTO: Amie, I'm going to ask you to
16 limit your objections to the form and leave it
17 there. You are going beyond what is required.
18 We've had conversations about this. There's nothing
19 more necessary. So I'm just going to ask that you
20 do that.

21 BY MR. SOTO:

22 Q. Mr. Rutledge, did you hear my question?
23 Did you need me to repeat it?

24 A. I heard it. I believe that's a reasonable
25 assumption.

1 Q. And so he was waiting on the PPM funds to
2 produce documents in response to this request by the
3 Department that you were helping him with?

4 A. I believe --

5 MS. BERLIN: Objection to form. I'm
6 sorry, Mr. Rutledge. Please pause before you
7 answer. Objection as to form.

8 THE WITNESS: I believe so.

9 BY MR. SOTO:

10 Q. And I'm going to use pooled investment
11 vehicle synonymously with PPM funds. Is that fair,
12 at least with respect to this email?

13 A. I think that is how Joe Cole referred to
14 them, as PPM funds, so yeah.

15 Q. So when you read PPM funds in an email
16 from Joe Cole, you understand that to be a pooled
17 investment vehicle?

18 A. A pooled investment vehicle that is not
19 associated or affiliated with CBSG.

20 Q. But a pooled investment vehicle that CBSG
21 is asking for documents from in connection with this
22 request by the Department; correct?

23 A. Apparently so.

24 MS. BERLIN: I'm sorry, Mr. Rutledge.

25 THE WITNESS: I'm sorry.

1 MS. BERLIN: That's okay. Objection as to
2 form. I'm just concerned that many of my objections
3 are not going to show up on the transcript or aren't
4 being captured.

5 BY MR. SOTO:

6 Q. And so if he's requesting documents from
7 these PIVs, that would indicate given the context of
8 the request by Pennsylvania, by the Department, that
9 these are PIVs to whom CBSG has sold notes; correct?

10 MS. BERLIN: Objection. Objection. Calls
11 for speculation.

12 THE WITNESS: Yes.

13 BY MR. SOTO:

14 Q. So you go on -- sorry. He goes on to say,
15 "I believe the other point to convey," after he asks
16 for documents from the PIV funds or the PPMs, he
17 goes on to say, "And will organize this in a
18 background check of sorts for policies and
19 procedures."

20 What did you understand him to mean when
21 he said, "We'll organize this in a background check
22 of sorts for our policies and procedures"?

23 A. I don't know what he meant.

24 Q. You don't know what he meant when he said,
25 we'll work to try to obtain documents we'll organize

1 consists of merchant receipts pledged to CBSG by
2 merchants under a future receipts sales agreement."

3 Do you see that?

4 A. Yes.

5 Q. Was that statement relevant to your
6 analysis in support of your argument that the notes
7 were not securities?

8 A. Yes.

9 Q. And how is it that you came to know that
10 the principal and interest in connection with these
11 notes was secured by execution of a security
12 agreement in favor of the purchaser?

13 A. Mr. Cole provided me with the documents.

14 Q. Did you discuss with Mr. Cole that the
15 fact that the note was a nonnegotiable,
16 nontransferable debt instrument whose term cannot
17 exceed 18 months and whose payment was secured by
18 execution of a security agreement in favor of the
19 purchaser of the note as factors supporting your
20 argument that the notes were not securities?

21 A. Yes.

22 Q. In paragraph 3 of this draft, you write,
23 "Other than the CBSG credit agreements previously
24 provided to the Department, CBSG advises that it has
25 no other documents described in the request. It

1 should be noted however that Rule 502(b) of SEC
2 Regulation D states that an issuer is not required
3 to provide specific disclosures to any accredited
4 investor and CBSG advises it has reason to believe
5 that all persons purchasing the notes were
6 accredited investors."

7 Do you see that?

8 A. Yes.

9 Q. Do you recall writing that as part of this
10 draft?

11 A. Yes.

12 Q. And when you write that an issuer is not
13 required to provide specific disclosures to any
14 accredited investor, assuming Rule 502(b) of SEC
15 Regulation D is applicable, do you mean in this
16 context that CBSG would not be required to provide
17 specific disclosures to any accredited investor that
18 it has reason to believe is accredited in connection
19 with the purchase of the notes?

20 A. Yes. Under Rule 502, which applies to SEC
21 Regulation D, there are certain disclosure
22 requirements. However, 502(b) says that if you're
23 offering and selling to an accredited investor, no
24 specific disclosures are required under the
25 availability or the regulatory scheme of

1 agreements with the funds with work with."

2 Do you see that?

3 A. Yes.

4 Q. So he's asking you to send instructions so
5 that they can increase the amount of money that they
6 pay you as a retainer reserve in order to cover some
7 additional work that they're asking you to do for
8 them; correct?

9 A. Yes, because we were still dealing with
10 the Department. And also they had requested that I
11 prepare a note purchase agreement for them that
12 could be used for any purchaser of the notes because
13 heretofore, all they had was a note and a security
14 agreement, and that was it.

15 Q. Right. And they wanted to increase that
16 retainer reserve with you to cover what you just
17 described and also made clear here that the
18 agreements were to be in connection with the funds
19 that they work with. Do you see that last part of
20 that sentence?

21 A. Yes.

22 MS. BERLIN: Objection as to form.

23 BY MR. SOTO:

24 Q. And so when Mr. Cole says he is asking
25 that you increase the retainer reserve in connection

1 with this work related to the funds, is it fair to
2 say that he was conveying to you that ABFP was one
3 of at least a number of funds that they were selling
4 notes to?

5 MS. BERLIN: Objection to form.

6 THE WITNESS: I didn't know what number of
7 funds they were working with or I should say selling
8 notes to.

9 BY MR. SOTO:

10 Q. Is it fair to say that when he wrote to
11 you in September of 2018, that he was asking you to
12 increase their retainer reserve to have you assist
13 them with respect to documents or agreements with
14 the funds we work with, that you understood that
15 that were selling notes to at least one other PIV in
16 addition to ABFP?

17 A. (Indecipherable.)

18 Q. Mr. Rutledge, we did not hear that answer.

19 A. I heard something. I thought it was
20 Ms. Berlin.

21 MS. BERLIN: Yes. I tried to object to
22 form.

23 THE WITNESS: Okay. It was you.

24 BY MR. SOTO:

25 Q. You can answer.

1 A. You have her objection?

2 Q. Yes.

3 A. Since he used the plural, yes.

4 Q. And you mentioned in your earlier response
5 that you were going to prepare a note purchase
6 agreement for CBSG.

7 A. Correct.

8 Q. And so when he says we'd like that
9 retainer reserve to cover the upcoming response and
10 documents for agreements, did you understand him to
11 mean the note purchase agreements?

12 A. The note purchase agreement.

13 Q. Note purchase agreement, right. That's
14 what you understood him to mean?

15 A. Yes.

16 Q. Okay. And did you understand him to mean
17 that you would be preparing a note purchase
18 agreement for the funds that they sell notes to, as
19 part of that last sentence?

20 A. No. He just wanted one template, if you
21 will, of a note purchase agreement, a form of note
22 purchase agreement.

23 Q. Right. But did you understand that he
24 would be using that template for the note purchase
25 agreement in connection with the sale of notes by

1 CBSG to at least two funds?

2 A. Well, it would be to any purchaser,
3 whether it be a fund or an individual.

4 Q. Right. But as of September 25, 2018, you
5 understood that Mr. Cole was going to use this
6 template that he was asking you to draft in
7 connection with the sale by CBSG of its notes to at
8 least two funds?

9 MS. BERLIN: Objection to form.

10 BY MR. SOTO:

11 Q. You can answer, sir.

12 A. Yes.

13 Q. Let's look at Exhibit 130. And before we
14 begin reviewing that, it's 12:06. I think we
15 started at 10:30. I'm happy to continue,
16 Mr. Rutledge, but I just want to let you know that
17 if you need a break, a bathroom break, at any time,
18 just let me know. I tend to focus on what I'm doing
19 and kind of forget about the time. So please just
20 interrupt and let me know you need a break.

21 A. Okay.

22 MR. SOTO: Let's go to Exhibit 130. I
23 don't see it on the screen. So let's scroll down to
24 the bottom so Mr. Rutledge can see the last page.
25 It's only three pages.

1 the notes are not securities, that the Department
2 would not have jurisdiction over the concern it had
3 involving CBSG?

4 A. If it were determined they were not
5 securities, yes.

6 Q. But you made that argument twice; correct?

7 A. Yes.

8 Q. And you believed in good faith when you
9 wrote this letter and argued that the notes were not
10 securities twice that that was a good faith
11 argument?

12 A. It was a good faith argument to make to
13 the Department, yes.

14 MR. SOTO: Let's look at Exhibit 128. I
15 don't see it on the screen. Cherly, you might have
16 to resubmit it. There we go. Let's go to page 4.

17 BY MR. SOTO:

18 Q. And at page 4, do you see an email from
19 you, dated September 28, 2018 at 3:47 to Joe?

20 A. Yes.

21 Q. Is that an email to Joe Cole?

22 A. Yes.

23 Q. And in it you write, "Per your request,
24 attached for your review and comment is a draft note
25 purchase agreement which could be used as a template

1 MS. BERLIN: Objection as to form.
2 Mr. Rutledge is not here as an expert witness. I'm
3 not sure if the question has to do with what he told
4 CBSG. And that's the basis of my objection as to
5 form for these questions.

6 MR. SOTO: Again, Amie, I would ask that
7 you limit your objection to the form and not engage
8 in speaking objections. This is the second time.

9 MS. BERLIN: Yes. I won't engage with
10 you, Mr. Soto. I'm just stating my objections.

11 BY MR. SOTO:

12 Q. Mr. Rutledge, did you understand my
13 question?

14 MR. TROY: I objected as well, but I will
15 let him answer the question.

16 THE WITNESS: Can you please repeat the
17 question?

18 BY MR. SOTO:

19 Q. My question was: Would it have been
20 necessary for CBSG's noteholders to indicate to CBSG
21 in writing confirmation that they are accredited in
22 order for CBSG's notes to be exempt under Rule
23 506(b)?

24 MS. BERLIN: Objection as to form for the
25 reasons stated.

1 THE WITNESS: It probably would not be the
2 exclusive way, but it certainly is best practice,
3 and it certainly protects CBSG in the sale of the
4 notes to determine by a representation in writing by
5 the purchaser that that purchaser qualifies as an
6 accredited investor.

7 BY MR. SOTO:

8 Q. And did you tell CBSG that it was
9 necessary for its investors, its noteholders to make
10 this representation in writing in order for the
11 exemption to apply?

12 A. My advice to them was to protect you, you
13 want the accredited investor to tell you how they
14 qualify as an accredited investor, and if they
15 won't, don't sell to them.

16 Q. Did you discuss with them the fact that
17 this representation by the noteholder did not have
18 to be in writing?

19 A. No.

20 MR. SOTO: In paragraph 2 -- let's go back
21 up to Mr. Rutledge's email in Exhibit 128, the
22 second paragraph there.

23 BY MR. SOTO:

24 Q. You write, "Although I do not believe the
25 purchase agreement itself is a security, in the

1 conference calls during this time. I don't recall.
2 I do recall sending them some of my thoughts,
3 research on the matter.

4 Again, I was not representing CBSG on
5 this. I was only brought in to kind of give my
6 views, particularly as I had represented them before
7 the Department. And I'm going to say within a
8 period of two to three weeks, I was somewhat
9 marginalized on dealing with them because they were
10 ramping up the exchange offer at that time.

11 Q. Okay. But in addition to Lisa Jacobs
12 representing to CBSG that the notes were not
13 securities and your various letters to the
14 Department making the argument that they were not
15 securities, we also had Haynes Boone who was hired
16 in connection with the Texas State Securities Board
17 matter making the argument that they were not
18 securities; correct?

19 A. It was Joe Cole who told me what he said
20 Lisa Jacobs said. I only have his word for it.

21 Q. So in addition to what you understood
22 through Joe Cole was Lisa Jacobs' representation
23 that the notes weren't securities, you made numerous
24 arguments to the Department that the notes weren't
25 securities, and Haynes Boone, who was separately

1 hired to deal with a separate matter, made its own
2 arguments suggesting that the notes were not
3 securities; correct?

4 A. Yes. I believe it's the sentence saying,
5 "Par nevertheless has legitimate, good faith
6 arguments that these notes are not securities."

7 Q. I just want to make sure that we have the
8 date. Can we scroll back up. March 24, 2020, do
9 you see that?

10 A. Yes.

11 Q. That's the date of the memo?

12 A. Yes.

13 Q. So from the inception of your involvement
14 with CBSG through almost the end of your involvement
15 with CBSG, several lawyers had made the
16 representation to CBSG that there was a good faith
17 argument that its notes were not securities?

18 MS. BERLIN: Objection. Form.

19 THE WITNESS: The arguments were made by
20 both myself and apparently Haynes Boone. That does
21 not mean that we prevailed in the argument. And at
22 the get-go, as I referenced earlier, when Joe was
23 soliciting information on the current noteholders,
24 he said it was for purposes of complying with the
25 securities laws.

1 A. I had no reason to believe it was not
2 being made in good faith.

3 Q. Okay. Thank you.

4 Let's look at Exhibit 135.

5 MS. LUCIEN: Before we go to the next
6 exhibit, can we take a quick five-minute break?

7 MR. SOTO: Sure.

8 THE VIDEOGRAPHER: The time is 12:42 p.m.,
9 and we are off the record.

10 (Recess from 12:42 p.m. to 1:33 p.m.)

11 THE VIDEOGRAPHER: The time is 1:33 p.m.,
12 and we are back on the record.

13 MR. SOTO: Let's go to the next exhibit.
14 This is, for the record, Exhibit 135.

15 BY MR. SOTO:

16 Q. Mr. Rutledge, do you see it and can you
17 identify it?

18 A. Yes. It's a November 8, 2018 letter to
19 Stephanie Hamilton at the Department.

20 MR. SOTO: Let's scroll to the end so that
21 Mr. Rutledge can see whether he signed it or whether
22 it's a draft. Too far. There are attachments.

23 BY MR. SOTO:

24 Q. Do you see that this is your signed letter
25 dated November 8, 2018 to the Department?

1 A. Yes.

2 Q. Let's move back up. So this letter you
3 addressed to Stephanie Hamilton, Deputy Chief
4 Counsel; correct?

5 A. Correct.

6 Q. And this is your settlement offer on
7 behalf of CBSG, correct, to the Department?

8 A. It was --

9 MS. BERLIN: Excuse me. Objection as to
10 form.

11 THE WITNESS: It was a settlement offer.

12 BY MR. SOTO:

13 Q. A settlement offer that you were
14 describing in this letter in connection with your
15 representation of CBSG?

16 A. Correct.

17 Q. At page 2 -- I'm sorry. Let's just go
18 back to page 1. There's a section here that says
19 Business of CBSG?

20 A. Yes.

21 Q. Let's go ahead and take a look at that,
22 scan that. It begins, "The business plan of CBSG is
23 to provide working capital to merchants."

24 Do you see that?

25 A. Yes.

1 BY MR. SOTO:

2 Q. And when he says "...and potentially
3 institutional capital later this year...", that's a
4 separate issue, isn't it? Isn't that a question he
5 asked you about their desire to get involved with
6 the purchase of a bank?

7 MS. BERLIN: Objection to form.

8 THE WITNESS: No. It had nothing --

9 BY MR. SOTO:

10 Q. What did you understand that to mean?

11 A. I really didn't know what it meant. The
12 discussion of the bank was much, much later,
13 probably in 2019. I didn't know what Joe meant or
14 what was in his mind when he said potential
15 institutional capital.

16 Q. But at least as of the date of this
17 letter, March 30, 2018, you understand that CBSG is
18 going to be selling its notes to PPM funds as
19 opposed to individuals?

20 A. It was --

21 MS. BERLIN: Objection to form.

22 BY MR. SOTO:

23 Q. You can answer, sir.

24 A. That that was their pivot. I don't know
25 that it was exclusive, that they would never sell to

1 an individual. But the impression I got from Joe is
2 they wanted to pivot away from individuals.

3 Q. Right. Isn't it fair to say we are no
4 longer taking any new individual notes and directing
5 individual investors to PPM funds as their notes
6 mature? Isn't it fair to say that that's --

7 A. Well, that's as of March 30, 2018. I
8 don't know. It could have changed.

9 Q. My question just as of that date.

10 A. As of that date, yes, that's what it says.

11 Q. Then on Friday, March 30, 2018, just a few
12 minutes later, you asked Joe to give you a call on
13 Monday to discuss the structure of the PPMs to whom
14 CBSG is directing individuals; right?

15 A. Um-hum.

16 MS. BERLIN: Objection to form.

17 BY MR. SOTO:

18 Q. And so what was the purpose of your
19 directing Joe to give you a call on Monday?

20 A. My concern was that Joe -- I should say my
21 concern was that CBSG was not involved in setting up
22 PPMs, that it was they were independent. They
23 didn't set them up. They didn't market them. They
24 didn't promote them. They didn't send people to
25 them.

1 purchaser or a nonnatural purchaser.

2 Q. Right. That wasn't my question. I'm not
3 asking you whether the note purchase agreement was
4 designed for an individual versus an entity. That's
5 not my question.

6 My question is: By the time that you are
7 involved in drafting the note purchase agreement,
8 which is in or about October 1, 2018 -- can we agree
9 on that?

10 A. Yes.

11 Q. By the time you're drafting this note
12 purchase agreement in or about October of 2018, this
13 is several months after you learn that CBSG is
14 selling notes going forward after March of 2018 to
15 PPM funds or PIVs as you put it?

16 A. Yes.

17 Q. So you must understand that the note
18 purchase agreement that they're asking you to draft
19 is going to be used in connection with the sale of
20 notes to pooled investment funds?

21 A. Yes. That's a fair statement.

22 Q. Okay.

23 MS. BERLIN: Object as to form.

24 MR. SOTO: Amie, I heard object as to
25 form.

1 MS. BERLIN: Can you hear me?

2 MR. SOTO: I can hear your voice. I heard
3 you say objection to form.

4 MS. BERLIN: Thank you. Thank you.

5 BY MR. SOTO:

6 Q. So after you've drafted this exemplar of a
7 note purchase agreement knowing that it's going to
8 be used by CBSG in order to sell notes to pooled
9 investment funds, you send this settlement offer to
10 the Department in November of 2018; right? That's
11 Exhibit 135.

12 A. Yes.

13 Q. And you write in paragraph 2 -- I'm
14 sorry -- I meant to say page 2 under the subheading
15 CBSG's Cooperation with the Department's
16 Investigation, "CBSG engaged experienced securities
17 counsel, and upon his advice immediately terminated
18 its finders' agreements. Furthermore, CBSG with the
19 advice of special counsel totally revised its note
20 purchase agreements, which it has implemented
21 including a representation and warranty by the
22 purchaser and the seller no finders or brokers are
23 being used or compensated in connection with the
24 purchase or sale of the notes."

25 Is my timeline correct there, that you

1 wrote this letter in November of 2018 representing
2 to the Department that CBSG on the advice of counsel
3 revised its note purchase agreement after you were
4 aware that it was selling to pooled investment funds
5 and had prepared a note purchase agreement for its
6 use on CBSG's part to serve in connection with its
7 sale of notes to a pooled investment fund?

8 A. Yes.

9 MS. BERLIN: Object to form.

10 BY MR. SOTO:

11 Q. Did you say "yes," sir?

12 A. Yes. The note purchase agreement could be
13 used for the sale of the notes to a PIV.

14 Q. So when you wrote on November 8, 2018 that
15 "CBSG totally revised its note purchase agreement,
16 which it has implemented, including a representation
17 and warranty by the purchaser and the seller that no
18 finders or brokers are being used or compensated in
19 connection with the purchase or sale of the notes,
20 you knew that CBSG was selling notes to pooled
21 investment funds"; correct?

22 A. That they would sell a note to a pooled
23 investment fund, yes, investment vehicle.

24 Q. Well, let's go back. I'm sorry. I just
25 want to make sure that we are on the same page.

1 Let's go back to Exhibit 126. Let's just go to top
2 of first page 2.

3 This is after you ask, "Has CBSG sold any
4 notes after the date of production sans finders'
5 fees?"

6 Mr. Cole writes, "We did add a few notes
7 this quarter, but only for PPM funds." Right?

8 A. Yes.

9 Q. So you knew as of March of 2018 that they
10 had, in fact, sold new notes that quarter, the first
11 quarter, of 2018 to PPM funds?

12 A. That they had sold it to entities that he
13 styled as a PPM fund.

14 Q. Which you agreed were pooled investment
15 vehicles; right.

16 A. Yeah. I would agree that that was his
17 jargon for pooled investment vehicle.

18 Q. And I point to that only to make the point
19 that you understand in November of 2018 when he
20 wrote this letter, not that their intention was to
21 sell notes to pulled investment vehicles, but that
22 they had, in fact, already begun selling their notes
23 to pooled investment vehicles?

24 A. During that quarter which I presume is
25 January 1 through March 30 of 2018.

1 Q. Right, which is prior to the date of the
2 letter that you drafted?

3 A. Correct.

4 Q. And you also understood, as you testified
5 earlier, that they intended --

6 A. Also prior to the date of my engagement.

7 Q. Right. But, nevertheless, you understood
8 as of November 8, 2018 that they had already begun
9 selling their notes to pooled investment vehicles
10 and, as you testified, intended to continue selling
11 those notes to pooled investment vehicles?

12 A. Yes.

13 Q. And as of October 1, 2018 when you that
14 note purchase agreement, you understood that at
15 least one of those pooled investment vehicles was
16 ABFP?

17 A. I honestly can't recollect when I became
18 aware of ABFP in terms of a timeline. So I'm not
19 sure of that.

20 Q. I want to ask you a question about on page
21 5 of the settlement offer under the subheading
22 Finders, you write, "The Department alleges that
23 there are 15 finders to which it seeks to impose a
24 \$25,000 administrative assessment against CBSG for
25 each finder. The first analysis is a legal one to

1 much the request of the client.

2 Q. They were put at the request of the
3 client, but you added them because you believed that
4 they were accurate?

5 A. Yeah. I had no reason to believe that
6 they were not accurate and that that was the
7 intention of the client.

8 Q. And you write just after that, "In this
9 regard, CBSG has adopted and has been using a new
10 note purchase agreement wherein purchasers and
11 sellers must represent that no fees or commissions
12 were paid to any agent, broker, finder or any other
13 person in connection with the purchase or sale of
14 the notes." Right? It goes on after that. But do
15 you recall writing that?

16 A. Yes.

17 Q. When you write "CBSG has adopted and has
18 been using a new note purchase agreement," this is
19 the note purchase agreement that you drafted for
20 them?

21 A. Correct.

22 Q. And where you write, "CBSG has adopted and
23 has been using a new note purchase agreement wherein
24 purchasers and sellers must represent that no fees
25 or commissions were paid," you understood at the

1 time that the purchasers in that sentence were
2 pooled investment vehicles who were purchasing notes
3 from CBSG?

4 A. The purchasers were the pooled investment
5 vehicles, yes.

6 MR. SOTO: Let's go to Exhibit 149. Let's
7 go to the last page.

8 BY MR. SOTO:

9 Q. Let's quickly review the last part of it.
10 November 12, 2018 you write to Joe Cole, "Attached
11 for your review is a revised draft letter of PADOBS
12 that includes Option 1." Right? Do you recall
13 that?

14 A. Yes. That's what it says.

15 Q. So this is November 12, 2018. This is a
16 draft of the letter that you later write or send to
17 the Department on November 14; right?

18 A. Yes.

19 Q. Mr. Cole then responds a few minutes later
20 to you and copies Cynthia Clark. "Okay. Thanks,
21 Phil. I'll discuss with Cindy first before signing
22 off on it anyways. Thanks for providing. Will
23 follow up."

24 Right?

25 A. Yes.

1 negotiating with the Department. That's what the
2 offers of settlement related to, that there would be
3 a consent order between CBSG and the Department to
4 settle the matter.

5 Q. Okay. And she had a question about the
6 nonfinancial terms that would be included in that
7 consent order. Is that what you understood?

8 A. Yes.

9 Q. She says, "Per your November 8 letter, the
10 order would conclude the Department's investigation
11 and any other action it could commence under
12 applicable Pennsylvania law as it relates to the
13 offer and sale of notes as defined in the
14 correspondence through the date of the consent
15 order.

16 She then writes, "Does that language
17 encompass or can it be broadened to encompass the
18 manner in which CBSG currently offers and sells
19 notes (i.e., a statement or acknowledgement that the
20 current manner in which CBSG offers or sells notes
21 is not in violation of Pennsylvania law)? Our
22 concern is that CBSG has modified the manner in
23 which notes now being offered/sold (beyond the notes
24 that are specifically the subject of the current
25 investigation) and that the Department could

1 initiate a new investigation after the date of the
2 consent order with respect to those sales being made
3 under the new procedures after the date of the
4 order. Please advise. Thanks, Cindy."

5 Right? So this is an email that she sends
6 you November 13, 2018, a day before the November 14
7 letter that we just discussed; right?

8 MS. BERLIN: Objection to form.

9 THE WITNESS: Correct.

10 BY MR. SOTO:

11 Q. And in this letter, Cynthia Clark, general
12 counsel for CBSG, is asking whether the language in
13 that letter to the Department can be broadened to
14 encompass the way in which CBSG at that time is
15 selling its notes; right?

16 MS. BERLIN: Object to form. Objection to
17 form. I'll just restate my standing objection to
18 the leading questions today.

19 BY MR. SOTO:

20 Q. Isn't that right, sir? She's asking you
21 whether the language that you intend to use in your
22 communication to the Department can be broadened to
23 encompass the specific manner in which CBSG is then
24 selling its notes?

25 MS. BERLIN: Objection to form. Calls for

1 speculation.

2 THE WITNESS: Yes.

3 BY MR. SOTO:

4 Q. Okay. And at that time, in November of
5 2018, you know that CBSG is selling its notes using
6 a note purchase agreement that you drafted for them
7 to pooled investment vehicles; right?

8 A. To certify that they are accredited
9 investors, yes.

10 Q. That's not my question. My question is:
11 At the time you know that CBSG's new procedure, its
12 current manner of selling notes is selling notes to
13 pooled investment vehicles?

14 MR. TROY: Answer again.

15 THE WITNESS: Using the note purchase
16 agreement, those pooled investment vehicles would
17 have to certify that they are an accredited investor
18 if they are using the form that I prepared for CBSG.

19 BY MR. SOTO:

20 Q. But you're answering a slightly different
21 question. My question is: As of the moment of this
22 letter, November 13, 2018, you know when Ms. Clark
23 says the current manner which CBSG offers and sells
24 notes, that the current manner which it sells notes
25 is selling notes exclusively to PPM funds using the

1 note purchase agreement that you drafted for them?

2 MS. BERLIN: Object to form.

3 THE WITNESS: Which includes the
4 accredited investor certification.

5 BY MR. SOTO:

6 Q. Is that a "yes," sir? Is that a "yes,"
7 Mr. Rutledge?

8 MS. BERLIN: Object to form.

9 MR. TROY: You can answer it a fourth
10 time. Clarify your answer.

11 THE WITNESS: Again, because the manner
12 subsumes use of the note purchase agreement, then
13 the PIV to whom they sold, of which I was aware,
14 would have to be an accredited investor.

15 BY MR. SOTO:

16 Q. So you were aware that when you wrote this
17 or when you received this email from Ms. Clark that
18 she was asking you to broaden your letter to the
19 Department to include the fact that CBSG was selling
20 its notes to pooled investment vehicles using your
21 note?

22 A. No. I think what she wanted was and quite
23 properly what you want is the Department to say that
24 if you sell only to accredited investors, whether
25 they're PIVs or whether they're individuals, that

1 selling to accredited investors gives you an
2 exemption under 506(b) and 211(b) of the
3 Pennsylvania Securities Act from securities
4 registration requirements of the Pennsylvania
5 Securities Act. And I believe this is in the order
6 itself, which is exactly what they wanted, "they"
7 meaning CBSG, without the payment of commissions.

8 Q. So let's look at your response. You
9 write, Tuesday, November 13, 2018 at 2:52, "Cindy,
10 you are requesting is similar to what we call in the
11 trade a staff no action letter."

12 Do you see that?

13 A. Yes.

14 Q. A staff no action letter is essentially a
15 request made by a private citizen to the staff of
16 the Department in the context of your email asking
17 the Department to bless a particular procedure or to
18 say that the staff agrees that the Department would
19 take no action against the private entity in
20 connection with that procedure. Isn't that fair?

21 A. A little refinement on that. It can't be
22 an individual. At least the rules at that time I
23 believe required that to be submitted by an attorney
24 with a legal opinion before the Department would
25 consider issuing a no action letter.

1 There is no requirement, as in the last
2 paragraph, that the Department grant the request to
3 give the no action letter. And I think because this
4 was in an enforcement context anyway, that the
5 likelihood of that happening would be small.

6 Q. I wasn't asking about the likelihood of
7 that happening. I simply asked for you to agree
8 with me with respect to the definition of a staff no
9 action letter.

10 So I'll ask you using your refinement: Is
11 it fair to say that a staff no action letter is
12 essentially a request made through a lawyer for the
13 Department in this case to agree that it will not
14 take action against the entity in connection with a
15 particular procedure involving the offer or sale of
16 notes as described by the attorney in that letter?

17 A. If I may, a further refinement. It has to
18 be prospective. The Commission or the Department
19 won't bless something that's already been done. So
20 it would be: We propose to do this. Here is my
21 legal opinion. Would you confirm?

22 And a staff no action letter is just that.
23 The staff no action letter, if they would reply, the
24 reply would we will not recommend enforcement action
25 if you comply with what you submitted. So it's not

1 binding on the Department. It's an expression of
2 the staff.

3 Q. So accepting that it's not binding and
4 that it involves prospective activity and has to be
5 drafted by an attorney --

6 A. With a legal opinion.

7 Q. -- with a legal opinion, you agree?

8 A. Yes, I believe so, with those caveats.

9 Q. Okay. That's fine. I appreciate that.

10 Isn't it the case here that Ms. Clark was
11 asking you to prepare language to describe the
12 manner in which CBSG was then selling its notes in
13 order to have the Department assess whether it would
14 take action against that current manner of selling
15 notes in order to assure itself it wasn't going to
16 have a problem in connection with the current manner
17 in which it was selling notes?

18 A. She wanted some assurance by the
19 Department that going forward, they were not going
20 to run afoul of the Pennsylvania Department.

21 Q. Right. And so when she says -- would you
22 agree with me when she says, does that language
23 encompass or can it be broadened to encompass, she's
24 asking can we provide more information describing
25 what we're doing in November of 2018 in order to

1 have the Department assess whether what we're doing
2 currently in November of 2018 is okay?

3 MS. BERLIN: Object to form.

4 THE WITNESS: Yes, which we eventually did
5 get in the order.

6 BY MR. SOTO:

7 Q. You on November 13, 2018 in response to
8 Cynthia Clark copying Joe Cole, write, "Cindy" --

9 MR. SOTO: It's above that. Scroll up a
10 little bit.

11 BY MR. SOTO:

12 Q. "Cindy, Corp. Fin. may not want to grant
13 the request because it just restates current
14 statutory law or it may not want to grant the
15 request because CBSG is or was the subject of an
16 enforcement action. I don't think CBSG would be the
17 subject of any greater scrutiny by asking but I
18 still think the initial step is to get something
19 including in the finding of fact and in the sent
20 order."

21 Right? That's your response to her?

22 A. Yes.

23 Q. Then she writes probably 30 minutes later,
24 "Thanks, Phil. We should get the language in the
25 consent order to be as broad and cover as much as

1 possible."

2 Right?

3 A. Yes.

4 Q. So she wants the language in the consent
5 order to cover as much about the current manner
6 which they are selling notes as is possible?

7 A. Yes.

8 Q. Let's look at Exhibit 69. We're making
9 some progress here.

10 (There was a pause in the proceedings.)

11 BY MR. SOTO:

12 Q. We're at Exhibit 69. This is a note
13 purchase agreement, dated as of October 15, 2018.
14 Do you see that, Mr. Rutledge?

15 A. Yes.

16 MR. SOTO: And let's go to Section 405,
17 which is page 4.

18 BY MR. SOTO:

19 Q. We talked about this provision earlier.
20 This is the provision that you said would give CBSG
21 the comfort that its noteholders were accredited;
22 right?

23 A. Yes, although I've not seen this document
24 before.

25 Q. Okay. I apologize. But I'll ask you: Do

1 you recall testifying when you were being questioned
2 by the SEC in this case that you had directed
3 Mr. Cole to have CBSG's noteholders fill out that
4 blank after Rule 501(a) as opposed to just marking
5 it the way that is indicated here?

6 MS. BERLIN: Object to form.

7 THE WITNESS: Yes. I told him that was in
8 my view unacceptable.

9 BY MR. SOTO:

10 Q. Right. I believe that's the word that you
11 used. And do you recall testifying that you didn't
12 think CBSG took your advice address this issue?

13 MS. BERLIN: Object to form.

14 THE WITNESS: My recollection is I did
15 point this out to Joe Cole. It wasn't this
16 document. It was the note purchase agreements for
17 the ABFP fund, if that's correct. And there was one
18 note purchase agreement I saw, and then subsequently
19 I saw the other two. And in July of 2019, I said --
20 the unacceptable email came first. Then when I saw
21 in 2019 that it apparently had not been corrected
22 and there were two more that also did not look like
23 they had been completed properly, I suggested to Joe
24 and he agreed to send a letter to at that point it
25 was Mr. Vagnozzi saying you can't do this. We would

1 like you to change it and fill it out properly and
2 return it.

3 BY MR. SOTO:

4 Q. Okay.

5 A. Whether he did so -- whether Mr. Vagnozzi
6 did so, I don't know.

7 Q. Let's look at Exhibit 141. I'm at
8 Cherly's computer. My computer has locked up two
9 times in the last 15 minutes. So I think it's
10 probably time for us to take a five-minute break so
11 that I can reboot. And hopefully we'll move more
12 quickly after that. So why don't we take a
13 five-minute break. It's 2:44. Let's resume at
14 2:50.

15 THE VIDEOGRAPHER: The time is 2:44 p.m.,
16 and we are off the record.

17 (Recess from 2:44 p.m. to 2:50 p.m.)

18 THE VIDEOGRAPHER: It's time is 2:50 p.m.
19 and we are back on the record.

20 BY MR. SOTO:

21 Q. Mr. Rutledge, I'd like to direct your
22 attention to Exhibit 141. On the bottom of it, you
23 write on July 25, 2019 to Joe Cole, "As we
24 discussed, attached for your review and comment is a
25 draft letter to Dean Vagnozzi from CBSG."

1 international company which backs the debt
2 securities of CBSG purchased by each fund, would you
3 please confirm in writing to the undersigned that
4 you will not make such representations with respect
5 to any debt securities issued by CBSG and have been
6 or will be purchased by any of the above-referenced
7 funds."

8 Right?

9 A. Yes.

10 Q. This is what you drafted for Joe Cole to
11 accepted to Dean Vagnozzi to cure the issue that he
12 raised in his email to you two days before on
13 July 22?

14 A. Yes.

15 Q. And you previously agreed that he sent the
16 letter out as you directed?

17 A. He said he sent it out and he provided me
18 a copy of what he sent.

19 Q. Okay. So he brought to your attention a
20 concern he had about the ABFP funds making certain
21 representations and you drafted a letter for him to
22 cure that specific concern and he sent it out?

23 A. Yes. He said he sent it out, and I had no
24 reason to believe he did not.

25 Q. I thought we agreed -- let's look at

1 Exhibit 143 -- that he sent it out. He just didn't
2 tell you that he sent it out is what I think you
3 testified to.

4 A. No. I think he subsequently sent an email
5 to me that said that he had sent it out.

6 Q. Okay.

7 A. I believe so, but I'm not totally sure.

8 Q. But the bottom line is that he sent out
9 the email you directed him to send out in order to
10 cure this concern with respect to Dean Vagnozzi and
11 ABFP?

12 A. Yeah. He sent the letter, yes.

13 Q. Let's go back to Exhibit 144. So in
14 paragraph 4, it says, "In light of the June 21, 2019
15 letter from Euler Hermes that you provided, I am
16 concerned that Mr. Vagnozzi's allusion in a video to
17 two of four investments being backed by large
18 international companies may be a veiled reference to
19 Euler Hermes, which is a constituent company of
20 Allianz."

21 Right?

22 A. Yes.

23 Q. And I'll also point you to -- let's go to
24 page 5, subsection 3. You reference a concern.
25 They're both here. "In a video available to the

1 of this, Recommendations, first recommendation does
2 not relate to the federal securities laws; correct?

3 A. Correct.

4 Q. And in paragraphs 2 through 6 --

5 MR. SOTO: And Cherly, go slowly.

6 BY MR. SOTO:

7 Q. -- you make what appear to be four
8 recommendations, at paragraph 2, that CBSG filed a
9 Form D?

10 A. Yes.

11 Q. At paragraph 3, that CBSG address your
12 concern that its noteholders confirm their
13 accreditation status in Section 405 more
14 specifically, and -- I'm sorry. Is that another
15 recommendation that you make? I can repeat the
16 question.

17 A. That was the recommendation to go back and
18 get 4.05 completed properly.

19 Q. Right. And paragraph 4, your third
20 recommendation is that CBSG send a letter to
21 Vagnozzi addressing the two issues related to the
22 Euler Hermes marketing materials that ABFP is
23 apparently put out; right?

24 A. Yes.

25 Q. And so you agree that CBSG followed your

1 advice and sent the letter dated July 25, 2019 to
2 ABFP and cured your concern in paragraphs 3 and 4?

3 A. It addressed my concerns in 3 and 4, yes.

4 Q. The other concern you have in paragraphs 6
5 is that it review its insurance coverage; right?

6 A. Yes, as a matter of course.

7 Q. But that doesn't relate to an enforcement
8 action by a state regulatory body or the SEC; right?
9 That's a concern over potential private suits?

10 A. Although it's styled for private suits, it
11 could also have applied to an enforcement
12 proceeding, but I think that that -- I think that
13 particular provision was directed at civil suits,
14 yes.

15 Q. And so the only recommendation here that
16 to this point we haven't discussed or agreed has
17 been addressed is paragraph 2. "It is important
18 that CBSG file -- have a Form D filed with the SEC
19 in connection with its sale of debt securities to
20 ABFP."

21 Right?

22 A. Yes.

23 Q. So of the four recommendations, the only
24 one we haven't addressed that we agree they've cured
25 based on your advice is the one in paragraph 2?

1 updating amendment in April of 2020.

2 Q. But you would agree that the updating
3 amended Form D filing in April of 2020 addressed
4 your concern in paragraph 2?

5 A. Yeah. It would have encompassed, albeit
6 perhaps on a post facto basis, but it would
7 hopefully encompass that concern.

8 Q. Let's look at SEC Exhibit 66. Let's
9 scroll to the last page of this. So the last page
10 of this exhibit includes an email from Joe Cole to
11 you, dated March 2, 2020, with the subject line CBSG
12 Texas C&D Order; right?

13 A. Yes.

14 Q. And Joe Cole writes, "Phil, please see the
15 attached letter received by us and a PPM fund we're
16 working with. Per our updated policy, Par has a
17 note directly with their fund and they raise capital
18 directly into their PPM without our involvement."

19 Do you see that?

20 A. Yes.

21 Q. He says, "I found several erroneous
22 statements on this response, but let me know when
23 you have some time to review. We're holding off on
24 doing any additional notes in Texas for the time
25 being. We greatly appreciate your guidance on this

1 because you can't control what he or others say or
2 do and, as a result, Par gets dragged into any of
3 the problems that they create."

4 So I just want to address that part of
5 your email. So is it safe to say that what you're
6 suggesting to Mr. Cole is that the risk that is
7 being created here is being created by the conduct
8 of Mr. Vagnozzi and ABFP and not the conduct of
9 CBSG?

10 MS. BERLIN: Object to form.

11 THE WITNESS: At that time, yes. At that
12 time my concern was any adverse effects on Par or
13 CBSG because of the activities of Mr. Vagnozzi as
14 they were known to me at that point.

15 BY MR. SOTO:

16 Q. Okay. And so you go on to say, "Although
17 the individuals may not be getting a direct selling
18 commission as in the case of the PA situation, I am
19 sure Texas will argue that the haircut they receive
20 on the interest paid on the notes constitutes a
21 selling commission."

22 Now, when you write, "Although the
23 individuals may not be getting a direct selling
24 commission as in the case of the PA situation, did
25 you mean to say that this situation is different

1 than the Pennsylvania situation where Par was paying
2 finders directly?

3 A. Yes. I think the distinction I was making
4 that in PA, they had finders' agreements whereby
5 they would pay I believe a percentage of the notes
6 sold as a finders' fees, if you will. And I don't
7 think that was -- again, given the parameters of the
8 Texas order, I don't think that Texas was arguing
9 the same thing.

10 Q. So your concern was that Texas might, as
11 you put it here, argue that the difference between
12 what CBSG was receiving from the funds and what the
13 funds were in turn receiving from their noteholders
14 might be an argument that they would make that this
15 haircut constitutes a commission?

16 A. Yes, on two levels. One would be what
17 the -- well, actually on one level. I believe this
18 is what you're saying. But what the fund would
19 receive from Par and what the investors in the PPM
20 would receive from the PPM.

21 Q. Right.

22 A. Okay.

23 Q. And so at this time, did you have any
24 indication that CBSG had any control over what the
25 funds were receiving in connection with their sale

1 of notes?

2 A. At this time, I didn't know what the
3 details were or the arrangements were between CBSG
4 and any of the PIVs.

5 Q. And you go on on page 3 to make immediate
6 recommendations. You make or you suggest immediate
7 recommended steps; correct?

8 A. Yes.

9 Q. Alert your insurance carrier in case there
10 is coverage. By that you meant coverage that would
11 indemnify CBSG in connection with violations by
12 third parties including ABFP or other fund managers?

13 A. Actually, I believe what I meant was do
14 you have insurance coverage to defend yourself in
15 the C&D.

16 Q. File a request for a hearing with Texas.
17 You were just advising them there to file it so they
18 have a placeholder; correct?

19 A. Correct, because sometimes requests for
20 filing -- excuse me -- requests for a hearing on a
21 C&D have a very short time limitation.

22 Q. Okay. In paragraph 3 you are suggesting
23 to them that they notify these funds who are note
24 purchasers with respect to the indemnification
25 provision of the note that are they signed; correct?

1 A. Correct.

2 Q. And you then discuss -- you then
3 recommended as part of No. 4 considering add an
4 addendum to the note purchase agreement disclosing
5 the actions taken by the three state regulatory
6 bodies that you're aware of to that point,
7 Pennsylvania, New Jersey and Texas; correct?

8 A. Correct.

9 Q. So the first question I have is, you don't
10 recommend in this email, do you, that CBSG stop
11 selling its notes to any of the funds, do you?

12 A. In Texas.

13 Q. Outside of Texas.

14 A. Correct.

15 Q. You don't -- and prior to this, you had
16 not recommended to CBSG that it disclosed the
17 actions taken by Pennsylvania, had you?

18 A. In my November memo to -- prior to
19 settlement, I did raise the issue that settlement of
20 the Pennsylvania matter by an order could give rise
21 to a disclosure requirement.

22 Q. Right. You said that it could give rise
23 to a disclosure requirement. Did you direct them to
24 disclose the Pennsylvania order?

25 A. The Pennsylvania order came down after the

1 Q. Right? Here you're not doing that.
2 You're not telling them you have to disclose
3 immediately; right? You're not saying that?

4 A. This was my initial reaction, and it
5 actually came to fruition because all that
6 disclosure was made in the exchange offer which was
7 done that month.

8 Q. Right. So notwithstanding the fact that
9 you were not directing them to do this, they still
10 disclosed the Pennsylvania, New Jersey and Texas
11 investigations and orders and the exchange notes;
12 correct?

13 A. Yes, because I told them to.

14 Q. Well, you told them to consider doing
15 that; right?

16 A. I told them to consider the addendum at
17 that time when I first became aware. Immediate
18 steps, consider adding an addendum. Final steps or
19 more further down the road steps was, yes, you
20 you're doing an exchange offer. You disclose this
21 in the exchange offer.

22 Q. And they followed your advice?

23 A. The original advice was to put it in the
24 exchange offer wrapper, if you will. They wanted to
25 put it in the note purchase agreement.

1 Q. Ultimately, they followed your advice?

2 A. Ultimately they followed my advice that
3 disclosure was made.

4 Q. Okay. Did you at some point thereafter
5 discuss with CBSG whether they had any control over
6 the amount of interest paid by the pooled investment
7 vehicles?

8 A. I don't recall.

9 Q. In connection with your concern that the
10 haircut, as you put it in March, might have been an
11 issue, did you ask them whether they had any
12 involvement in the interest that the pooled
13 investment vehicles were charging?

14 A. No.

15 Q. So at this point, March 3, 2020, you
16 understand that Par is selling notes to pooled
17 investment vehicles including pooled investment
18 vehicles owned by Dean Vagnozzi and that those
19 pooled investment vehicles are in turn selling notes
20 to others; correct?

21 A. No. I don't know what they're selling.

22 Q. Well --

23 A. They may be selling notes. I think one of
24 Dean's funds was actually selling membership
25 interest.

1 A. Well, that would be in the note purchase
2 agreement because the fund would have to represent
3 that it was an accredited investor.

4 Q. Let's take a look at Exhibit 134. At the
5 very bottom of this exhibit, 134, you write on
6 April 4, 2020 at 5:05 p.m. to Brett Berman and Steve
7 Cohen, the subject heading CBSG Exchange Offer,
8 "Brett and Steve, I would like to get your thoughts
9 on some issues with discussion with Joe."

10 That's Joe Cole; correct?

11 A. That is correct.

12 Q. And the first subheading is Organizational
13 Matters. "I think we are agreed that not only does
14 the exchange offer represent an opportunity for
15 restructuring of CBSG debt, it may also provide an
16 opportunity to address concerns raised in the Texas
17 order."

18 What do you mean by concerns raised in the
19 Texas order?

20 A. The disclosure issues relating to Texas,
21 New Jersey and Pennsylvania.

22 Q. Okay. So your advice here was that CBSG
23 take the opportunity through the exchange offer to
24 disclose the Pennsylvania, New Jersey and Texas
25 investigations and orders to the extent there were

Message

From: Joe Cole [joe@parfunding.com]
Sent: 3/11/2020 3:41:13 PM
To: Berman, Brett [BBerman@foxrothschild.com]
CC: Philip Rutledge [Rutledge@bybelrutledge.com]; Addleman, Kit [Kit.Addleman@haynesboone.com]; Newman, Timothy [Timothy.Newman@haynesboone.com]; benjamin.goodman@haynesboone.com
Subject: Re: Draft Regulatory Disclosures
Attachments: image004.png; image001.jpg; CBSG Consulting Agreement - New Field Ventures.pdf

Please see the attached consulting agreement for Perry's entity - New Field Ventures.

Given the PA issue, we redid his contract to pay this entity under this agreement starting in 2018. It removed the language about basing compensation around capital raised and is the current agreement in place we have with him.

I also spoke with him earlier today and he confirmed he's sorting out an engagement letter with separate counsel that was referred to him.

We can share any documents as you guys see fit to confirm overall strategy on both ends with the forthcoming hearings being scheduled.

Thanks.

Joe Cole

On Wed, Mar 11, 2020 at 10:17 AM Berman, Brett <BBerman@foxrothschild.com> wrote:

JOINT DEFENSE PRIVILEGED COMMUNICATION

Thanks, Phil.

I do just want to point out something about the Texas litigation which Fox Rothschild is handling. The case was started as a single merchant case against Par in Texas state court. It was successfully removed to Federal court in Texas and then transferred to the Eastern District of Pennsylvania. The merchant eventually filed a second amended complaint alleging Texas class allegations. The case is through class discovery and we will be fighting out through the summer whether or not a class can be certified. There have been no substantive rulings on the merits in any way and no findings by any court in Texas or PA. I would be surprised if every piece of litigation like this would need to be disclosed and under what basis would such disclosures be required when there have been no findings. Just wanted you to have the context on this case.

EXHIBIT 122

Brett Berman

Partner

Fox Rothschild LLP

2000 Market Street
20th Floor
Philadelphia, PA 19103-3222
215.299.2842 – direct
215.299.2150 – fax

101 Park Avenue
Suite 1700
New York, NY 10178
215.299.2842
212.692.0940

BBerman@foxrothschild.com
www.foxrothschild.com

[California](#) | [Colorado](#) | [Connecticut](#) | [Delaware](#) | [DC](#) | [Florida](#) | [Georgia](#) | [Illinois](#) | [Minnesota](#) | [Nevada](#) | [New Jersey](#) | [New York](#) | [North Carolina](#) | [Pennsylvania](#) | [South Carolina](#) | [Texas](#) | [Washington](#)

From: Philip Rutledge <Rutledge@bybelrutledge.com>
Sent: Wednesday, March 11, 2020 10:01 AM
To: Complete Business Solutions, Inc. (joecole@parfunding.com) <joecole@parfunding.com>; Addleman, Kit <Kit.Addleman@haynesboone.com>; Berman, Brett <BBerman@foxrothschild.com>
Cc: Newman, Timothy <Timothy.Newman@haynesboone.com>; benjamin.goodman@haynesboone.com
Subject: [EXT] Draft Regulatory Disclosures

All,

Attached for your review and comment is a draft of regulatory disclosures.

This might be useful as a template to make representations to the TSSB that CBSG would agree to use such disclosures in future as a basis of resolving the matter. It also shows the position of PA which stated that CBSG could continue sales in PA in compliance with the order, recognized that it had stopped paying sales commissions and stated that the order should not be a basis for any disqualification under federal or state securities laws.

Interestingly, in paragraphs 45, 61, 63, 66 of the TX Order, it does not state to whom CBSG failed to make these disclosures which I think is important because, with respect to paragraph 61, CBSG is not required under SEC Rule 502(b) to provide this type of business disclosure to accredited investors.

However, similar to the above, pledging to make this information available in the future also could form a basis for resolving the matter.

The strategy being that CBSG is willing to make changes which enhance compliance in the views of the TSSB and let TSSB focus on the non-CBSG respondents who have greater compliance issues.

I didn't include any disclosure concerning the Texas civil litigation in that I don't know anything about it. It could be included in the disclosures if that was the will of the TSSB in resolving the C&D but equally would be within the realm of Rule 502(b).

Joe: I haven't received the updated consulting agreement. Could you please send to everyone?

Regards from London,

Philip



G. Philip Rutledge

BYBEL RUTLEDGE LLP

1017 Mumma Road, Suite 302

Lemoyne, PA 17043

Tel. 717.731.1700

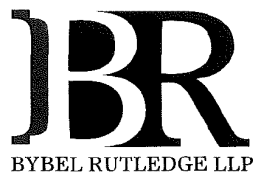
Fax 717.731.8205

rutledge@bybelrutledge.com

www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Fox Rothschild LLP by replying to this email and delete the original and reply emails. Thank you.



RECEIVED

FEB - 5 2018

PA DEPARTMENT OF
BANKING AND SECURITIES

1017 Mumma Road
Suite 302
Lemoyne, PA 17043
717 731 1700 phone
717 731 8205 fax
www.bybelrutledge.com

February 5, 2018

By Hand Delivery

Glenn Skreppen, Bureau Director
Bureau of Securities Compliance and Examinations
Pennsylvania Department of Banking and Securities
17 N. Second Street, Suite 1300
Harrisburg, PA 17101

**RE: Production of Records Pursuant to Subpoena Issued to
Complete Business Solutions Group, Inc. d/b/a PAR Funding ("CBSG")
Docket No. 2017-12-4**

Dear Mr. Skreppen:

Enclosed is a USB flash drive containing the information identified by the Pennsylvania Department of Banking and Securities in its subpoena dated January 4, 2018 to CBSG.

Business of CBSG

I have been advised by CBSG that its business plan is to provide working capital to merchant businesses through purchasing an interest in a designated portion of the merchants' future accounts and receivables. Under CBSG's Future Receipts Sales Agreement (a copy of which is enclosed), a merchant agrees to sell a certain amount of its future receipts to CBSG for an immediate cash payment. The merchant further agrees to pay CBSG a daily amount of the future receipts to fulfill the transaction, with the daily amounts deducted from the merchant's operating account by CBSG pursuant to the terms of its Automatic Collection Program.

CBSG has asserted that the transactions between the merchants and CBSG are not loans, a forbearance of money, or a credit transaction, but rather constitute a purchase and sale of future receipts governed largely by Section 9 of the Uniform Commercial Code which Pennsylvania has adopted at 13 Pa.C.S. §9901 et seq. ("PA UCC").

Under the terms described above, CBSG has entered into Future Receipts Sales Agreements with multiple merchants across the United States. The proceeds from the sale of the promissory notes issued by CBSG has allowed CBSG to have a more diversified portfolio of purchased merchant business receivables which contributes to its growth and fiscal stability.

EXHIBIT 124

Mr. Glenn Skreppen
February 5, 2018
Page 2

As the Department will be able to see from the production of subpoenaed documents, CBSG operates a legitimate business that provides an important function in financing operating businesses in Pennsylvania by maintaining an open-end cash flow debt financing for these merchants through a standby agreement to purchase receipts of these merchants for cash.

The source of funds for payment to these merchants has been the sale of non-negotiable, non-transferable term promissory notes issued by CBSG to individuals who met the definition of Accredited Investor in Rule 501 of SEC Regulation D. The source of funds for repayment of the principal and interest on the notes is the amount realized from monies due to the merchant, which right to receipt has been assigned to CBSG.

CBSG has entered to contracts with “finders” who have received compensation for finding individuals who met the definition of Accredited Investor in Rule 501 of SEC Regulation D to purchase notes issued by CBSG. Upon advice of counsel retained in the above-captioned matter, CBSG advises that it has terminated this practice with immediate effect and until CBSG has received further advice and direction from the Department.

As the Department will see from the promptness and completeness of the production accompanying this letter, CBSG desires to comply with all rules and regulations applicable to its activities and is receptive to suggestions by the Department in how it can achieve compliance with regard to its business model. As an example of its desire to cooperate with the Department and aid staff in the review of the subpoenaed documents, CBSG has included a spreadsheet showing the purchaser of the Note, date of purchase and amount of each purchase.

CBSG believes that the documents enclosed herein satisfy the terms of the subpoena with one minor exception. Although CBSG believed at the time that its promissory notes were purchased by individuals who met the definition of Accredited Investor, upon receipt of the subpoena, CBSG went back to each note holder to confirm such status. There are a few of these confirmations outstanding and they will be forwarded to the Department upon receipt by CBSG.

The Promissory Note

The form of promissory note issued by CBSG (“Note”) is a non-negotiable, non-transferable term debt instrument, the payment of principal and interest thereon when due is secured by the execution by CBSG of a security agreement in favor of the Note holder which grants the Note holder a security interest in all tangible and intangible personal property of

Mr. Glenn Skreppen

February 5, 2018

Page 3

CBSG, wherever located and whether now owned or hereafter acquired. When the security interest granted by CBSG is properly perfected by the Note holder under the PA UCC, the Note holder will have an interest in the assets of CBSG (ie the contracts binding merchants to sell a certain amount of its future receipts to CBSG) in the event of CBSG defaulting on its obligations under the Note.

Is the Note a Security?

Section 102(t) of the Pennsylvania Securities Act of 1972, as amended (the “1972 Act”) defines a “security” to include a “note.”

The leading case for determining whether a document denominated as a “note” is a security under the federal securities laws is the opinion of the U.S. Supreme Court in *Reves v Ernst & Young*, 494 U.S. 56 (1990). The Court determined that an instrument denominated as a “note” shall be presumed to be a security and that presumption may be rebutted only by showing that the note bears a strong resemblance (in terms of the four factors enunciated by the Court) to one of the enumerated categories of notes that have been deemed not to constitute securities.

In *Reves*, the Court determined that (1) notes delivered in consumer financing, (2) a note secured by a mortgage on a home, (3) a short-term note secured by a lien on a small business or some of its assets, (4) a note evidencing a “character” loan to a bank customer, (5) short-term notes secured by an assignment of accounts receivable and (6) a note that formalizes an open-account debt incurred in the ordinary course of business are not the type of notes that come within the definition of a “security.”

The Notes appear to meet the fifth type of arrangement identified by the Court as not constituting a security. The Notes are short term (ie not exceeding an 18 month maturity) and the Note holders are the beneficiaries of a security interest granted by CBSG in the merchant receipts pledged to CSBG under the Future Receipts Sales Agreements. This security interest may be perfected by the Note holder under the PA UCC.

Although Pennsylvania courts are not bound by federal court decisions, there is evidence that Pennsylvania courts may derive guidance from federal case law in determining whether the Notes constitute a security under the 1972 Act.

Mr. Glenn Skreppen
February 5, 2018
Page 4

In this regard, the leading case is the Pennsylvania Superior Court opinion in *Martin v. ITM/International Trading & Marketing Ltd.*, 343 Pa.Super. 250 (1985). In *Martin*, the Court stated that it would derive guidance from federal case law in determining whether the agreement in question constituted an “investment contract” under the 1972 Act. Based upon the decision in *Martin*, one would expect that Pennsylvania courts would derive guidance from the *Reves* decision if they were faced with interpreting whether a particular instrument constituted a “note” under the 1972 Act.

Of course, if were determined that the Note did not constitute a security under the 1972 Act, the finders to whom CBSG paid compensation would not come within the jurisdiction of the 1972 Act as they did not represent CBSG in effecting or attempting to effect purchases or sales of securities.

Availability of Rule 506(b) Exemption

Even if it was determined that the Notes were securities under the 1972 Act, it appears that the exemption provided in Rule 506(b) of SEC Regulation D would be available in that the Notes were sold only to Accredited Investors. Non-compliance by CBSG (including failure to file Form D with the SEC) would not make the exemption in Rule 506(b) unavailable under the provisions of Rule 508 of SEC Regulation D. Similarly, a failure to file Form D with the Department under Section 211(b) of the 1972 Act does not create a civil private cause of action pursuant to Section 211(d) thereof. However, CBSG has advised that it stands ready to file Form D with the SEC and the Department upon advice of the Department.

As previously indicated, CBSG has expressed a desire to comply with all applicable requirements to operating its business model and stands ready to cooperate with the Department.

Although I will be commencing my annual teaching in the Master of Laws program at BPP Law School in London, England on February 15, 2018 through March 11, 2018, I will have access to email during this time but not telephone access.

Very truly yours,



BYBEL RUTLEDGE LLP

By: G. Philip Rutledge

cc: Joseph Cole, CFO, CBSG

Deb Wilkinson

From: Philip Rutledge
Sent: Friday, March 30, 2018 11:45 AM
To: 'joecole@parfunding.com'
Cc: 'NORMAN VALZ'
Subject: RE: CBSG Follow Up

Joe:

Could you give me a call on Monday to discuss the structure of these "PPMs" to whom you are directing individuals?

We need to discuss their compliance with securities laws as well as making sure that CBSG's activity in this regard does not constitute it acting as a broker-dealer under the securities laws.

Regards,

Philip



BYBEL RUTLEDGE LLP

G. Philip Rutledge
BYBEL RUTLEDGE LLP
1017 Mumma Road, Suite 302
Lemoyne, PA 17043
Tel. 717.731.1700
Fax 717.731.8205
N [REDACTED]
rutledge@bybelrutledge.com
www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: joecole@parfunding.com [mailto:joecole@parfunding.com]
Sent: Friday, March 30, 2018 11:35 AM
To: Philip Rutledge
Cc: 'NORMAN VALZ'
Subject: RE: CBSG Follow Up

Hi Phil,

There are no other confirmations we're waiting on from our creditors.

We did add a few new notes this quarter but only from PPM funds, not direct individuals. We are not longer taking any new individual notes and directing individual investors to PPMs as their notes mature.

I'll assume no news is good news for now and we'll keep you posted if any communication is received from the state on our end.

Once this is all settled, we'd love to have you review our note / security agreement language for the PPMs and potentially institutional capital later this year.

Thanks.

Joe Cole

From: Philip Rutledge <Rutledge@bybelrutledge.com>
Sent: Friday, March 30, 2018 9:33 AM
To: jcoole@parfunding.com
Cc: 'NORMAN VALZ' <NVALZ@msn.com>
Subject: RE: CBSG Follow Up

Joe:

Thank you.

I filed this supplemental production with the Department today via email. Are there any more confirmations outstanding?

This is to confirm that I have heard nothing further from the Department as a result of the production of documents on Feb. 5, 2018.

Has CBSG sold any notes after the date of production sans finders' fees?

Regards,

Philip



G. Philip Rutledge
BYBEL RUTLEDGE LLP
1017 Mumma Road, Suite 302
Lemoyne, PA 17043

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717 731 1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER. Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein

From: Joe Cole [mailto:joecole@parfunding.com]
Sent: Tuesday, September 25, 2018 12:32 PM
To: Philip Rutledge
Subject: Re: Draft Response Letter to PADOBS

Good afternoon Philip,

We reviewed the attached response letter and concur with the language used. The response under item 6 does accurately describe the course of action taken after the request by the state was made. We can substantiate this via copies of communications on our end to confirm that it was completed as described. Please respond to the state accordingly.

I also conveyed the concerns you had with the PPM documents to our investor relations director. He is discussing the offering document issues with the various fund managers today which they will hopefully amend in subsequent offerings. He is also discussing the need for an agreement with us to confirm that they are accredited and to indemnify CBSG.

Also please confirm remittance instructions to increase our retainer reserve with you. I believe we already exhausted it with all this follow up work and we'd like to cover the upcoming response and documents for agreements with the funds we work with.

Let me know if you have any questions. Thank you.

Joe Cole

On Mon, Sep 24, 2018 at 4:00 PM Philip Rutledge <Rutledge@bybelrutledge.com> wrote:

Joe:

Attached for your review and comment is a proposed response letter to PADOBS.

Please read the first sentence of Item 6 carefully so see if you can make that representation.

Regards,

Phil



G. Philip Rutledge

BYBEL RUTLEDGE LLP

1017 Mumma Road, Suite 302

Lemoyne, PA 17043

Tel. 717.731.1700

Fax 717.731.8205

rutledge@bybelrutledge.com

www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Deb Wilkinson

From: Philip Rutledge
Sent: Monday, September 24, 2018 4:00 PM
To: 'Joe Cole'
Subject: Draft Response Letter to PADOBS
Attachments: Draft Response Letter to 9.7.18 Letter from PADOBS.Docx

Joe:

Attached for your review and comment is a proposed response letter to PADOBS.

Please read the first sentence of Item 6 carefully so see if you can make that representation.

Regards,

Phil



G. Philip Rutledge
BYBEL RUTLEDGE LLP
1017 Mumma Road, Suite 302
Lemoyne, PA 17043
Tel. 717.731.1700
Fax 717.731.8205

[REDACTED]
rutledge@bybelrutledge.com
www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

September ____, 2018

Via Hand Delivery

DRAFT OF 9.24.17

Ms. Lori Boyogueno
Senior Securities Compliance Examiner and
Enforcement Administrator
Bureau of Securities Compliance and Examinations
Pennsylvania Department of Banking and Securities
17 N. Second Street, Suite 1300
Harrisburg, PA 17101

**RE: Complete Business Solutions Group, Inc. ("CBSG")
Docket No. 2017-12-4**

Dear Ms. Boyogueno:

This responds to your letter dated September 7, 2018 wherein you request certain additional information from CBSG. I will address each request *ad seriatim*.

1. CBSG advises that it does not possess any further documents within the scope of this request other than those submitted to the Pennsylvania Department of Banking and Securities (the "Department") with my February 5, 2018 letter to Mr. Glenn Skreppen ("Skreppen Letter") (see Folder 2.0 included with the Skreppen Letter).

As I noted in the Skreppen Letter, the promissory notes issued by CBSG contained in that production represented a non-negotiable, non-transferable debt instrument whose term does not exceed 18 months ("Note") as to which payment of principal and interest is secured by execution of a security agreement in favor of the purchaser of the Note with respect to all tangible and intangible personal property of CBSG which consists of merchant receipts pledged to CBSG by merchants under a Future Receipts Sales Agreement. Therefore, it is arguable that, under the holding of the US Supreme Court in *Reves v. Ernst & Young*, 494 U.S. 56 (1990), the Notes are not securities in that they represent a short term note secured by an assignment of contracts receivable.

Even if the Notes were deemed to be securities, the Notes would be exempt from registration under the Securities Act of 1933, as amended ("1933 Act") in reliance on rule 506(b) of SEC Regulation D as CBSG had a reasonable basis to believe that all of the purchasers of the Notes met the definition of Accredited Investor. Therefore, with respect to Accredited Investor status, CBSG's statutory duty is one of reasonable, not verification.

2. Other than the CBSG Credit Agreements previously provided to the Department (see Folder 2.1 included with the Skreppen Letter), CBSG advises that it has no other documents in its possession which individuals may have used in connection with the offer and sale of the Notes. However, CBSG advises that it is unaware that any general solicitation or general advertising was used by anyone in connection with the offer and sale of the Notes.
3. Other than the CBSG Credit Agreements previously provided to the Department (see Folder 2.1 included with the Skreppen Letter), CBSG advises that it has no other documents described in this request. It should be noted, however, that Rule 502(b) of SEC Regulation D states that an issuer is not required to provide specific disclosures to any Accredited Investor and CBSG advises that it has reason to believe that all persons purchasing the Notes were Accredited Investors.
4. This information was previously provided to the Department in Folders 6.0 and 7.0 of the Skreppen Letter.
5. This information was previously provided to the Department in Folders 6.0 and 7.0 of the Skreppen Letter.
6. CBSG advises that it was aware that the individuals who received compensation held licenses issued by the Commonwealth of Pennsylvania. Upon receipt of the Department's subpoena, CBSG took immediate steps to obtain the assistance of experienced securities counsel and, on advice of counsel, moved to terminate all agreements with individuals who had received compensation for the sale of the Notes. As it may be more likely than not that, under the U.S. Supreme Court's ruling in *Reves*, the Notes are not securities, the individuals who received compensation in connection with the sale of the Notes may not have been required to be registered under the securities laws.
7. CBSG advises that its tax accounting firm has been in continuous discussions with the Internal Revenue Service ("IRS") regarding its 2016 federal income tax filing which will impact on how it prepares its 2017 federal income tax filing which, in turn, will affect its state income tax filing. CBSG states that it has been providing all information requested by the IRS and is hopeful that the IRS will provide definitive advice which will permit CBSG to file federal and

state income tax returns for 2017 by the end of October 2018. When those filings have been made, CBSG undertakes to provide a copy to the Department promptly thereafter.

For ease of comparison, enclosed is a copy to the production schedule attached to the Skreppen Letter which describes the documents previously provided to the Department. If you wish this information to be re-furnished to the Department, please advise.

Very truly yours,

BYBEL RUTLEDGE LLP
By: G. Philip Rutledge

Enclosure

cc: Joe Cole, CFO
Complete Business Solutions Group, Inc.

Deb Wilkinson

From: Philip Rutledge
Sent: Friday, September 21, 2018 11:36 AM
To: 'Joe Cole'
Subject: RE: PA Dept. of Banking and Securities Request for Additional Information

Joe:

That's fine. My calendar is pretty open Mon.-Wed. next week.

Phil



G. Philip Rutledge
BYBEL RUTLEDGE LLP
1017 Mumma Road, Suite 302
Plymouth, PA 17043
Tel: 717.731.1700
Fax 717.731.8205

rutledge@bybelrutledge.com
www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: Joe Cole [mailto:joecole@parfunding.com]
Sent: Friday, September 21, 2018 11:33 AM
To: Philip Rutledge
Subject: Re: PA Dept. of Banking and Securities Request for Additional Information

Good morning Philip.

I believe we'll be able to gather what we need for this request and I'd like to round back with you early next week if that works. Monday or Tuesday afternoon would be ideal for me.

I'm waiting on the PPM funds we work with to produce documentation and we'll organize this in a "background check" of sorts for our policies and procedures. I believe the other point to convey is that much of this

information was gathered for the initial due diligence request and further elaboration on the response letter will be needed to explain.

I'll work on the language for that as well.

Thanks.

Joe Cole

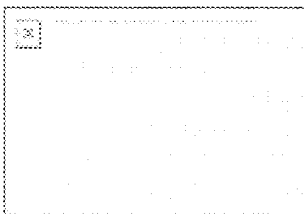
On Thu, Sep 20, 2018 at 1:57 PM Philip Rutledge <Rutledge@bybelrutledge.com> wrote:

Joe:

Just checking in with you about this request and whether you think you will be able to collate the information by the requested due date or do I need to ask for an extension?

Thanks,

Phil



G. Philip Rutledge


BYBEL RUTLEDGE LLP

1017 Mumma Road, Suite 302

Lemoyne, PA 17043

Tel. 717.731.1700

Fax 717.731.8205



utledge@bybelrutledge.com

www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Deb Wilkinson

From: Philip Rutledge
Sent: Monday, October 1, 2018 8:49 AM
To: 'Joe Cole'
Subject: RE: Draft Note Purchase Agreement Template
Attachments: Note Purchase Agreement for Complete Business Solutions (Draft of 10.1.18).Docx

Joe:

OK.

Attached is a revised template containing the following changes:

1. Amended Sec. 4.05 to include a representation that no one associated with the purchaser is subject to a disqualification under Rule 506(d) which would negate the availability of the Rule 506 exemption for the sale.
2. Although I do not believe the purchase agreement itself is a security, in the spirit of "belt and suspenders," I included the notice language that appears on your notes at the bottom of the last page.

Best,

Phil



G. Philip Rutledge
 BYBEL RUTLEDGE LLP
 1017 Mumma Road, Suite 302
 Lemoyne, PA 17043
 Tel. 717 731 1700
 Fax 717 731 8205

[REDACTED]
 rutledge@bybelrutledge.com
 www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717 731 1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: Joe Cole [mailto:joecole@parfunding.com]
Sent: Sunday, September 30, 2018 8:50 AM

To: Philip Rutledge
Subject: Re: Draft Note Purchase Agreement Template

Ok, lets plan for 3p on Tuesday in that case then.

Thanks.

Joe Cole

On Sat, Sep 29, 2018 at 1:21 PM Philip Rutledge <Rutledge@bybelrutledge.com> wrote:

3-5 Tuesday might be best.

Sent from my iPhone

On Sep 29, 2018, at 12:19 PM, Joe Cole <joe@parfunding.com> wrote:

Hi Philip,

I'm flexible on the date. If you can do between 3p-5p Tuesday or 2p-4p Thursday that works for me.

Just let me know if that works.

Thanks.

Joe Cole

On Sat, Sep 29, 2018 at 10:12 AM Philip Rutledge <Rutledge@bybelrutledge.com> wrote:

Wednesday I have to be in DC for a client but I may have time to step out to take a call.

Error! Filename not specified.

G. Philip Rutledge

BYBEL RUTLEDGE LLP

1017 Mumma Road, Suite 302

Lemoyne, PA 17043

Tel. 717.731.1700

Fax 717.731.8205


rutledge@bybeirutledge.com

www.bybeirutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: Joe Cole [mailto:joecole@parfunding.com]
Sent: Friday, September 28, 2018 5:15 PM
To: Philip Rutledge
Subject: Re: Draft Note Purchase Agreement Template

Thanks Phil, we'll review over the weekend and give you some feedback.

Let me know if you have time on Wednesday afternoon to do a quick call and discuss our pending response for the state.

Have a great weekend.

Joe Cole

On Fri, Sep 28, 2018 at 3:47 PM Philip Rutledge <Rutledge@bybeirutledge.com> wrote:

Joe:

Per your request, attached for your review and comment is a draft Note Purchase Agreement which could be used as a template for future issuance of notes by CBSG, Inc.

Regards,

Phil

Error! Filename not specified.

G. Philip Rutledge

BYBEL RUTLEDGE LLP

1017 Mumma Road, Suite 302

Lemoyne, PA 17043

Tel. 717.731.1700

Fax 717.731.8205



rutledge@bybelrutledge.com

www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue

Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein

NOTE PURCHASE AGREEMENT

DRAFT OF 10.1.18

THIS NOTE PURCHASE AGREEMENT, (the "Agreement") dated as of _____, 201____ (the "Effective Date"), is between COMPLETE BUSINESS SOLUTIONS GROUP, INC. ("Seller"), a Delaware corporation, and _____, a _____ (the "Purchaser").

RECITALS

WHEREAS, Purchaser desires to purchase non-negotiable term promissory notes to be issued by Seller (the "Notes") and as to which the Seller, pursuant to a separate security agreement of even date (each, and collectively, the "Security Agreement"), has granted to Purchaser a security interest in substantially all of its assets, including without limitation, its inventory, accounts receivable and general intangibles;

WHEREAS, Seller desires, from time to time, to offer the Notes for sale to the Purchaser in accordance with the terms and conditions of this Agreement and the terms and conditions of the Note and the Security Agreement which terms and conditions are incorporated by reference herein and Purchaser agrees to purchase the Notes on such terms and conditions;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Purchase Agreement, the amount and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I DEFINITIONS

"Affiliate" means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the Person specified.

"Knowledge of Seller" means the actual knowledge of the Seller or any of its Affiliates.

"Knowledge of Purchaser" means the actual knowledge of the Purchaser or any of its Affiliates.

"Person" means an individual, partnership, corporation, business trust, joint stock company, limited liability company, trust, unincorporated association, joint venture, governmental or regulatory authority or other entity of whatever nature.

ARTICLE II PURCHASE OF NOTE

2.01. Purchase and Sale. Subject to and upon the terms and conditions set forth in this Agreement, the Note and the Security Agreement and in reliance on the representations and warranties set forth herein, the Seller, from time to time, may offer to sell to Purchaser, and Purchaser agrees to purchase from the Seller, at the Closing referred to in Section 2.04 below, the Notes offered by the Seller.

2.02. Principal Amount, Interest Rate and Maturity. The Notes to be sold to Purchaser shall contain such terms and conditions relating, without limitation, to principal amount, interest rate and maturity, as the Seller, in its sole discretion, may determine.

2.03. No Right to Purchase Note. Nothing in this Agreement creates a right on the part of Purchaser to require Seller to offer and sell Notes to the Purchaser and Seller reserves the right not to offer to sell any Notes to the Purchaser in its sole discretion.

2.04. Closing. The sale and purchase of Notes under this Agreement may be made pursuant to one or more closings (each, a "Closing") on such dates, times and places as the Seller may determine in its sole discretion (each, a "Closing Date").

2.05. Accredited Investor Status. Purchaser and Seller agree and acknowledge that a bargained for provision of this Agreement is that Seller shall offer to sell Notes to Purchaser only if Purchaser is an accredited investor ("Accredited Investor") as that term is defined in Rule 501 of Regulation D adopted by the U.S. Securities & Exchange Commission (the "SEC") under the Securities Act of 1933, as amended (the "1933 Act"). In this regard, Purchaser agrees to provide such information as Seller may require including, without limitation, an opinion of counsel satisfactory to Seller, for Seller to form a basis for a reasonable belief that Purchaser is an Accredited Investor. Failure of Purchaser to provide Seller with requested information and any conclusion by Seller that it does not have a basis upon which to form a reasonable belief that Purchaser is an Accredited Investor shall release Seller from any obligations under this Agreement as to which Purchaser agrees to hold Seller harmless.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE SELLER

Seller hereby makes the following representations and warranties to the Purchaser.

3.01. Incorporation, Good Standing and Qualification of Seller. The Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. The Seller has the requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted or as proposed to be conducted.

3.02. Corporate Power and Authority; Authorization; Enforceability. All corporate action on the part of the Seller necessary for the authorization of this Agreement and such Notes and Security Agreements to be issued pursuant to this Agreement and the performance of all obligations of the Seller hereunder and thereunder at the Closing has been taken or will be taken prior to the Closing. This Agreement has been duly executed and delivered by the Seller by a Person duly authorized under the Seller's organizational documents and constitutes a valid and binding obligation of the Seller enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights.

3.03 No Conflict. Neither the execution and delivery by the Seller of this Agreement and each other instrument to be executed and delivered by such Seller pursuant to, or as contemplated by, this Agreement nor the performance by such Seller of such Seller's obligations thereunder, (i) violates any laws of the

United States or laws of any state or other jurisdiction applicable to such Seller or requires such Seller to obtain any approval, consent or waiver of, or make any filing with, any Person or entity (governmental or otherwise) that has not been obtained or made; (ii) results in a breach of, or constitutes a default under (or with due notice or lapse of time or both would result in a default under) any material agreement, indenture or instrument to which such Seller is a party or by which such Seller or any of its respective properties or assets is bound; (iii) results in the creation or imposition of any lien, pledge, security interest, claim, charge or encumbrance on the Notes; (iv) results in any judgment, order or decree of any governmental authority or law or regulation applicable to the Seller or its respective properties or assets or (v) violates the Purchaser's certificate of incorporation or bylaws, as amended or statute, law, rule, regulation, judgment, decree, writ, injunction, order or award of any arbitrator, court or governmental authority.

3.04. No Proceedings. There are no outstanding judgments, proceedings, or claims pending to the Knowledge of Seller threatened against the Seller or its Affiliates, or governmental investigation pending or to the Knowledge of Seller threatened against the Seller or its Affiliates that, in any case, individually or in the aggregate, reasonably would be expected to prevent the Seller from consummating the transactions contemplated by this Agreement.

3.05. Finders or Brokers. Seller agrees that it has not paid any fee or commission to any agent, broker, finder or other Person for or on account of services rendered as a broker or finder in connection with this Agreement or the transactions contemplated hereby.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Purchaser hereby makes the following representations and warranties to Seller.

4.01. Organization, Good Standing and Qualification of Purchaser. The Purchaser is a _____ duly formed, validly existing and in good standing under the laws of the State of _____. The Purchaser has the requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted or as proposed to be conducted.

4.02. Corporate Power and Authority; Authorization; Enforceability. All corporate action on the part of the Purchaser necessary to enter into this Agreement, the Notes and the Security Agreements and the performance of all obligations of the Purchaser hereunder and thereunder at the Closing has been taken or will be taken prior to the Closing. This Agreement has been duly executed and delivered by the Purchaser and constitutes a valid and binding obligation of the Purchaser enforceable in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights.

4.03. No Conflict. Neither the execution and delivery by the Purchaser of this Agreement and each other instrument to be executed and delivered by such Purchaser pursuant to, or as contemplated by, this Agreement nor the performance by such Purchaser of such Purchaser's obligations thereunder, (i) violates any laws of the United States or laws of any state or other jurisdiction applicable to such Purchaser or requires such Purchaser to obtain any approval, consent or waiver of, or make any filing with, any Person or entity (governmental or otherwise) that has not been obtained or made; (ii) results in a breach of, or

constitutes a default under (or with due notice or lapse of time or both would result in a default under) any material agreement, indenture or instrument to which such Purchaser is a party or by which such Purchaser or any of its respective properties or assets is bound; (iii) results in the creation or imposition of any lien, pledge, security interest, claim, charge or encumbrance on the Notes; (iv) results in any judgment, order or decree of any governmental authority or law or regulation applicable to the Purchaser or its respective properties or assets or (v) would violate the Purchaser's certificate of incorporation or bylaws, as amended or statute, law, rule, regulation, judgment, decree, writ, injunction, order or award of any arbitrator, court or governmental authority.

4.04. No Proceedings. There are no outstanding judgments, proceedings, or claims pending to the Knowledge of Purchaser threatened against the Purchaser or its Affiliates, or governmental investigation pending or to the Knowledge of Purchaser threatened against the Purchaser or its Affiliates that, in any case, individually or in the aggregate, reasonably would be expected to prevent the Purchaser from consummating the transactions contemplated by this Agreement.

4.05. Accredited Investor Status; No Disqualification. Purchaser is an Accredited Investor as that term is defined in Rule 501(____) of SEC Regulation D and neither Purchaser nor any of its Affiliates is subject to the "bad actor" provisions of Rule 506(d) of SEC Regulation D.

4.06. Not a Broker-Dealer. Purchaser is not acting as a broker or dealer as those terms are defined in the Securities Exchange Act of 1934, as amended (the "1934 Act") and is not acting as a broker-dealer under the Pennsylvania Securities Act of 1972, as amended (the "1972 Act") or the securities laws of any other state and is not required to register as a broker or dealer with the SEC or as a broker-dealer with the Pennsylvania Department of Banking and Securities (the "PADOBS") or the securities regulatory agency of any other state.

4.07. Not an Investment Adviser. Purchaser is not acting as an investment adviser as that term is defined in the Investment Advisers Act of 1940, as amended ("Advisers Act") or the 1972 Act and is not required to register as an investment adviser with the SEC, the PADOBS or the securities regulatory agency of any other state.

4.08. Not an Investment Company. Purchaser is not acting as an investment company as that term is defined in the Investment Company Act of 1940, as amended ("1940 Act") and is not required to register with the SEC as an investment company thereunder.

4.09. Compliance with Securities Laws. Purchaser's business as now being conducted is in compliance with all applicable federal and state securities laws and the rules and regulations adopted thereunder.

4.10. Compliance with Tax Laws. Purchaser's business as now being conducted is in compliance with all applicable federal, state and local tax laws and the rules and regulations adopted thereunder.

4.11. Finders or Brokers. Purchaser has not paid any fee or commission to any agent, broker, finder or other Person for or on account of services rendered as a broker or finder in connection with this Agreement or the transactions contemplated hereby.

**ARTICLE V
ADDITIONAL COVENANTS**

5.01. Notice Required for Governmental Actions. Purchaser shall immediately notify Seller if Purchaser or any of its Affiliates are the subject of any demand, inquiry, investigation, subpoena, civil complaint, criminal complaint or indictment, injunctive action or administrative proceeding by any governmental agency or if, to the Knowledge of Purchaser, any such action is threatened by any governmental agency.

5.02. Notice Required for Civil Suit. Purchaser shall immediately notify Seller if Purchaser or any of its Affiliates are the subject of any demand, inquiry, subpoena, complaint, arbitration, or injunctive action relating to an alleged civil cause of action against Purchaser or any of its Affiliates or if, to the Knowledge of Purchaser, any such action is threatened

**ARTICLE VI
INDEMNIFICATION**

6.01. Indemnification. Subject to the other terms and conditions of this Article VI, Purchaser shall indemnify and defend Seller and its managers, officers, directors, employees, agents, affiliates, successors, and permitted assigns (collectively, the "Seller Indemnitees") against and shall pay and reimburse each of them for, any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including professional fees and reasonable attorneys' fees (collectively "Losses"), that are Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

- (a) any inaccuracy in or breach of any of the representations or warranties of Purchaser contained in this Agreement;
- (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Purchaser pursuant to this Agreement;
- (c) any claim by a third party ("Third Party Claim") based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Purchaser or any of its Affiliates or assigns conducted, existing or arising on or after the Effective Date including without limitation, any claim based upon an alleged violation of the 1933 Act, 1934 Act, 1940 Act, Advisers Act, the 1972 Act or the securities laws of any other jurisdiction;
- (d) any dishonest, fraudulent, negligent or criminal act or omission on the part of Purchaser;
- (e) violation by Purchaser of any applicable law, rule, regulation or policy of any governmental or regulatory authority.

6.02. Certain Limitations. The party making a claim under this Article VI is referred to as the "Indemnified Party," and the party against whom such claims are asserted under this Article VI is referred to as the "Indemnifying Party." The indemnification provided for in this Article shall be subject to the following limitations:

- (a) The Indemnifying Party shall not be liable to the Indemnified Party for indemnification until the aggregate amount of all Losses in respect of indemnification exceeds \$25,000 (the "Deductible"), in which event the Indemnifying Party shall only be required to pay or be liable for Losses in excess of the Deductible.

(b) Payments by the Indemnifying Party shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds and any indemnity, contribution or other similar payment actually received by the Indemnified Party in respect of any such claim. The Indemnified Party shall use its commercially reasonable efforts to recover under insurance policies or indemnity, contribution or other similar agreements for any Losses prior to seeking indemnification under this Agreement.

(c) In no event shall the Indemnifying Party be liable to the Indemnified Party for any punitive, incidental, consequential, multiple, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement, or diminution of value or any damages based on any type of multiple (other than indemnification for amounts paid or payable to third parties in respect of any Third Party Claim for which indemnification hereunder is otherwise required.)

(d) The Indemnified Party shall take, and cause its Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto, including incurring costs only to the minimum extent necessary to remedy the breach that gives rise to such Loss.

6.03. Indemnification Procedures. Whenever any claim shall arise for indemnification hereunder, the Indemnified Party shall promptly provide written notice of such claim to the Indemnifying Party. In connection with any Third Party Claim giving rise to indemnity hereunder, the Indemnifying Party, at its sole cost and expense and upon written notice to the Indemnified Party, may assume the defense of any such action with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall be entitled to participate in the defense of any such action, with its counsel and at its own cost and expense. If the Indemnifying Party does not assume the defense of any such action, the Indemnified Party may, but shall not be obligated to, defend against such action in such manner as it may deem appropriate, including, but not limited to, settling such action, after giving prior written notice to the Indemnifying Party, on such terms as the Indemnified Party may deem appropriate and no action taken by the Indemnified Party in accordance with such defense and settlement shall relieve the Indemnifying Party of its indemnification obligations herein provided. The Indemnifying Party shall not settle any action without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld or delayed).

ARTICLE VII CONDITIONS TO CLOSE

7.01. Conditions to Purchaser's Obligations at the Closing. Purchaser's obligations under Article II of this Purchase Agreement are subject to the satisfaction, at or prior to the Closing Date, of the following conditions:

(a) Representations and Warranties True; Performance of Obligations. The representations and warranties made by the Seller in Article III hereof shall be true and correct in all material respects as each Closing Date; and

(b) Delivery of the Notes and Security Agreements. The Seller shall have delivered the Notes in the appropriate principal amount and the associated Security Agreements to Purchaser.

7.02. Conditions to Obligations of the Seller. The Seller's obligations under Article II of the Agreement are subject to the satisfaction, at or prior to the Closing Date, of the following conditions:

(a) Representations and Warranties True. The representations and warranties made by Purchaser in Article IV shall be true and correct as each Closing Date; and

(b) Purchase Price Delivery. The Seller shall have received from Purchaser a wire transfer in immediately available funds in the principal amount of the Notes being purchased by the Purchaser hereunder in the account designated by the Seller to the Purchaser.

**ARTICLE VIII
MISCELLANEOUS**

8.01. Amendments and Waivers. This Agreement may be amended, and any term or provision of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only upon the written consent of the Seller and the Purchaser. No amendment or waiver of this Agreement pursuant to this Section 8.01 shall constitute a waiver or an amendment to any term or condition of any Note or Security Agreement issued by Seller to Purchaser pursuant to this Agreement.

8.02. Successors and Assigns. This Agreement may not be assigned, conveyed or transferred without the prior written consent of the Seller. The rights and obligations of the Seller and Purchaser under this Agreement shall be binding upon and benefit their respective permitted successors, assigns, heirs, administrators and transferees.

8.03. Notices. All notices, requests and demands to or upon the respective parties hereto to be effective shall be in writing, and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, or, in the case of electronic mail, when received, or, in the case of a nationally recognized courier service, one business day after delivery to such courier service, addressed as follows or to such other address as may be hereafter notified by the respective parties hereto:

Seller:

Attn: _____

With a copy to:

Purchaser:

Attn: _____

With a copy to:

8.04. Waiver; Cumulative Remedies. No failure to exercise and no delay in exercising, on the part of Purchaser, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law or in equity.

8.05. Payment of Fees, Expenses. Each of the parties hereto shall bear its own costs and expenses in connection with the transactions contemplated hereunder including, without limitation, any litigation arising under this Agreement.

8.06. Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

8.07. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.08. Governing Law. This Agreement shall be construed and enforced in accordance with, and governed by, laws of the Commonwealth of Pennsylvania, without giving effect to the conflicts of law principles thereof.

8.09. Jurisdiction and Service of Process. Any legal action or proceeding with respect to this Agreement or arising out of the Purchaser's purchase of the Notes and the Seller's sale of the Notes shall be brought in the courts of the Commonwealth of Pennsylvania or of the United States of America for the Eastern District of Pennsylvania. By execution and delivery of this Agreement, each of the parties hereto accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts, irrevocably waives objection to the laying of venue of such claim or cause of action brought in such court, irrevocably waives any claim that any such claim or cause of action brought in such court has been brought in an inconvenient forum, irrevocably waives the right to object, with respect to such claim or cause of action brought in such court that the court does not have jurisdiction over such party, irrevocably agrees that service of process sufficient to confer personal jurisdiction in any such action

may be made by any party on the other by courier service, with a copy by regular mail, with service to be made to the addresses set forth in Section 8.03, and irrevocably waives any objection which such party may have to such service of process in any such action.

8.10. No Third Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing in this Agreement expressed or implied shall give or be construed to give to any Person, other than the parties hereto and such permitted assigns, any legal or equitable rights under this Agreement.

8.11. Entire Agreement; Drafting. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements and understandings of the parties, oral and written, with respect to the subject matter hereof. No party shall be liable or bound to any other party in any manner by any representation, warranty or covenant relating to such subject matter except as specifically set forth in this Agreement. No rule of construction shall be applied against the party drafting this Agreement.

8.12. Termination. This Agreement may be terminated upon either party giving written notice to the other party as provided in Section 8.03 hereof. Articles III, IV and VI of this Agreement, as well as any other provision that, in order to give proper effect to its intent, should survive the expiration or termination of this Agreement, shall survive such expiration or termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their proper and duly authorized officers as of the day and year first above written.

COMPLETE BUSINESS SOLUTIONS GROUP, INC.

By: _____

Name: Joseph Cole
Title: Chief Financial Officer

[Insert name of Purchaser]

By: _____

Name:
Title:

Neither this Agreement nor any Note issued by Seller pursuant to this Agreement has been registered under the 1933 Act, the 1972 Act or any other state securities law. Neither this Agreement nor any Note issued by Seller pursuant to this Agreement may be offered, sold, transferred, pledged, hypothecated or otherwise disposed of in the absence of an effective registration statement under such laws, or if such registration is not required to effect such sale or offer.




STATE SECURITIES BOARD

AUSTIN, TEXAS

CERTIFICATE

I, TRAVIS J. ILES, Securities Commissioner of the State of Texas, do hereby certify that I have caused to be made a careful examination of the records of the State Securities Board, which records are kept under my supervision and control, as authorized under the provisions of House Bill 521, Chapter 100, Acts of the 44th Legislature, Regular Session, as amended, such Act being effective May 23, 1935, Senate Bill 149, Chapter 67, Acts of the 54th Legislature, and House Bill 39, Chapter 384, Acts of the 54th Legislature, both Regular Session, as amended, such Acts being effective September 6, 1955, and Senate Bill 294, Chapter 269, Acts of the 55th Legislature, Regular Session, as amended, such Act being effective August 22, 1957, known and cited as "The Securities Act," and from such examination, I do further certify that the attached twelve pages constitute a true and correct record of information filed with the Securities Commissioner.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of the State Securities Board at my office in the City of Austin, this 2nd day of July, 2020.



TRAVIS J. ILES
Securities Commissioner

EXHIBIT 131

TRAVIS J. ILES
SECURITIES COMMISSIONER



CLINTON EDGAR
DEPUTY SECURITIES COMMISSIONER

Mail: P.O. BOX 13167
AUSTIN, TEXAS 78711-3167

Texas State Securities Board

208 E. 10th Street, 5th Floor
Austin, Texas 78701-2407
www.ssb.texas.gov

Phone: (512) 305-8300
Facsimile: (512) 305-8310

E. WALLY KINNEY
CHAIR

MIGUEL ROMANO, JR.
MEMBER

KENNY KONCABA
MEMBER

ROBERT BELT
MEMBER

MELISSA TYROCH
MEMBER

| | | |
|---|---|---------------------------|
| IN THE MATTER OF | § | |
| SENIOR ASSET PROTECTION, INC. DBA ENCORE | § | |
| FINANCIAL SOLUTIONS, MERCHANT GROWTH & | § | |
| INCOME FUNDING, LLC ABETTERFINANCIALPLAN.COM, | § | Order No. ENF-CDO-20-1798 |
| LLC AKA A BETTER FINANCIAL PLAN, COMPLETE | § | |
| BUSINESS SOLUTIONS GROUP, INC. DBA PAR FUNDING, | § | |
| GARY NEAL BEASLEY AND PERRY ABBONIZIO | § | |

TO: Senior Asset Protection, Inc. dba Encore Financial Solutions, is being served by certified mail, return receipt requested, addressed to 5706 Bull Creek Road, Austin, TX 78756, Barton Oaks Plaza, 3110 Glen Ora Street, Austin, Texas, 78704, and 901 South Mopac Expressway, Building 1, Suite 300, Austin, Texas 78746, and to Gary Neal Beasley, its registered agent, at 5706 Bull Creek Road, Austin, TX 78756.

Merchant Growth & Income Funding, LLC, is being served by certified mail, return receipt requested, addressed to 5706 Bull Creek Road, Austin, Texas 78756, and to The Corporation Trust Company, its registered agent, at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

Abetterfinancialplan.com, LLC aka A Better Financial Plan, is being served by certified mail, return receipt requested, addressed to 114 Ithan Lane, Collegeville, Pennsylvania 19426, The Atrium, 234 Mall Boulevard, Suite 270, King of Prussia, Pennsylvania 19406, and 10,000 Lincoln Drive E, One Greentree Center, Suite 201, Marlton, New Jersey 08053.

Complete Business Solutions Group, Inc. dba PAR Funding, is being served by certified mail, return receipt requested, addressed to 205 Ach Street, Second Floor, Philadelphia, Pennsylvania 19106, 20 N. 3rd Street, Philadelphia, Pennsylvania 19106 and 2000 PGA Boulevard, Suite 4440, Palm Beach Gardens, Florida 33408, and to Registered Office Service Company, its registered agent in Delaware, at 614 N. Dupont Highway, Suite 210, Dover, Delaware 19901.

Gary Neal Beasley, is being served by certified mail, return receipt requested, addressed to the addresses for Senior Asset Protection, Inc., dba Encore Financial Solutions and Merchant Growth & Income Finding, LLC, the registered agents for Senior Asset Protection, Inc., dba Encore Financial Solutions and Merchant Growth & Income Finding, LLC, and 901 South Mopac Expressway, Building 1, Suite 300, Austin, Texas 78746.

Perry Abbonizio is being served by certified mail, return receipt requested, addressed to the addresses for Complete Business Solutions Group, Inc. dba PAR Funding and Abetterfinancialplan.com, LLC aka A Better Financial Plan and to the registered agent for Complete Business Solutions Group, Inc. dba PAR Funding.

EMERGENCY CEASE AND DESIST ORDER

This is your OFFICIAL NOTICE of the issuance by the Securities Commissioner of the State of Texas (the "**Securities Commissioner**") of an EMERGENCY CEASE AND DESIST ORDER pursuant to Section 23-2 of The Securities Act, Tex. Rev. Civ. Stat. Ann. arts. 581-1 to 581-45 (the "**Securities Act**").

The Enforcement Division of the Texas State Securities Board (the "**Enforcement Division**") has presented evidence sufficient for the Securities Commissioner to find that:

FINDINGS OF FACT

1. Senior Asset Protection, Inc., doing business as Encore Financial Solutions ("**Respondent Encore Financial**"), is a Texas corporation that is being served with process by certified mail, return receipt requested, addressed to Respondent Encore at 5706 Bull Creek Road, Austin, Texas 78756, Barton Oaks Plaza, 3110 Glen Ora Street, Austin, Texas, 78704, and 901 South Mopac Expressway, Building 1, Suite 300, Austin, Texas 78746, and addressed to Gary Neal Beasley, its registered agent in Texas, at 5706 Bull Creek Road, Austin, Texas 78756.
2. Merchant Growth & Income Funding, LLC ("**Respondent Merchant Growth**"), is a Delaware limited liability company that is being served with process by certified mail, return receipt requested, addressed to Respondent Merchant Growth at Barton Oaks Plaza, 901 S. Mopac Expressway, Building 1, Suite 300, Austin, Texas 78746, and addressed to The Corporation Trust Company, its registered agent in Delaware, at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.
3. Abetterfinancialplan.com, LLC, also known as A Better Financial Plan ("**Respondent Better Financial Plan**"), is a Pennsylvania Limited Liability Company that is being served with process by certified mail, return receipt requested, addressed to Respondent Better Financial Plan at 114 Ithan Lane, Collegetown, Pennsylvania 19426, The Atrium, 234 Mall Boulevard, Suite 270, King of Prussia, Pennsylvania 19406, and 10,000 Lincoln Drive E, One Greentree Center, Suite 201, Marlton, New Jersey 08053.
4. Complete Business Solutions Group, Inc., doing business as PAR Funding ("**Respondent PAR Funding**"), is a Delaware corporation that is being served with process by certified mail, return receipt requested, addressed to Respondent PAR Funding at 205 Ach Street, Second Floor, Philadelphia, Pennsylvania 19106, and 2000 PGA Boulevard, Suite 4440, Palm Beach Gardens, Florida 33408, and addressed to Registered Office Service Company, its registered agent in Delaware, at 614 N. Dupont Highway, Suite 210, Dover, Delaware 19901.

5. Gary Neal Beasley ("**Respondent Beasley**") is being served by certified mail, return receipt requested, addressed to the addresses for Respondents Encore Financial and Merchant Growth and the registered agents for Respondents Enforce Financial and Merchant Growth.
6. Perry Abbonizio ("**Respondent Abbonizio**") is being served by certified mail, return receipt requested, addressed to the addresses for Respondents PAR Funding and Better Financial Plan and the registered agent for Respondent PAR Funding.

BACKGROUND

7. Respondent Beasley was a self-employed investment adviser representative in Texas through June 10, 2013. He was assigned CRD Number 1071551.
8. Respondent Beasley resigned as a securities advisor to form Respondent Merchant Growth. Respondent Merchant Growth is a Delaware limited liability company operating from Austin, Texas, and Respondent Beasley is its sole member.
9. Respondent Beasley is also the President, Chief Executive Officer and sole Director of Respondent Encore Financial, a domestic for-profit corporation operating from Austin, Texas.

RESPONDENT ENCORE FINANCIAL AND ITS PUBLIC WEBSITE

10. Respondent Encore Financial maintains an internet website accessible by the public at both <https://www.encore-financial> and <https://encorefinancial.wordpress.com/> (the "**Encore Financial Website**").
11. The Encore Financial Website states Respondent Encore Financial was founded on a philosophy of minimizing downside risk, and it also states the company focuses on retirement planning by helping individuals and businesses plan for a successful financial future.
12. The Encore Financial Website further represents Respondent Encore Financial is offering ways to diversify a portion of portfolios away from stock market risk while earning a high rate of return.

THE RADIO ADVERTISEMENTS FOR ENCORE FINANCIAL

13. In addition to advertising through the Encore Financial Website, Respondent Encore Financial has been publishing advertisements on a local radio station that broadcasts in and around Austin, Texas.
14. The radio advertisements feature Respondent Beasley. He encourages the public to contact Respondent Encore Financial and purchase investments that have less risk than the stock market and that protect against an inevitable market correction.

THE INTRODUCTION OF RESPONDENT MERCHANT GROWTH

15. Potential investors responding to the public solicitations are being introduced to Respondent Merchant Growth.
16. Respondent Merchant Growth is issuing and offering various classes of promissory notes.
17. Respondents Merchant Growth and Beasley claim the various classes of promissory notes provide investors with an opportunity to participate in the relatively high rates of return generated in merchant cash advance financing transactions.

THE PROMISSORY NOTES ISSUED BY RESPONDENT MERCHANT GROWTH

18. Respondents Merchant Growth and Beasley are describing the various classes of promissory notes as follows:
 - A. Respondent Merchant Growth is issuing and offering Class A Notes for a principal investment of \$75,000 to \$124,000.00. Class A Notes purportedly bear an annual interest rate of 8 percent with interest paid on a monthly basis and principal paid on the maturity date.
 - B. Respondent Merchant Growth is issuing and offering Class B Notes for a principal investment of \$125,000.00 to \$249,000.00. Class B Notes purportedly bear an annual interest rate of 10 percent with interest paid on a monthly basis and principal paid on the maturity date.
 - C. Respondent Merchant Growth is issuing and offering Class C Notes for a principal investment of \$250,000.00 to \$399,000.00. Class C Notes purportedly bear an annual interest rate of 12 percent with interest paid on a monthly basis and principal paid on the maturity date.
 - D. Respondent Merchant Growth is issuing and offering Class D Notes for a principal investment of \$400,000.00 to \$499,000.00. Class D Notes purportedly bear an annual interest rate of 13 percent with interest paid on a monthly basis and principal paid on the maturity date.
 - E. Respondent Merchant Growth is issuing and offering Class E Notes for a principal investment of \$500,000.00 or more. Class E Notes purportedly bear an annual interest rate of 14 percent with interest paid on a monthly basis and principal paid on the maturity date.
19. Respondents Merchant Growth and Beasley are claiming Respondent Merchant Growth will use the gross proceeds of the offering to purchase other promissory notes and similar debt instruments offered and sold by one or more companies that provide merchant cash advance financing in the United States.
20. Respondents Merchant Growth and Beasley are actively offering the promissory notes, and state they have raised at least \$300,000.00 through the sale of the promissory notes since December 2019.

THE AFFILIATION WITH RESPONDENT BETTER FINANCIAL PLAN

21. Respondents Merchant Growth and Beasley are claiming Respondent Beasley makes all investment decisions on behalf of Respondent Merchant Growth and is solely responsible for the development and implementation of the company's investment policy and strategy.
22. Respondents Merchant Growth and Beasley are also representing the success of Respondent Merchant Growth is largely dependent on the ability and experience of Respondent Beasley.
23. Notwithstanding the forgoing, Respondents Merchant Growth and Beasley are acknowledging that Respondent Beasley has limited experience in commercial lending and business finance transactions.
24. Respondent Merchant Growth has therefore entered into a management agreement with Respondent Better Financial Plan, a foreign company operating from King of Prussia, Pennsylvania, and Marlton, New Jersey.

THE AFFILIATION WITH RESPONDENT PAR FUNDING

25. Although Respondent Better Financial Plan purportedly provides management services for Respondent Merchant Growth, Respondent Better Financial Plan is actually a commissioned sales agent for Respondent PAR Funding.
26. PAR Funding is a foreign corporation operating from Palm Beach Gardens, Florida, that claims to provide hard money for construction projects, venture capital for high-growth startups, invoice factoring for small businesses and supply chain financing for businesses that need secure access to revenue.
27. Respondent Abbonizio is a principal owner of Respondent PAR Funding.

THE USE OF PROCEEDS AND PAYMENT OF RETURNS

28. Respondent Merchant Growth, along with forty-four other parties, is pooling principal obtained from investors and forwarding their funds to Respondent Better Financial Plan.
29. Respondent Better Financial Plan is using these funds to invest in merchant cash advances from Respondent PAR Funding.
30. Respondent PAR Funding or Respondent Better Financial Plan are thereafter paying commissions to either Respondent Beasley or Respondent Merchant Growth.
31. Respondents PAR Funding or Respondent Better Financial Plan are also thereafter reportedly paying returns to purchasers of various classes of promissory notes issued by Respondent Merchant Growth.
32. Respondents Merchant Growth and Beasley are touting the safety of the investments and telling investors Respondent Better Financial Plan or Respondent PAR Funding will pay returns out of their own assets before defaulting on its obligations.

THE SCOPE OF THE INVESTMENT SCHEME

33. As described herein, Respondents PAR Funding and Abbonizio are claiming that Respondent Merchant Growth and forty-four other parties are raising capital for Respondent PAR Funding.
34. Respondents PAR Funding and Abbonizio are also claiming these agents raised more than \$270 million over the last year.
35. Respondents PAR Funding and Abbonizio are further claiming Respondent PAR Funding has more than 1200 investors, with the total number of investors growing on a monthly basis.

THE PENNSYLVANIA ENFORCEMENT ACTION

36. Respondents PAR Funding, Better Financial Plan, Merchant Growth, Encore Financial, Abbonizio and Beasley (the "**Respondents**") are not disclosing the Department of Banking and Securities for the Commonwealth of Pennsylvania conducted an investigation of Respondent PAR Funding.
37. On November 28, 2018, based on the results of its investigation, the agency entered a Consent Agreement and Order, Docket No. 180098 (SEC-CAO), styled Commonwealth of Pennsylvania, Department of Banking and Securities, Bureau of Securities Compliance and Examinations v. Complete Business Solutions Group, Inc. d/b/a PAR Funding.
38. The Consent Agreement and Order found Respondent PAR Funding entered into agreements with persons to represent the company in connection with the offer and sale of promissory notes.
39. The Consent Agreement and Order also found these persons were neither registered in Pennsylvania nor exempt from registration as agents of Respondent PAR Funding.
40. The Consent Agreement and Order ordered Respondent PAR Funding to pay an administrative assessment in the amount of \$499,000.00.

THE NEW JERSEY ENFORCEMENT ACTION

41. Respondents are not disclosing the New Jersey Bureau of Securities conducted an investigation of Respondent PAR Funding.
42. On December 27, 2018, based on the results of its investigation, the agency entered a Summary Cease and Desist Order styled In the Matter of Complete Business Solutions Group, Inc., and Complete Business Solutions Group, Inc. d/b/a PAR Funding.
43. The Summary Cease and Desist Order found Respondent PAR Funding sold unregistered securities through unregistered agents.
44. The Summary Cease and Desist Order ordered Respondent PAR Funding and its agents to immediately cease and desist from violating state securities laws as follows:

- A. The Summary Cease and Desist Order ordered Respondent PAR Funding and its agents to immediately cease and desist from offering for sale any security in New Jersey until the securities are registered or offered pursuant to an exemption, and
- B. The Summary Cease and Desist Order ordered Respondent PAR Funding and its agents to immediately cease and desist from acting as agents in New Jersey until each agent is registered with the agency or acting pursuant to an exemption.

PENDING LITIGATION

- 45. Respondents are not disclosing litigation filed against Respondent PAR Funding arising from its lending practices.
- 46. For example, on or about July 28, 2017, parties residing in Dallas, Texas, filed a lawsuit against Respondent PAR Funding. The case was originally filed in the 192nd Judicial District Court for Dallas County, Texas, before being removed to the United States District Court for the Northern District of Texas, Dallas Division, in Fleetwood Services, LLC, et al., vs. Complete Business Solutions Group, Inc. d/b/a PAR Funding, et al.
- 47. The plaintiffs are alleging they "were victimized by a predatory merchant cash advance lender" and the defendants "intentionally and systematically took advantage of [them] at a time when [plaintiffs] were experiencing cash-flow issues."
- 48. They are also alleging the defendants violated the Texas Theft Liability Act and their conduct constitutes fraud in the inducement, negligent misrepresentation, intentional infliction of emotional distress and civil conspiracy.
- 49. The lawsuit was recently transferred to the United States District Court of the Eastern District of Pennsylvania. It is still pending.

REGISTRATION VIOLATIONS AND THE FALSE CLAIMS OF EXEMPTIONS FROM AND PREEMPTION OF SECURITIES REGISTRATION LAW

- 50. Respondents have not been registered with the Securities Commissioner as dealers or agents at any time material hereto.
- 51. The investments described herein have not been registered with the United States Securities and Exchange Commission and have not been registered with or permitted for sale by the State Securities Board or any other state securities commission.
- 52. Respondent Merchant Growth and PAR Funding are relying on Regulation D, Rule 506(b).
- 53. Regulation D, Rule 506(b), is a federal regulation that coordinates with a federal statute to provide an exemption from a federal law that protects investors by requiring the registration of securities.

54. Regulation D, Rule 506(b), also serves as a basis for preempting the State Securities Board from administering a state law that protects investors by requiring the registration of securities.
55. Although Respondents Merchant Growth and PAR Funding may be relying on Regulation D, Rule 506(b), the investments described herein do not qualify for safe harbor from registration laws in part because the parties are not complying with accreditation requirements and Respondent Merchant Growth is using general solicitation to recruit investors.

FRAUD AND DECEIT
AND THE OBLIGATIONS OF RESPONDENT MERCHANT GROWTH AS A DEBTOR

56. As described herein, Respondents Merchant Growth and Beasley are telling investors Respondent Merchant Growth will forward the proceeds of the sale of promissory notes to Respondent Better Financial Plan or Respondent PAR Funding, and they are promising Respondent Better Financial Plan or Respondent PAR Funding will pay returns to investors.
57. As also described herein, Respondents Merchant Growth and Beasley are also telling investors Respondent Better Financial Plan or Respondent PAR Funding will pay returns out of their own assets before defaulting on their obligations.
58. The representations relating to the use of proceeds and payment of returns to investors are materially misleading or otherwise likely to deceive the public for the following reasons:
 - A. Investors execute contracts with Respondent Merchant Growth and not Respondents Better Financial Plan and PAR Funding, and the contracts provide that Respondent Merchant Growth is legally obligated to pay returns to investors, and
 - B. The contracts do not obligate Respondents Better Financial Plan or PAR Funding to pay returns to investors. Instead, the contracts provide that Respondent Merchant Growth is the only party legally obligated to pay returns to investors.
59. Although Respondent Merchant Growth is solely obligated to pay returns to purchasers of promissory notes, Respondents Encore Financial, Merchant Growth and Beasley are intentionally failing to disclose the following information in connection with the offer of the promissory notes:
 - A. Respondents Encore Financial, Merchant Growth and Beasley are intentionally failing to disclose the current capitalization of Respondent Merchant Growth, and this information constitutes material facts, and
 - B. Respondents Encore Financial, Merchant Growth and Beasley are intentionally failing to disclose the current liabilities of Respondent Merchant Growth, including its obligations to other purchasers of promissory notes, and this information constitutes material facts.

FRAUD AND DECEIT AND CONCEALMENT
OF THE IDENTITY OF THE PRINCIPALS OF PAR FUNDING

60. As described herein, although Respondent Merchant Growth is legally obligated to pay returns to investors, Respondents Encore Financial, Merchant Growth and Beasley are promising Respondent Better Financial Plan or Respondent PAR Funding will pay returns to investors. These statements are materially misleading or otherwise likely to deceive the public because Respondents Encore Financial, Merchant Growth and Beasley are not disclosing the following information about the identity and management of Respondent PAR Funding:
- A. They are not disclosing the identity of all principals and managers of Respondent PAR Funding, and
 - B. They are not disclosing the business repute and qualifications of the principals and managers of Respondent PAR Funding, and
 - C. They are not disclosing the experience of the principals and managers of Respondents PAR Funding.
61. In connection with the offer of investments described herein, Respondents PAR Funding, Better Financial Plan and Abbonizio are intentionally failing to disclose the following information about the identity and management of Respondent PAR Funding:
- A. They are intentionally failing to disclose the identity of all principals and managers of Respondent PAR Funding, and this information constitutes material facts, and
 - B. They are intentionally failing to disclose the business repute and qualifications of the principals and managers of Respondent PAR Funding, and this information constitutes material facts, and
 - C. They are intentionally failing to disclose the experience of the principals and managers of Respondent PAR Funding, and this information constitutes material facts.

FRAUD AND DECEIT AND
CONCEALMENT OF THE PENNSYLVANIA ORDER

62. As described herein, the Department of Banking and Securities for the Commonwealth of Pennsylvania entered a Consent Agreement and Order that ordered Respondent PAR Funding to pay an administrative assessment in the amount of \$499,000.00.
63. In connection with the offer of investments described herein, Respondents PAR Funding, Better Financial Plan and Abbonizio are intentionally failing to disclose the Consent Agreement and Order, and this information constitutes a material fact.
64. Respondents Encore Financial, Merchant Growth and Beasley are offering the investments described herein, promising to use gross proceeds of the offering to purchase other promissory notes and similar debt instruments and promising

Respondent PAR Funding will pay returns to investors. These statements are materially misleading or otherwise likely to deceive the public because they are not disclosing the Consent Agreement and Order to potential investors.

FRAUD AND DECEIT AND CONCEALMENT OF THE NEW JERSEY ORDER

65. As described herein, the New Jersey Bureau of Securities entered a Summary Cease and Desist Order that ordered Respondent PAR Funding and its agents to immediately cease and desist from violating the securities laws.
66. In connection with the offer of investments described herein, Respondents PAR Funding, Better Financial Plan and Abbonizio are intentionally failing to disclose the Summary Cease and Desist Order, and this information constitutes a material fact.
67. Respondents Encore Financial, Merchant Growth and Beasley are offering the investments described herein, promising to use gross proceeds of the offering to purchase other promissory notes and similar debt instruments and promising Respondent PAR Funding will pay returns to investors. These statements are materially misleading or otherwise likely to deceive the public because they are not disclosing the Summary Cease and Desist Order.

FRAUD AND DECEIT AND CONCEALMENT OF PENDING LITIGATION

68. As described herein, plaintiffs residing in Dallas, Texas, filed a lawsuit against Respondent PAR Funding and others alleging the defendants violated the Texas Theft Liability Act and their conduct constitutes fraud in the inducement, negligent misrepresentation, intentional infliction of emotional distress and civil conspiracy
69. In connection with the offer of investments described herein, Respondents PAR Funding and Abbonizio are intentionally failing to disclose pending litigation, and this information constitutes a material fact.
70. Respondents Encore Financial, Merchant Growth and Beasley are offering the investments described herein, promising to use gross proceeds of the offering to purchase other promissory notes and similar debt instruments and promising Respondent PAR Funding will pay returns to investors. These statements are materially misleading or otherwise likely to deceive the public because they are not disclosing the pending litigation.

CONCLUSIONS OF LAW

1. The investments described herein are "securities" as that term is defined in Section 4.A of the Securities Act.
2. Respondents are violating Section 7 of the Securities Act by offering securities for sale in Texas at a time when the securities are not registered with the Securities Commissioner.

3. Respondents are violating Section 12 of the Securities Act by offering securities for sale in Texas without being registered pursuant to the provisions of Section 12 of the Securities Act.
4. Respondents are engaging in fraud in connection with the offer for sale of securities.
5. Respondents Encore Financial, Merchant Growth and Beasley are making offers containing statements that are materially misleading or otherwise likely to deceive the public.
6. Respondents' conduct, acts and practices threaten immediate and irreparable harm.
7. The foregoing violations constitute bases for the issuance of an Emergency Cease and Desist Order pursuant to Section 23-2 of the Securities Act.

ORDER

1. It is therefore ORDERED that Respondents immediately CEASE AND DESIST from offering for sale any security in Texas until the security is registered with the Securities Commissioner or is offered for sale pursuant to an exemption from registration under the Texas Securities Act.
2. It is further ORDERED that Respondents immediately CEASE AND DESIST from acting as securities dealers or agents in Texas until they are registered with the Securities Commissioner or are acting pursuant to an exemption from registration under the Texas Securities Act.
3. It is further ORDERED that Respondents immediately CEASE AND DESIST from engaging in any fraud in connection with the offer for sale of any security in Texas.
4. It is further ORDERED that Respondents Encore Financial, Merchant Growth and Beasley immediately CEASE AND DESIST from offering securities in Texas through an offer containing a statement that is materially misleading or otherwise likely to deceive the public.

NOTICE

Pursuant to Section 23-2 of the Securities Act, you may request a hearing before the 31st day after the date you were served with this Order. The request for a hearing must be in writing, directed to the Securities Commissioner, and state the grounds for the request to set aside or modify the Order. Failure to request a hearing will result in the Order becoming final and non-appealable.

You are advised under Section 29.D of the Securities Act that any knowing violation of an order issued by the Securities Commissioner under the authority of Section 23-2 of the Securities Act is a third-degree felony punishable by a fine of not more than \$10,000, or imprisonment in the penitentiary for two to ten years, or by both such fine and imprisonment.

SIGNED AND ENTERED by the Securities Commissioner this 25th day of February, 2020.



TRAVIS J. ILES
Securities Commissioner

Message

From: joecole@parfunding.com [joecole@parfunding.com]
Sent: 1/18/2018 8:07:53 PM
To: 'Perry Abbonizio' [perry@parfunding.com]
Subject: FW: Subpoena Matrix for PA Department of Banking and Securities
Attachments: CBS Subpoena from the Department of Banking and Securities.docx

Please see attached.

Joe Cole

From: Philip Rutledge [mailto:Rutledge@bybelrutledge.com]
Sent: Thursday, January 18, 2018 12:54 PM
To: joecole@parfunding.com; NORMAN VALZ <NVALZ@msn.com>
Cc: Tara Burns <burns@bybelrutledge.com>
Subject: Subpoena Matrix for PA Department of Banking and Securities

Joe and Norm:

As requested, attached is a matrix for CBS to follow in producing documentation covered by the subpoena issued by PADOBS.

The due date is February 5, 2018 as February 4 is a Sunday.

After a brief discussion with morning with Department staff to receive some clarification on the subpoena, the Department appears focused on the payment by CBS of finder's fees in connection with the sale of the promissory notes to persons who are not registered with the Department to receive such fees.

My strong legal advice is for **CBS IMMEDIATELY DESIST FROM PAYING ANY FINDERS FEES**. This would include any compensation that might be due but not yet paid and certainly applies to future referrals by such folk.

Although this may not avoid an action by the Department, it will go a long way to convincing the Department that, when this practice was brought to your attention, you immediately responded by discontinuing the practice.

Regarding a potential action by the Department, I think where this is heading is to a consent order and agreement wherein CBS, without admitting or denying any allegations of paying compensation to unregistered persons in violation of the PA Securities Act, it will agree to a finding and payment of a fine. This will be a public order and searchable on the internet.

I am available this afternoon to discuss this matter further.

Regards,

Philip

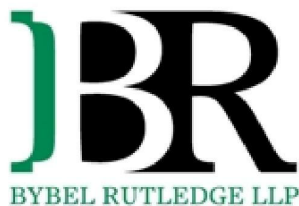


EXHIBIT 132

G. Philip Rutledge
BYBEL RUTLEDGE LLP
1017 Mumma Road, Suite 302
Lemoyne, PA 17043
Tel. 717.731.1700
Fax 717.731.8205


rutledge@bybelrutledge.com
www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Message

From: Cohen, Stephen M. [SMCohen@foxrothschild.com]
Sent: 4/5/2020 11:16:13 AM
To: Philip Rutledge [Rutledge@bybelrutledge.com]
CC: Berman, Brett [BBerman@foxrothschild.com]; Taylor, Lauren W. [LWTaylor@foxrothschild.com]
Subject: Re: [EXT] RE: CBSG Exchange Offer: Attorney-Client Privileged

It's at least \$380mm. Also, as I further reflect, 80% compliance probably not good enough. It's a company question. Trust indenture compliance difficult at best. The company needs to avoid that, if possible. Thanks

Stephen M. Cohen
Fox Rothschild LLP
2000 Market Street, 20th fl.
Philadelphia, PA 19103
(O) 215 299-2744
[REDACTED]

On Apr 5, 2020, at 11:06 AM, Philip Rutledge <Rutledge@bybelrutledge.com> wrote:

Do you know the aggregate principal amount to be exchanged?

<image001.png>

G. Philip Rutledge
BYBEL RUTLEDGE LLP
1017 Mumma Road, Suite 302
Lemoyne, PA 17043
Tel. 717.731.1700
Fax 717.731.8205
[REDACTED]
rutledge@bybelrutledge.com
www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: Cohen, Stephen M. <SMCohen@foxrothschild.com>
Sent: Sunday, April 5, 2020 11:05 AM
To: Philip Rutledge <Rutledge@bybelrutledge.com>
Cc: Berman, Brett <BBerman@foxrothschild.com>; Taylor, Lauren W. <LWTaylor@foxrothschild.com>
Subject: Re: [EXT] RE: CBSG Exchange Offer: Attorney-Client Privileged

EXHIBIT 134

 External email - Caution opening links/docs

I am thinking a minimum acceptance rate of 80%. They are going to have to exert leverage on the group. Either they all jump in the boat(or at least 80% of them), or they are going for a swim. Obviously, this is a client call.

Stephen M. Cohen
Fox Rothschild LLP
2000 Market Street, 20th fl.
Philadelphia, PA 19103
(O) 215 299-2744


On Apr 5, 2020, at 11:01 AM, Philip Rutledge <Rutledge@bybelrutledge.com> wrote:

All,

Is there going to be a minimum acceptance requirement and if so, what is the minimum?

If this is the case and in light of your comments, I would include a stronger #1 risk factor associated with this issue indicating that failure to tender X principal amount by Y date may likely result in the client having to seek protection of the bankruptcy courts which could engender substantial litigation that could divert financial resources away from paying on the Restated Notes to covering legal and court fees.

Also, whether the client wants to rely on Section 3(a)(9) may depend on availability of an exemption from the Trust Indenture Act which appears to be dependent on the principal amount of notes offered to be exchanged (max of \$50 million in a 12 month period per reference to Section 3(b) of the 1933 Act). This is based upon an assumption that the client may wish to avoid Trust Indenture Act issues.

If the current situation warrants compliance with the Trust Indenture Act in order to rely on Section 3(a)(9), perhaps Lauren could put together a checklist of what may be required. The main issue, however, would be to get someone to agree to be a trustee and the fees involved. It also may require a separate entity being a paying agent. Obviously, it would require drafting of additional legal agreements and perhaps filing a form with the SEC.

Section 3(a)(9) does not require any qualification of offerees only that the offering is made "with its existing security holders exclusively." Therefore, an accredited investor representation would not necessarily be required; however, I think I would keep it in just to make the noteholder reaffirm its status as in the previous note.

In the alternative, the client could rely on Rule 506(b) for the exchange offer as offerings under that section are exempt from the Trust Indenture Act but that would entail filing a new Form D with the SEC and the states. It also would require inclusion of the accredited investor representation.

Whether or not a Form D filing may be required for the exchange offer, I suggest that CBSG file an amendment to its existing Form D which should have been done in February 2020 to delete the finder fee information which appeared on the February 12, 2019 Form D filing and which is the only filing that is publicly available.

Phil

<image001.png>

G. Philip Rutledge
BYBEL RUTLEDGE LLP
1017 Mumma Road, Suite 302
Lemoyne, PA 17043
Tel. 717.731.1700
Fax 717.731.8205

rutledge@bybelrutledge.com
www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: Cohen, Stephen M. <SMCohen@foxrothschild.com>
Sent: Sunday, April 5, 2020 8:31 AM
To: Philip Rutledge <Rutledge@bybelrutledge.com>; Berman, Brett <BBerman@foxrothschild.com>
Cc: Taylor, Lauren W. <LWTaylor@foxrothschild.com>
Subject: RE: CBSG Exchange Offer: Attorney-Client Privileged

External email - Caution opening links/docs

Phil, the idea of structuring this as an Exchange Offer works perfectly to incorporate minimum acceptance standards. We may need to do so in order to incentivize broad-based acceptance of the offer.

The various lenders need to understand that we need to receive overwhelming support of the offer; otherwise they stand to risk an insolvency event, or a company mired in collection litigation, which is never good for business.

Naturally, this is a business issue that has to be supported by our clients.

Stephen Cohen
Partner
Fox Rothschild LLP
2000 Market Street
20th Floor
Philadelphia, PA 19103-3222
(215) 299-2744 -direct
[REDACTED]
(215) 299-2150- fax
SMCohen@foxrothschild.com
www.foxrothschild.com

From: Philip Rutledge <Rutledge@bybelrutledge.com>
Sent: Saturday, April 04, 2020 5:05 PM
To: Berman, Brett <BBerman@foxrothschild.com>; Cohen, Stephen M. <SMCohen@foxrothschild.com>
Subject: [EXT] CBSG Exchange Offer: Attorney-Client Privileged

Brett and Steve:

I would like to get your thoughts on some issues before discussion with Joe.

Organizational Matters

I think we are agreed that not only does the exchange offer represent an opportunity for restructuring of CBSG debt, it also may provide an opportunity to address concerns raised in the TX Order.

From an organization viewpoint, my suggestion is to have an Exchange Offer Document (a draft of which is attached) which explains the exchange offer, includes several risk factors, describes the features of the new notes and includes the regulatory and litigation disclosures. The exhibits to this document would be the Amended and Restated Note Purchase Agreement, the Amended and Restated Note and the Amended and Restated Security Agreement as prepared by Steve.

This would allow everything to be incorporated into a comprehensive document and may allow the modification of Section 4.14 of the Amended and Restated Note Purchase Agreement with respect to regulatory and litigation disclosures.

Legal Issue

Originally, the plan was to rely on the exemption in Section 3(a)(9) of the 1933 Act for the exchange offer. However, that could invoke compliance with the Trust Indenture Act of 1939.

The way I read the Trust Indenture Act exemptions is that, to be exempt, the exchange offer would have to rely on Rule 506(b) or the amount of the exchange offer would have to be \$50 million or less as permitted under offering limitations of Section 3(b) of the 1933 Act. Do you know the principal amount of notes to be exchanged?

If CBSG has to rely on Rule 506(b), then CBSG should file a new Form D for the Exchange Offer and make filings in all of the states where the exchange offerees reside.

Steve, your thoughts on this?

Disclosure Issues

I have highlighted a number of areas in the attached disclosure which need either data or confirmation from Joe or highlights structural issues which need to be resolved (see below).

Structural Issues

These are more in the nature of inquiries:

1. The "Effective Date" is the date at the top of the Amended and Restated Note. I am concerned that the exchange offeree will fill that in and that becomes the effective date. My suggestion is that the effective date be the date that CBSG executes the documents.
2. Should CBSG allow the Restated Notes to be pledged, assigned, transferred or hypothecated? If CBSG needs to rely on Rule 506(b) for the Restated Notes, there would be a new holding period. A pledge could be considered a sale of a security and we don't want a noteholder to violate the resale restriction by pledging the Restated Note. My thinking is to lockdown the Restated Note as non-negotiable, non-transferable and not eligible to be pledged or hypothecated but that is a business decision.
3. Should CBSG be given the ability to redeem a Restated Note at its option or have the ability to mandate redemption on a pari passu basis?

Comments on Amended and Restated Note Purchase Agreement

1. In Section 2.05(b), Subordinated Creditor does not appear to be defined.
2. Under Section 4.15, what type of financial information is contemplated. In the attached document, I am suggesting perhaps including the latest audited financial statements or balance sheet and/or perhaps an unaudited balance sheet for 12/31/2019 and the first quarter of 2020.
3. Do you want to include a "survival" provision?
4. Attached are some editorial suggestions for the Recitals.

Comments on the Amended and Restated Note

1. The above-referenced issue of pledging, transferability, assignment, etc. should be resolved.
2. Under Section 1, should the interest rate be 5% per annum?
3. In Section 3(b), should business day be defined in the note?

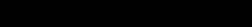
All comments are welcome.

Thanks,

Phil

<image001.png>

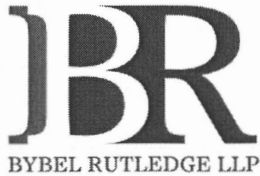
G. Philip Rutledge
BYBEL RUTLEDGE LLP
1017 Mumma Road, Suite 302
Lemoine, PA 17043
Tel. 717.731.1700
Fax 717.731.8205


rutledge@bybelrutledge.com
www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Fox Rothschild LLP by replying to this email and delete the original and reply emails. Thank you.

This email contains information that may be confidential and/or privileged. If you are not the intended recipient, or the employee or agent authorized to receive for the intended recipient, you may not copy, disclose or use any contents in this email. If you have received this email in error, please immediately notify the sender at Fox Rothschild LLP by replying to this email and delete the original and reply emails. Thank you.



1017 Mumma Road
Suite 302
Lemoyne, PA 17043
717.731.1700 phone
717.731.8205 fax
www.bybelrutledge.com

Via E-mail

November 8, 2018

FOR SETTLEMENT PURPOSES ONLY

Stefanie Hamilton, Deputy Chief Counsel
Pennsylvania Department of Banking and Securities
17 N. Second Street, Suite 1300
Harrisburg, PA 17101

RE: Complete Business Solutions Group, Inc. d/b/a PAR Funding
Your File No.: 2017-12-4
Our File No.: 358-001

Dear Ms. Hamilton:

We serve as special counsel to Complete Business Solutions Group, Inc. (“CBSG”) in connection with the above-referenced matter. This responds to our telephone conversation of November 2, 2018 wherein you advised of the terms upon which the Pennsylvania Department of Banking and Securities (the “Department”) would enter into a consent order with CBSG (“Consent Order”) with respect to alleged violations by CBSG of Section 301(b) of the Pennsylvania Securities Act of 1972, as amended (the “1972 Act”).

Business of CBSG

The business plan of CBSG is to provide working capital to merchants, including many Pennsylvania small businesses, through the purchase of an interest in a designated portion of the merchants’ future accounts and receivables. Under agreement with CBSG, a merchant agrees to sell a certain amount of its future receipts to CBSG for an immediate cash payment. The merchant further agrees to pay CBSG a daily amount of the future receipts to fulfill the transaction with the daily amounts deducted from the merchant’s operating account by CBSG pursuant to the terms of its agreement with the merchant.

EXHIBIT 135

Stefanie Hamilton, Esq.

November 8, 2018

Page 2

The source of funding, in part, for CBSG's purchase of merchant future accounts and receivables, was the offer and sale of non-transferable, non-negotiable promissory notes ("Notes") accompanied by the grant of a security interest to the purchaser of the Note of all tangible and intangible assets of CBSG. CBSG advises that all interest and principal on the Notes have been paid promptly in accordance with their terms and there are no outstanding delinquencies.

CBSG sold the Notes exclusively to accredited investors as that term is defined in Rule 501(a) of SEC Regulation D ("Accredited Investors") in good faith reliance on Rule 506(b) of SEC Regulation D and Section 211(b) of the 1972 Act. Pursuant to Rule 501(b) of SEC Regulation D, "an issuer is not required to furnish the specified information to purchasers when it sells securities under Rule 504, or to *any accredited investor*" (emphasis added). CBSG already has provided documentary evidence to the Department that CBSG has a reasonable basis to believe that all of the purchasers of the Notes were Accredited Investors.

CBSG's Cooperation with the Department's Investigation

At all times, CBSG has cooperated with the Department with respect to the Department's investigation of the sale of the Notes. Upon receipt of the subpoena issued by the Department on January 4, 2018, CBSG engaged experienced securities counsel and, upon his advice, immediately terminated its finder agreements. Furthermore, CBSG, with the advice of special counsel, totally revised its Note Purchase Agreement which it has implemented, including a representation and warranty by the purchaser and the seller that no finders or brokers are being used or compensated in connection with the purchase or sale of the Notes.

As you are aware, the terms of the subpoena issued by the Department relate solely to books, records and other documents (including schedules and summaries thereof) in CBSG's possession or control. Pursuant to your request of September 28, 2018, CBSG engaged its accountants, at considerable cost to CBSG, to prepare specific spreadsheet information which did not constitute a summary of documents routinely maintained by CBSG but were prepared *de novo* in response to a specific request by the Department. Furthermore, CBSG cooperated by providing a list of the address of each purchaser of a Note associated with each finder.

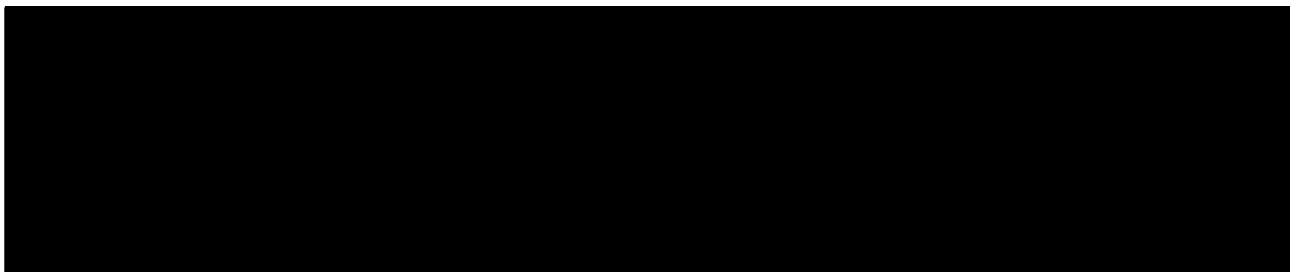
In many regulatory investigations, regulators take into account the cooperation of a respondent when determining an appropriate regulatory sanction. To do otherwise would remove any incentive for any respondent to cooperate with the regulator in any investigation.

Stefanie Hamilton, Esq.
November 8, 2018
Page 3

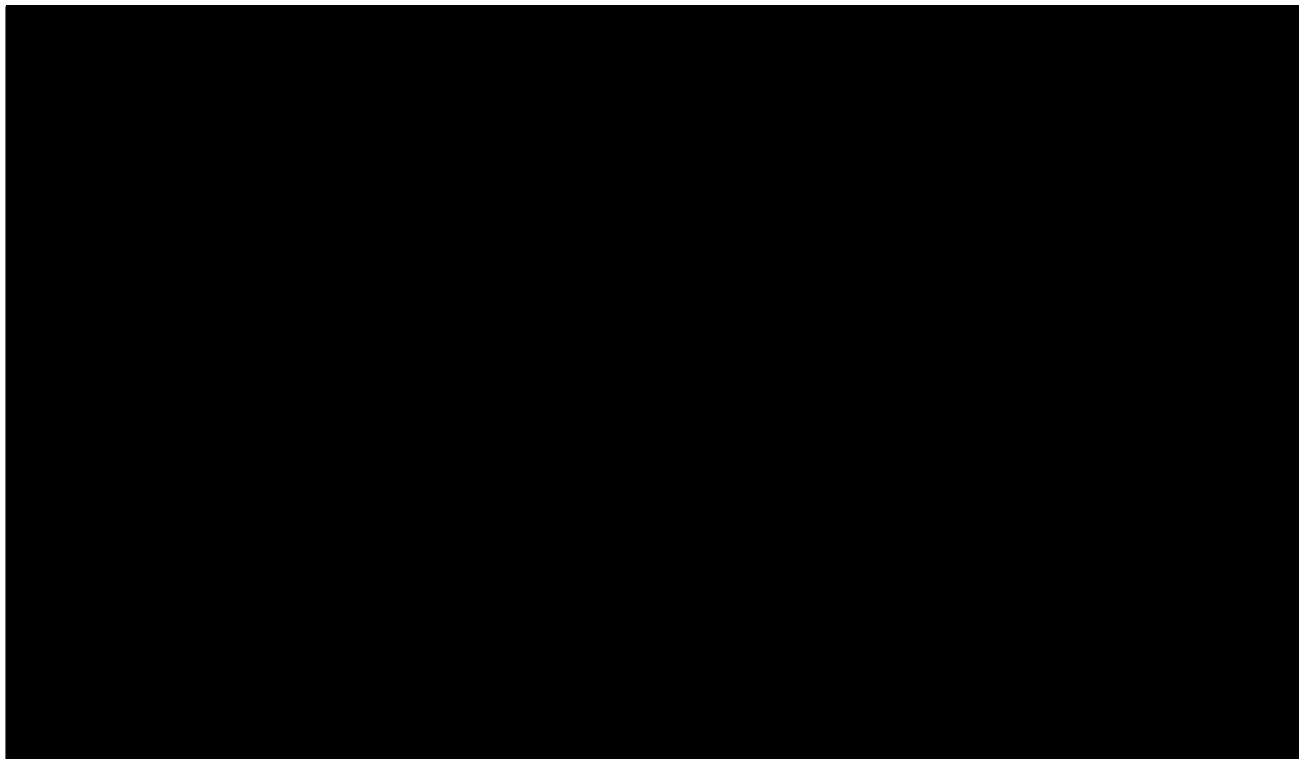
Alleged Violation of the 1972 Act

The Department has not alleged that the offer and sale of the Notes violated Section 201 of the 1972 Act. The Department has alleged that CBSG violated Section 301(b) of the 1972 Act which provides, in part, that it is unlawful for any issuer to employ an agent to represent him in this state unless the agent is registered under the 1972 Act.

Department's Request for Administrative Assessment



Prior Department Precedent for Section 301(b) Violations



Stefanie Hamilton, Esq.
November 8, 2018
Page 4

The Woodbridge order is interesting in that subsequent to its issuance, the Department issued orders to show cause against four individuals alleging that they sold over \$1 million of Woodbridge securities in Pennsylvania. The SEC has accused Woodbridge of being a \$1.2 billion Ponzi scheme so it is logical to assume that the total sales of Woodbridge securities in Pennsylvania was much greater than \$1 million. Yet Woodbridge received an administrative assessment which is infinitesimal to that requested of CBSG. Why should CBSG be treated differently than Citigroup and Woodbridge?

Analyzing the Department's Request

Notwithstanding the fact CBSG should be treated similarly to Citigroup and Woodbridge, we have undertaken an analysis of the Department's settlement request in context of the relevant sections of the 1972 Act.

Section 301(b) applies to an issuer who employs an agent to represent him in Pennsylvania. Based on the plain statutory language, this does not apply to agents who may represent the issuer outside of Pennsylvania. Furthermore, the definition of agent in Section 102(c) of the 1972 Act excludes an individual representing an issuer in a Rule 506 transaction if no compensation is paid or given directly or indirectly for soliciting any person in this state in connection with such transaction. Therefore, if no finder's fee was paid with respect to the sale of a Note, the person is excluded from the definition of agent and his conduct does not come within the ambit of Section 301(b).

The fact that CBSG may have entered into a finder's agreement does not in and of itself constitute a violation. The violation occurs when the finder engages in conduct described in Section 102(c) of the 1972 Act (ie acting as an agent) unless he otherwise is excluded from the definition or is exempt from registration.

Sale of Notes

Stefanie Hamilton, Esq.

November 8, 2018

Page 5

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

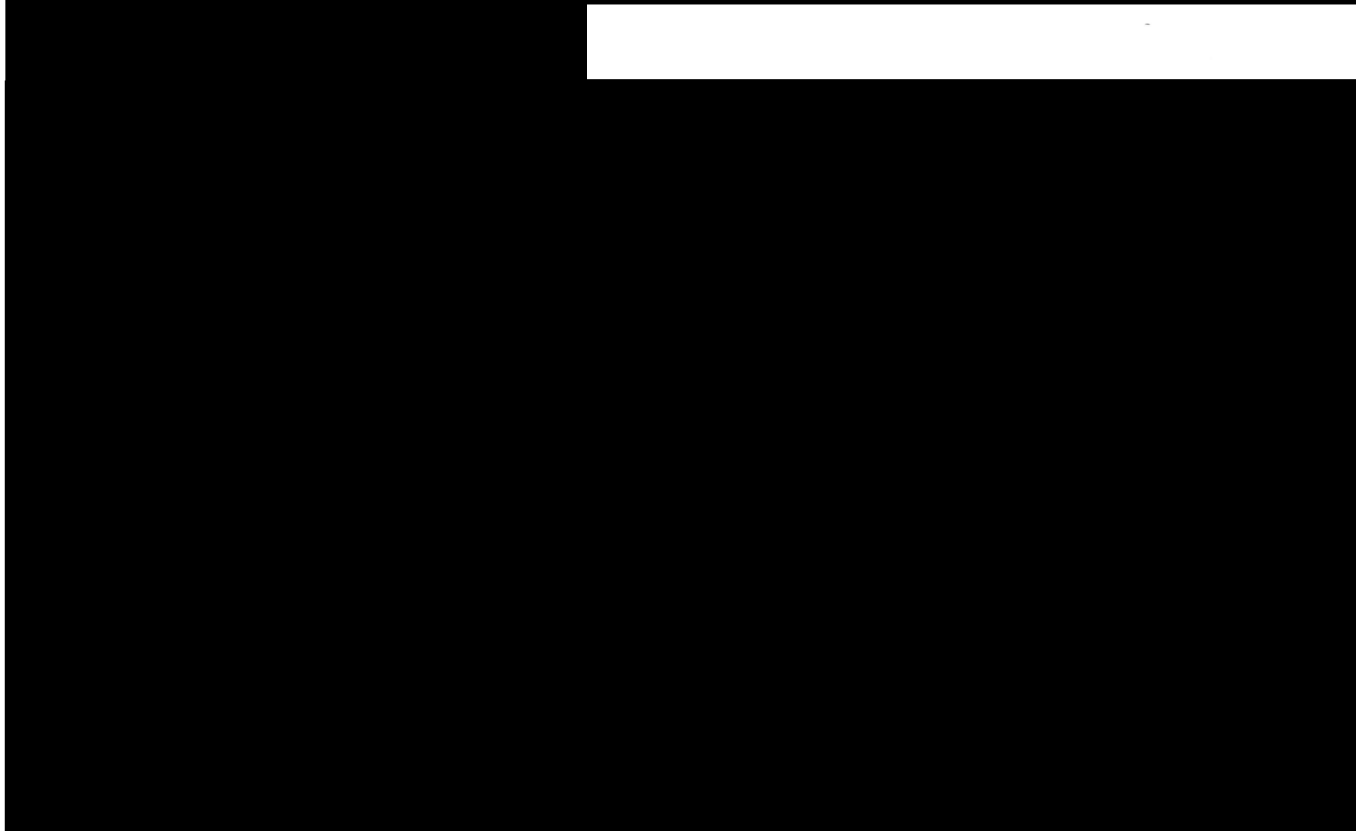
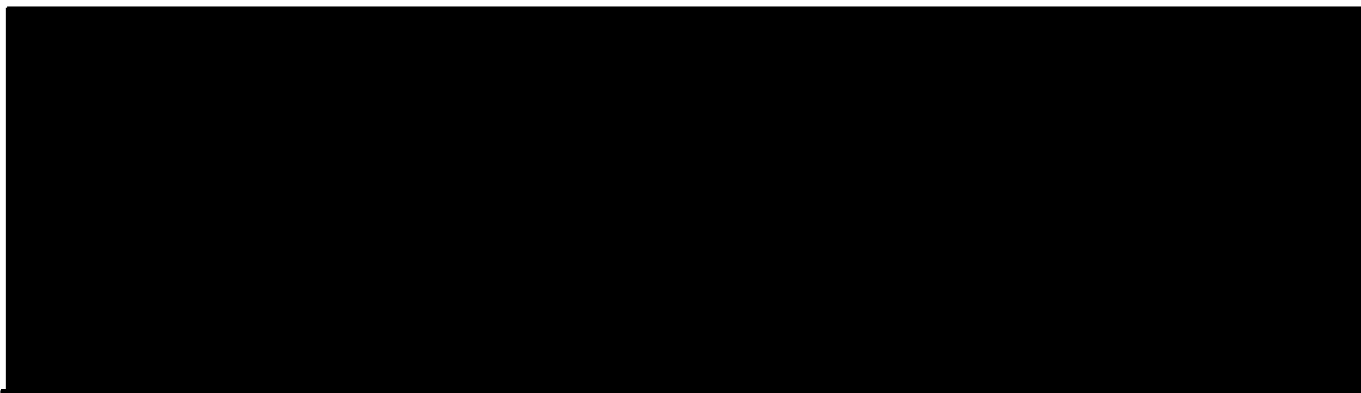
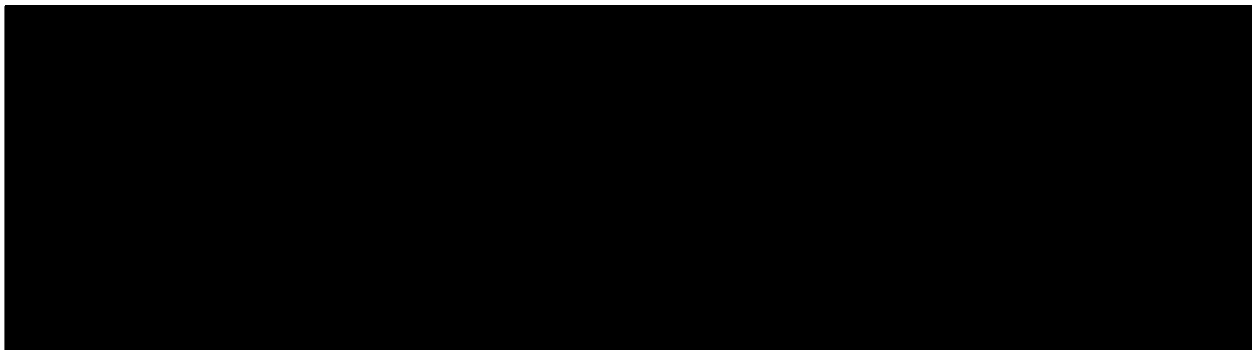
[REDACTED]

[REDACTED]

Stefanie Hamilton, Esq.

November 8, 2008

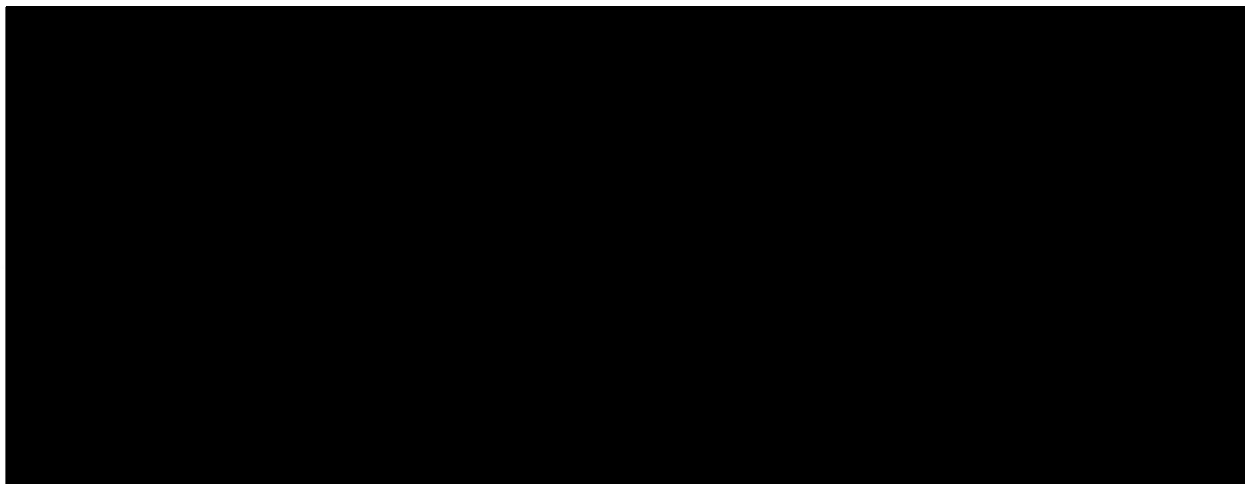
Page 6



Stefanie Hamilton, Esq.

November 8, 2018

Page 6



Based upon our statistical analysis of, and the application of the statutory language of Section 301(b) to, the evidence presented herein, CBSG believes this to be a fair offer which it hopes is acceptable to the Department.

Very truly yours,



BYBEL RUTLEDGE LLP

By: G. Philip Rutledge

Enclosures

Exhibit A – Summary of Note Sales to PA Residents and Sales without Fees Paid

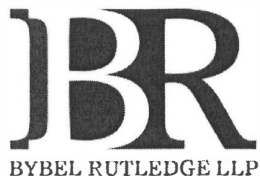
Exhibit B – Listing by Finder of all Sales of Notes and Fees Paid

Exhibit C – Listing by Finder of all Sales of Notes to PA Residents

Exhibit D – Listing of PA Purchasers and Non-PA Purchasers of Notes

cc: Joe Cole, CFO, Complete Business Solutions Group, Inc.

Cynthia Clark, Esq., General Counsel, Complete Business Solutions Group, Inc.



1017 Mumma Road
Suite 302
Lemoine, PA 17043
717.731.1700 phone
717.731.8205 fax
www.bybelrutledge.com

Via E-mail

November 14, 2018

FOR SETTLEMENT PURPOSES ONLY

Stefanie Hamilton, Deputy Chief Counsel
Pennsylvania Department of Banking and Securities
17 N. Second Street, Suite 1300
Harrisburg, PA 17101

RE: Complete Business Solutions Group, Inc. d/b/a PAR Funding ("CBSG")
Your File No.: 2017-12-4
Our File No.: 358-001

Dear Ms. Hamilton:

Thank you for your comments on CBSG's submission to the Pennsylvania Department of Banking and Securities (the "Department") of November 8, 2018 (the "November 8 Submission") which responded to the Department's offer to settle communicated on November 2, 2018. I also appreciate you expressing a willingness to recognize CBSG's cooperation in the Department's investigation. I now have had the opportunity to review the documents previously provided to the Department to which you referred in your e-mail correspondence of November 8, 2018.

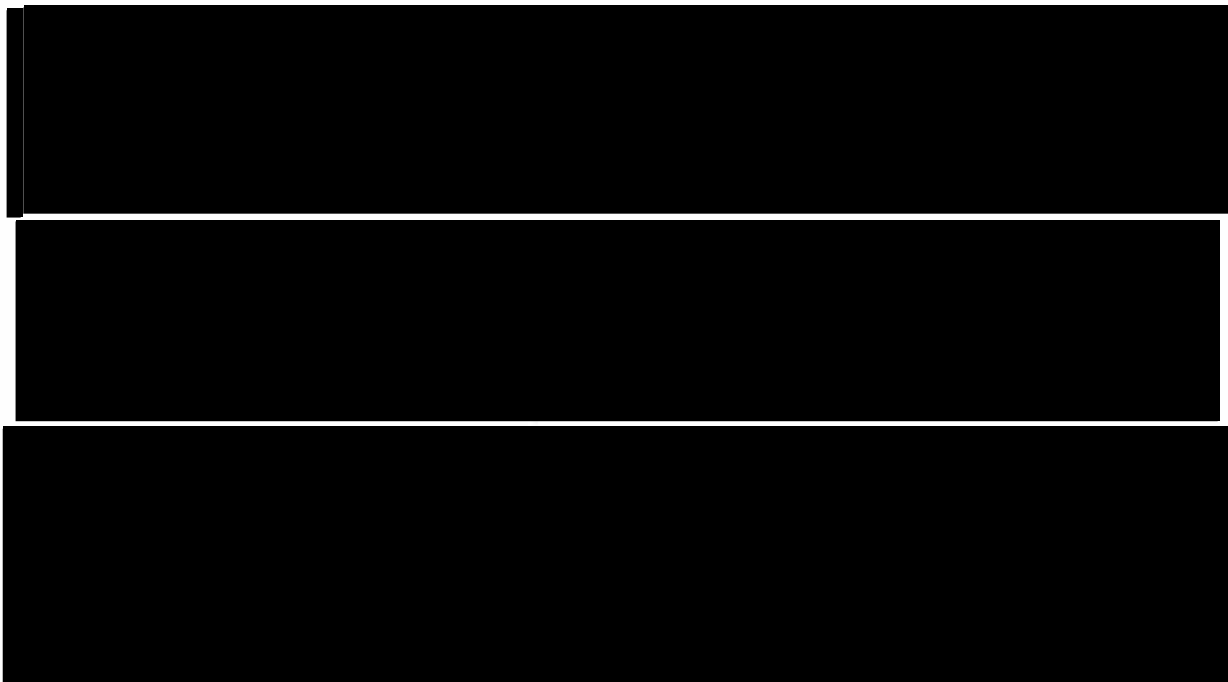


EXHIBIT 136

Stefanie Hamilton, Esq.
November 14, 2018
Page 2

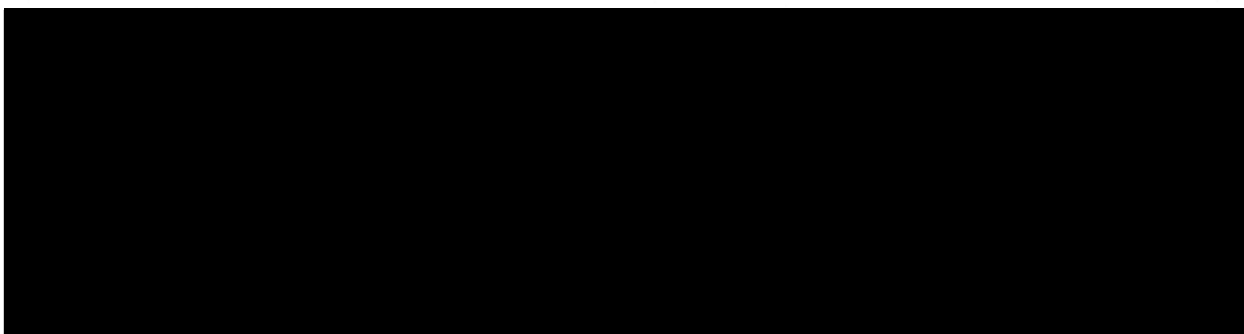
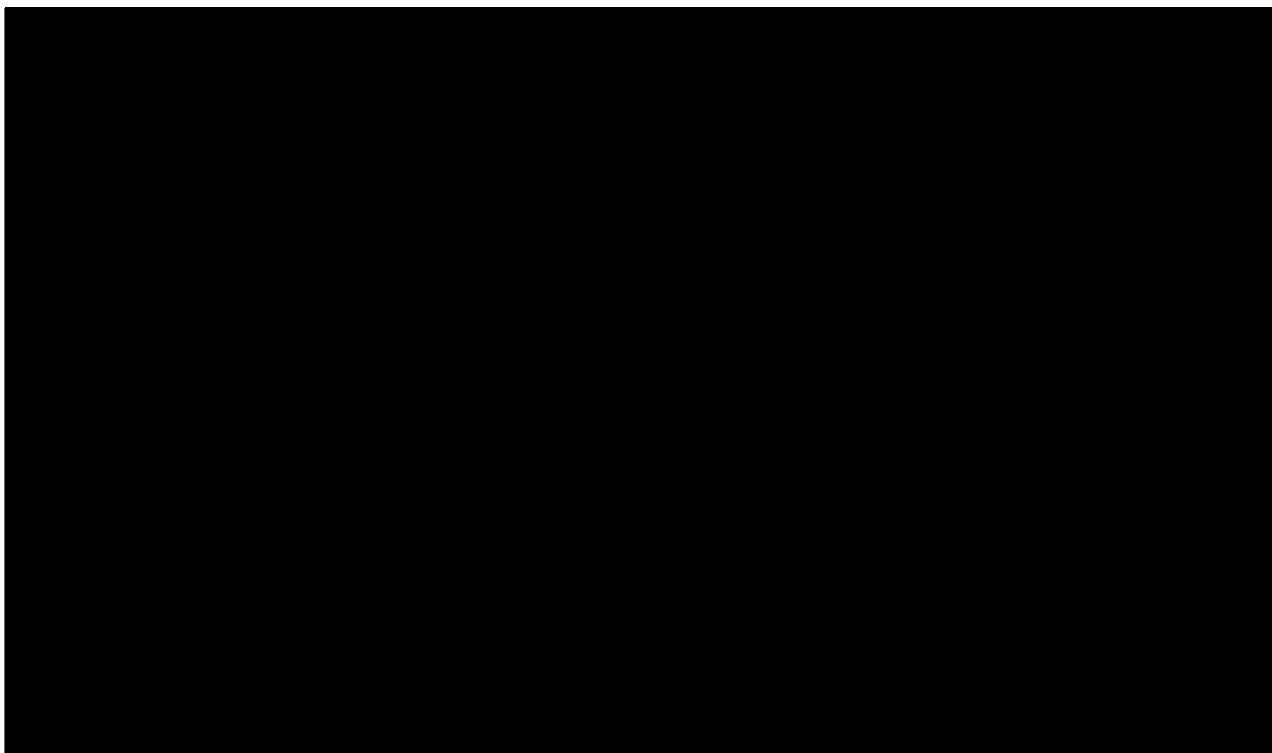
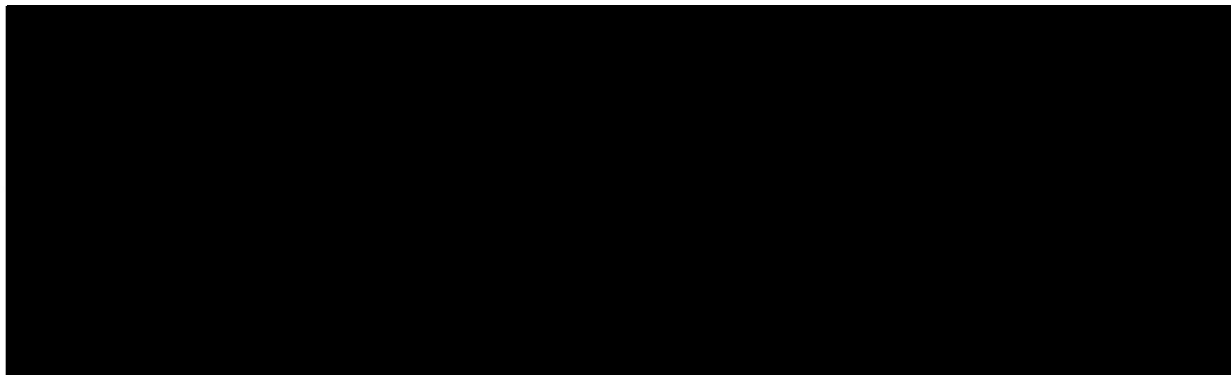
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Stefanie Hamilton, Esq.
November 14, 2018
Page 3



Stefanie Hamilton, Esq.
November 14, 2018
Page 4

[REDACTED]

My client has requested that I emphasize to the Department that, as a result of its investigation and the cooperation provided by CBSG, it has substantially revised its business procedures with respect to issuing Notes and, unless otherwise advised by the Department that such procedures are not compliant with the 1972 Act, plan to continue to follow such procedures in future.

Specifically, CBSG intends to issue Notes only to persons who it has a reasonable belief are accredited investors under Section 501(a) of SEC Regulation D in good faith reliance on Rule 506(b) of SEC Regulation D in transactions where any individual representing CBSG is not paid any compensation, directly or indirectly, for soliciting any person in Pennsylvania in connection with the offer or sale of the Notes by which CBSG may rely on Section 211(b) of the 1972 Act for the offer and sale of the Notes and on the exclusion from the definition of agent in Section 102(c) of the 1972 Act with respect to any individual who may represent CBSG in connection with the offer and sale of the Notes.

In this regard, CBSG has adopted and has been using a new Note purchase agreement wherein purchasers and sellers must represent that no fees or commissions were paid to any agent, broker, finder or any other person in connection with the purchase or sale of the Notes and the purchaser must represent that it is not acting as a broker-dealer, investment adviser or an investment company and that its business as now being conducted is being conducted in compliance with all applicable federal and state securities laws.

Very truly yours,



BYBEL RUTLEDGE LLP
By: G. Philip Rutledge

cc: Joe Cole, CFO, Complete Business Solutions Group, Inc.
Cynthia Clark, Esq., General Counsel, Complete Business Solutions Group, Inc.

My thoughts on the final paragraph:

In this regard, CBSG has adopted and has been using a new Note purchase agreement wherein purchasers and sellers must represent that no fees or commissions were paid to any agent, broker, finder or any other person in connection with the purchase or sale of the Notes and the purchaser must represent that it is not acting as a broker-dealer, investment adviser or an investment company, and CBSG's business is now being conducted in compliance with all applicable federal and state securities laws.

Cindy

Cynthia A. Clark, Esquire
General Counsel



20 N 3rd St
Philadelphia, PA 19106

Office: 215-422-3316 x1019 | Direct: 267-540-8126 | [REDACTED]
caclark@parfunding.com | www.parfunding.com

IMPORTANT: This e-mail and any files transmitted with it are intended only for the use of the addressee and may contain information that is legally privileged and confidential; it may not be forwarded without permission of the sender. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. Please notify the sender electronically or by telephone immediately by calling 267-540-8126 if you have received this e-mail in error.

From: Philip Rutledge <Rutledge@bybelrutledge.com>

Sent: Tuesday, November 13, 2018 4:00 PM

To: Joe Cole <joecole@parfunding.com>

Cc: Cynthia Clark <CAclark@parfunding.com>

Subject: RE: Draft Letter to PADOBS with Option 1

Joe and Cindy:

I revised accordingly and placed the onus on them to say if the proposed business process was non-compliant which alleviated the need for the last paragraph which I removed.

Your thoughts?

Phil



rutledge@bybelrutledge.com
www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: Joe Cole [<mailto:joecole@parfunding.com>]

Sent: Tuesday, November 13, 2018 3:51 PM

To: Philip Rutledge

Cc: Cynthia Clark

Subject: Re: Draft Letter to PADOBS with Option 1

I like the language and would like to make a small adjustment of asserting that the changes have already been made and that we'll continue to use the process, which we understand, is compliant.

We should be good to send out today unless Cindy has anything else to modify.

Thank you.

Joe Cole

On Tue, Nov 13, 2018 at 3:45 PM Philip Rutledge <Rutledge@bybelrutledge.com> wrote:
Cindy and Joe:

In light of your comments, I drafted some additional paragraphs at the end of the letter.

Let me know if you would like to include them.

It would not take the place of seeking similar language in the Findings of Fact.

Phil

G. Philip Rutledge
BYBEL RUTLEDGE LLP
1017 Mumma Road, Suite 302
Lemoyne, PA 17043
Tel. 717.731.1700
Fax 717.731.8205

rutledge@bybelrutledge.com
www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the

Case 9:20-cv-81295-RAB Document 823-2 Entered on FLSD Docket 10/06/2021 Page 129 of 137
must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: Cynthia Clark [mailto:CAclark@parfunding.com]

Sent: Tuesday, November 13, 2018 3:41 PM

To: Philip Rutledge

Cc: Joe Cole

Subject: RE: Draft Letter to PADOBS with Option 1

Thanks, Phil. We should get the language in the consent order to be as broad as and cover as much as possible. We can make a determination on a no-action letter a later time, unless you think otherwise.

Cindy

Cynthia A. Clark, Esquire
General Counsel

20 N 3rd St

Philadelphia, PA 19106

Office: 215-422-3316 x1019 | Direct: 267-540-8126 | [REDACTED]

caclark@parfunding.com | www.parfunding.com

IMPORTANT: This e-mail and any files transmitted with it are intended only for the use of the addressee and may contain information that is legally privileged and confidential; it may not be forwarded without permission of the sender. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. Please notify the sender electronically or by telephone immediately by calling 267-540-8126 if you have received this e-mail in error.

From: Philip Rutledge <Rutledge@bybelrutledge.com>

Sent: Tuesday, November 13, 2018 3:07 PM

To: Cynthia Clark <CAclark@parfunding.com>

Cc: Joe Cole <joecole@parfunding.com>

Subject: RE: Draft Letter to PADOBS with Option 1

Cindy:

Corp. Fin. may not want to grant the request because it just re-states current statutory law or it may not want to grant the request because CBSG is/was the subject of enforcement action.

However, I don't think CBSG would be subject to any greater scrutiny by asking.

I still think the initial step is to get something included in the Findings of Fact in the Consent Order.

Regards,

Phil

G. Philip Rutledge
BYBEL RUTLEDGE LLP
1017 Mumma Road, Suite 302
Lemoyne, PA 17043
Tel. 717.731.1700
Fax 717.731.8205

CBSG-ReceiverNative-000484274

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: Cynthia Clark [<mailto:CAclark@parfunding.com>]

Sent: Tuesday, November 13, 2018 2:59 PM

To: Philip Rutledge

Cc: Joe Cole

Subject: RE: Draft Letter to PADOBS with Option 1

Would such a no-action letter put CBSG on the radar (again, and with a separate department) and subject CBSG to greater or additional scrutiny?

Cindy

Cynthia A. Clark, Esquire
General Counsel

20 N 3rd St

Philadelphia, PA 19106

Office: 215-422-3316 x1019 | Direct: 267-540-8126 | [REDACTED]

caclark@parfunding.com | www.parfunding.com

IMPORTANT: This e-mail and any files transmitted with it are intended only for the use of the addressee and may contain information that is legally privileged and confidential; it may not be forwarded without permission of the sender. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. Please notify the sender electronically or by telephone immediately by calling 267-540-8126 if you have received this e-mail in error.

From: Philip Rutledge <Rutledge@bybelrutledge.com>

Sent: Tuesday, November 13, 2018 2:52 PM

To: Cynthia Clark <CAclark@parfunding.com>

Cc: Joe Cole <joecole@parfunding.com>

Subject: RE: Draft Letter to PADOBS with Option 1

Cindy:

What you are requesting is similar to what we call in the trade, a staff no action letter.

This is where you would submit a letter to the Department saying that you are offering and selling notes only to persons which you have reason to believe are accredited investors in good faith compliance under Rule 506(b) of SEC Regulation D and as to which you will not directly or indirectly pay and compensation for the sale of the Notes and you would give your legal opinion that the notes are exempt from registration under Section 201 of the 1972 Act pursuant to Section 211(b) and that the persons who represent CBSG are excluded from the definition of agent in Section 102(c) of the 1972 Act.

The letter would be addressed to the Division of Corporation Finance at the Department and not the Division of Enforcement and it has total discretion as to whether to respond to the no action letter request.

Having said all that, what I would try to do is put language into the Findings of Fact that you are now doing what is

CBSG-ReceiverNative-000484274

described in para. 2 above (including use of a new Note Purchase Agreement which specifically ensures that no finders are being used) which, if successful, could be interpreted as an indirect confirmation by the Department that it does not have an objection to this business practice going forward.

Regards,

Phil

G. Philip Rutledge
BYBEL RUTLEDGE LLP
1017 Mumma Road, Suite 302
Lemoyme, PA 17043
Tel. 717.731.1700
Fax 717.731.8205

rutledge@bybelrutledge.com
www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: Cynthia Clark [<mailto:CAclark@parfunding.com>]

Sent: Tuesday, November 13, 2018 2:30 PM

To: Philip Rutledge

Cc: Joe Cole

Subject: RE: Draft Letter to PADOBS with Option 1

Phil, I have a question about the non-financial terms that would be included in a consent order. Per your November 8 letter, the order would conclude the Department's investigation and any other action it could commence under applicable PA law as it relates to the offer and sale of Notes (a defined term in the correspondence) though the date of the consent order. Does that language encompass (or can it be broadened to encompass) the manner in which CBSG currently offers and sells notes (*i.e.*, a statement or acknowledgement that the current manner in which CBSG offers/sells notes is not in violation of PA law)? Our concern is that CBSG has modified the manner in which notes now being offered/sold (beyond the notes that are specifically the subject of the current investigation) and that the Department could initiate a new investigation after the date of the consent order with respect to those sales being made under the new procedures after the date of the order.

Please advise.

Thanks,
Cindy

Cynthia A. Clark, Esquire
General Counsel

20 N 3rd St
Philadelphia, PA 19106

Office: 215-422-3316 x1019 | Direct: 267-540-8126 | caclark@parfunding.com | www.parfunding.com

IMPORTANT: This e-mail and any files transmitted with it are intended only for the use of the addressee and may contain information that is legally privileged and confidential; it may not be forwarded without permission of the sender. If you are not the intended recipient, you are hereby notified that any dissemination of this communication is strictly prohibited. Please notify the sender electronically or by telephone immediately by calling 267-540-8126 if you have received this e-mail.

CBSG-ReceiverNative-000484274

From: Joe Cole <joe@parfunding.com>

Sent: Monday, November 12, 2018 2:50 PM

To: Philip Rutledge <Rutledge@bybelrutledge.com>

Cc: Cynthia Clark <caclark@parfunding.com>

Subject: Re: Draft Letter to PADOBS with Option 1

Ok, thanks Phil.

I'll discuss with Cindy first before signing off on it anyways.

Thanks for providing, we'll follow up tomorrow to send off.

Joe Cole

On Mon, Nov 12, 2018 at 2:45 PM Philip Rutledge <Rutledge@bybelrutledge.com> wrote:

Joe:

Attached for your review is a revised draft letter to PADOBS that includes Option 1.

You don't have to get back to me today – enjoy your day off!

Phil

G. Philip Rutledge
BYBEL RUTLEDGE LLP
1017 Mumma Road, Suite 302
Lemoyne, PA 17043
Tel. 717.731.1700
Fax 717.731.8205

rutledge@bybelrutledge.com
www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

Message

From: Joe Cole [joecole@parfunding.com]
Sent: 3/3/2020 7:54:21 PM
To: Philip Rutledge [Rutledge@bybelrutledge.com]
Subject: Re: CBSG Texas C&D Order
Attachments: image001.png; image002.png

Hi Phil,

Thanks for the quick response and looping me in on your trip to Britain for the rest of the month. Let me know if I should copy someone else at your office for the time being or if we're okay to continue corresponding via email.

The structure with the PPM funds is how we set it up as before, the PPM signs a purchase agreement indicating the protections and accreditation for their entity and purchases notes directly from CBSG. The relationship they have with individuals and how their funds are solicited is a liability on their end though it seems that some may be taking an aggressive approach and potentially misrepresenting themselves as agents of Par or marketing using our information. The PPM fund documents we reviewed do not specify which companies their funds are investing into and they have the ability to direct funds outside of our company if they choose.

Would you recommend providing guidelines and controls to PPM managers of how they are able to solicit their funds? Fortunately, this time it's not Vagnozzi though the relationships we've built with these funds and their investors have been lucrative to all parties involved. You are right about the haircut benefit for the funds, though I'm not sure how that would be treated. It sounds like something we could explain during a hearing.

Perry is a consultant for the company that travels and meets with these funds to discuss the company and how our notes function with their PPM. He is not an equity owner and does not take a commission for any capital raised though we are paying him a regular consulting fee.

I have noted the following factual errors as listed on the letter:

- #25: ABFP is not a commissioned sales agent for CBSG
- #26: CBSG does not provide financing as "hard money" transactions nor "venture capital for high-growth startups"
- #27: Perry is not a principal owner of Par Funding
- #29: ABFP does not invest in merchant cash advances at CBSG
- #30: CBSG does not pay commissions to Beasley or Merchant Growth
- #50: CBSG is registered with the state of Texas as a Reg D Rule 506 Filer (see attached)

I am not sure about the disclosure requirements for the funds to state prior registration issues, pending litigation or the identity of principals at CBSG. There may be some merit there but it would fall under the responsibility of the PPM manager and the counsel they used to set up their funds to begin with. Merchant Growth currently represents \$500K of the \$4.1M in note principal we have from investors in Texas.

Let me know if you or someone on your team can handle the request for a hearing with Texas. I will notify all these respondents that we intend to pursue the rights under the indemnification of their purchase agreement. I don't think it would hurt to add the disclosure for prior issues although we're very upfront about these when we start working with any fund manager.

I'll hold off on taking additional action until your next follow up. Thank you.

DEPOSITION
EXHIBIT
66

Joe Cole

On Tue, Mar 3, 2020 at 5:14 AM Philip Rutledge <Rutledge@bybelrutledge.com> wrote:

Joe:

As you can see by my out of office notice, I am in the UK teaching until the end of the month.

A Cease and Desist Order means stop what you are doing.

You indicated that you will stop selling notes in Texas which is a correct response to the C&D.

However, it may go beyond that. If PAR is selling notes to Vagnozzi and there are other persons out there raising funds in other jurisdictions to invest in A Better Financial Plan which, in turn, purchases notes from PAR, you will run into the same issue in those jurisdictions as in the Texas C&D.

Now that PA, NJ and TX have taken public actions, other states are going to be on high alert as to whether similar activities are occurring in their states.

This is the risk of continuing to do business with Vagnozzi, etc. because you can't control what he or others say or do and, as a result, PAR gets dragged into any of the problems that they create.

I have never heard of Abbonizio before. Is he part of PAR?

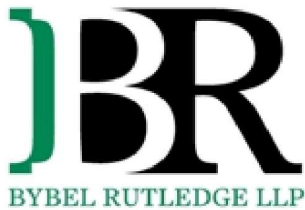
Although the individuals may not be getting a direct selling commission as in the case of the PA situation, I am sure TX will argue that the haircut they receive on the interest paid on the notes constitutes a selling commission.

The Note Purchase Agreement does have notice and indemnification provisions whereby the purchaser of the note indemnifies PAR against their violations of the securities laws.

Immediate recommended steps are:

1. Alert your insurance carrier in case there is coverage.
2. File a request for hearing with TX. Even if PAR may decide not to proceed, it is a place holder because if you don't request a hearing within the time frame, the order becomes final and unappealable.
3. Have PAR send a letter to each purchaser of a PAR note who is a respondent in the TX C&D reminding them of the representations and warranties made to PAR in the note agreement and the indemnification provisions and that PAR is serving notice that it intends to pursue all of its indemnification rights under the note agreement.
4. Consider adding an addendum to the note purchase agreement disclosing the actions taken by PA, NJ and TX so as to avoid future allegations of omissions of material fact in connection with the purchase and sale of the note.

Phil



G. Philip Rutledge

BYBEL RUTLEDGE LLP

1017 Mumma Road, Suite 302

Lemoyne, PA 17043

Tel. 717.731.1700

Fax 717.731.8205

rutledge@bybelrutledge.com

www.bybelrutledge.com

This message is for the named person's use only. It may contain confidential, proprietary or legally privileged material. No confidentiality or privilege is waived by any accidental or unintentional transmission. If you receive this message in error, please delete it immediately and all copies of it from your system, destroy any hard copies and notify the sender at 717.731.1700. You must not, directly or indirectly, use, disclose, distribute, print or copy any part of this

message if you are not the intended recipient. TAX ADVICE DISCLAIMER: Any federal tax advice contained in this communication (including attachments) was not intended or written to be used, and it cannot be used, by you for the purpose of (1) avoiding any penalty that may be imposed by the Internal Revenue Service or (2) promoting, marketing or recommending to another party any transaction or matter addressed herein.

From: Joe Cole <joecole@parfunding.com>
Sent: Monday, March 2, 2020 7:46 PM
To: Philip Rutledge <Rutledge@bybelrutledge.com>
Subject: CBSG Texas C&D Order

External email - Caution opening links/docs

Hi Phil,

Please see the attached letter received by us and a PPM fund we're working with.

Per our updated policy, Par has a note directly with their fund and they raise capital directly into their PPM without our involvement.

I found several erroneous statements on this response but let me know when you have some time to review.

We're holding off doing any additional notes in Texas for the time being.

We'd greatly appreciate your guidance on this sensitive matter, thanks.