UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. BRIAN H. STOKER, Defendant.	11 Civ. 07388 (JSR) ECF Case

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF ITS MOTION TO COMPEL PRODUCTION OF CERTAIN COMMUNICATIONS OVER WHICH PRIVILEGE HAS BEEN ASSERTED OR IN THE ALTERNATIVE TO PRECLUDE DEFENDANT BRIAN H. STOKER FROM ASSERTING THAT HE REASONABLY RELIED ON ADVICE OF COUNSEL

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April 5, 2012

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 2

ARGUMENT 6

I. Legal Standard For Determining If A Waiver Of A Privilege has Occurred 6

II. Stoker Waived His Attorney Client Privilege With Respect To Legal Advice Concerning The Disclosures In The Marketing Materials For Class V III 7

III. Citigroup Waived its Attorney Client Privilege With Respect To Any Legal Review Or Advice Concerning The Marketing Materials For Class V III 9

CONCLUSION 15

TABLE OF AUTHORITIES

FEDERAL CASES

Commodities Future Trading Comm'n v. Weintraub, 471 U.S. 343 (1985) 9

Fisher v. United States, 425 U.S. 391 (1976) 6

Granite Partners, L.P. v. Bear Stearns & Co., 184 F.R.D. 49 (S.D.N.Y. 1999) 10

Granite Partners, L.P. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., No. 96-cv-7874(RWS), 2002 WL 737482 (S.D.N.Y. Apr. 26, 2002) 14

In re Cnty. of Erie, 473 F.3d 413 (2d Cir. 2007) 6

In re Grand Jury Proceedings, 219 F.3d 175 (2d Cir. 2000).....6, 7, 8, 10

In re John Doe Corp. v. United States, 675 F.2d 482 (2d Cir. 1982) 10

In re Kidder Peabody Sec. Litig., 168 F.R.D. 459 (S.D.N.Y 1996) 7, 10

In re Sealed Case, 676 F.2d 793 (D.C.Cir. 1982) 10, 13

In re Sims, 534 F.3d 117 (2d Cir. 2008) 6, 7

In re von Bulow, 828 F.2d 94 (2d Cir. 1987) 7

In re Wagar, No. 1:06-MC-127 (LEK/RFT), 2006 WL 3699544 (N.D.N.Y. Dec. 13, 2006) 11, 12

Joy v. North, 692 F.2d 880 (2d Cir. 1982).....7

Markowski v. SEC, 34 F.3d 99 (2d Cir. 1994) 13, 14

SEC v. O'Meally, No. 06 Civ 6483(LTS)(RLE), 2010 WL 3911444 (S.D.N.Y Sep. 29, 2010) 13

TIFD III-E, Inc. v. United States, 223 F.R.D. 47 (D.Conn. 2004) 11

Trouble v. Wet Seal, Inc., 179 F.Supp.2d 291 (S.D.N.Y. 2001) 14

United States v. Bilzerian, 926 F.2d 1285 (2d Cir. 1991) 7, 8

United States v. Exxon Corp., 94 F.R.D. 246 (D.D.C. 1981).....7

United States v. Int'l Bd. Of Teamsters, Chauffeurs, Warehousemen and Helpers of Am., AFL-CIO, 119 F.3d 210 (2d Cir. 1997) 9

United States v. Mejia, 655 F.3d 126 (2d Cir. 2011) 7

United States v. Nobles, 422 U.S. 225 (1975) 10

United States v. Salvagno, 306 F.Supp.2d 258 (N.D.N.Y. 2004) 10

United States v. Schwimmer, 892 F.2d 237 (2d Cir. 1989) 11

Upjohn Co. v. United States, 449 U.S. 383 (1981) 6

von Bulow by Auersperg v. von Bulow, 811 F.2d 136 (2d Cir. 1987) 6

FEDERAL STATUTES AND RULES

FED R. CIV. P. 45 1

LOC. CIV. R. 7.1 1

MISCELLANEOUS

8 JOHN H. WIGMORE, EVIDENCE § 2326 (McNaughton rev. 1961) 13

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Pursuant to Federal Rules of Civil Procedure 45(c)(2)(B)(i) and Local Civil Rule 7.1 and the Court's Order, dated March 29, 2012, Plaintiff, the Securities and Exchange Commission ("Commission"), respectfully submits its Memorandum of Law in Support of Its Motion to Compel Production of Certain Communications Over Which Privilege Has Been Asserted or, in the Alternative, to Preclude Defendant, Brian H. Stoker from Asserting that He Reasonably Relied On Advice of Counsel.

PRELIMINARY STATEMENT

Brian H. Stoker ("Stoker" or "Defendant"), in a combined and joint defense with Citigroup Global Markets Inc. ("Citigroup"), has asserted reasonable reliance on counsel as an affirmative defense to the allegations against him. Citigroup has frustrated the Commission's efforts to effectively probe and challenge the reasonableness of this assertion by Stoker by refusing to turn over relevant, contemporaneous evidence of communications with counsel allegedly relied on by Stoker based upon its assertion of attorney-client privilege and attorney

work product doctrine. Stoker's assertion of reasonable reliance on counsel, in conjunction with the concerted and joint defense effort of Stoker and Citigroup to block discovery of all relevant communications, after selectively disclosing some privileged communications, severely prejudices the Commission's ability to effectively cross-examine Stoker and shields his asserted defense from the scrutiny of the fact finder. Fundamental fairness dictates that the defense should not be allowed to use the privilege as both a shield and a sword under these circumstances.

STATEMENT OF FACTS

The investigation of this matter spanned several years and over the course of those years Citigroup made numerous document productions to the Commission. During the course of that investigation, Citigroup produced documents from Stoker's electronic mail on two separate occasions, May 17, 2009 and October 12, 2009, Exhs. A-B, and produced e-mails from Brian Pinniger, Stoker's co-worker on the structuring desk, on June 25, 2009. Exh. C. Electronic searches of Stoker's and Pinniger's e-mails disclosed numerous e-mails between Stoker, Pinniger, and legal counsel related to the Class V offering and marketing materials. See, e.g. , Exh. D. Also, on seven separate occasions during the course of the Commission's investigation, Citigroup clawed back inadvertently disclosed, privileged documents. Exhs. E-K. Four of the claw-backs occurred after the second production of Stoker e-mails on January 11, May 11, July 2, 2010 and May 6, 2011. Exhs. H-K. However, in none of Citigroup's four claw-backs after the production of Stoker's and Pinniger's e-mails did Citigroup identify any of the electronic mails of Stoker or Pinniger produced by Citigroup on May 17, June 25 and October 12, 2009.

During the investigation of this matter, Stoker was represented, *inter alia*, by Susanna Buergel, who also represents Citigroup. On two separate occasions, March 4, 2010 and February

17, 2011, Stoker provided investigative testimony during which he was represented by Ms. Buergel who did not object or assert attorney client privilege, when Stoker testified that external counsel assisted in the preparation of the "deal documents," the offering circular and flip book, which are used to market the CDO, entitled Class V Funding III ("Class V III") that is the subject of this action. Exh. L at 70-72. Keith Pinniger, who worked on the Citigroup structuring desk and was assigned to work for Stoker on Class V III, provided investigative testimony on September 30, 2010, and was also represented by Ms. Buergel. Pinniger testified that the structuring desk relied on external counsel to determine if the offering materials were accurate and that he coordinated with counsel on certain matters. Exh. M at 21, 41, 44. On May 22, 2011, Citigroup provided a 608-page privilege log containing 7407 assertions of the attorney client privilege.

On June 29, 2011, Stoker presented matters for consideration by the Commission ("Wells Submission"). Exh. N. In his Well's submission, Stoker specifically focused on the role of counsel in reviewing risk disclosures for Class V III and submitted specific documents supporting his assertions. Exh. O, CITI 18328885-89; Exh. P, CITI 18416633-69. The bates numbers on these documents indicate they were previously produced to the Commission by Citigroup in its October 12, 2009 production of Stoker electronic mail during the investigation of the matter at hand. Citigroup did not claim any privilege with respect to these documents. These documents are internal e-mails between Citigroup employees and counsel related to the review of disclosures and marketing materials. Exhs. O-P.

On February 28, 2012, Stoker filed an Answer to the Commission's complaint. Dkt. No. 33. In his Sixth Affirmative Defense, Stoker asserted that he "reasonably relied on Citigroup's

institutional processes to ensure adequate review – both legal and managerial – and disclosure of material information, and he cannot be held liable for alleged failings of those processes." Id. at ¶ 88. On March 1, 2012, the Commission took the deposition of Murray Barnes, a former Citigroup employee. Mr. Barnes was represented at his deposition by Ms. Buergel. Mr. Barnes testified that in preparing for his deposition, he met with Ms. Buergel and counsel for Mr. Stoker. Ms. Buergel then instructed Mr. Barnes not to answer questions about the preparation session he had in which counsel for Stoker was present. Ms. Buergel, counsel for Citigroup and Mr. Barnes stated, "We have a common interest. We have orally agreed to a common interest with respect to this litigation and the litigation against Citigroup." Exh. Q at 13. Counsel for Stoker also claimed that Stoker had a "common interest privilege." Id.

On March 2, 2012, the Commission deposed Shalabh Mehrish, a current employee of Citigroup. Mr. Mehrish also was represented by Ms. Buergel. Mr. Mehrish testified that in preparing for his deposition, he also spoke with counsel for Stoker. Ms. Buergel then instructed Mr. Mehrish not to answer questions regarding his preparation session with Stoker's counsel based upon a "common interest privilege." Exh. R at 13. Ms. Buergel stated that because there was a common interest between Stoker, Mr. Mehrish and Citigroup, "I'm asserting the privilege, a common interest privilege, on behalf of Mr. Mehrish sharing a common interest with Mr. Stoker and with Citigroup." Id. at 14. Mr. Mehrish, who worked on Citigroup's CDO syndicate desk, then testified that, as a general matter, legal counsel put the offering circular together with information from the structuring desk. Id. at 73-74.

On March 6, 2012, the Commission took the deposition of Darius Grant, who was the managing director of Citigroup's CDO structuring desk and Stoker's supervisor during the relevant time period. Mr. Grant testified that he, and others on the structuring desk, relied on

external counsel to ensure the accuracy of the offering materials. Exh. S at 22. Mr. Grant testified the structuring desk used previous marketing materials from other deals as a template for the Class V III and that the deal manager, in this case, Stoker, was responsible for advising counsel regarding any differences in the current deal and things that needed to be changed. Id. at 22-23. Nestor Dominguez, the Co-Head of Citigroup's Global CDO business in 2006-2007, testified during his deposition that, among others, internal and external counsel were responsible for the content of the offering circular and the flip book. Exh. T at 164-66

On March 16, 2012, Stoker identified two experts, Mr. Deetz and Mr. Wormser. In their expert reports, both experts included discussions of the role of counsel in the preparation of marketing materials. Exh. U at 17-18; Exh. V at 14-15, 18, 21-23. Mr Wormser, in particular, went to great lengths to extol the experience of Citigroup's counsel on the Class V III transaction, Exh. V at 15; note counsel's responsibility for the disclosure documents and marketing materials Id. at 21; and highlight communications with counsel by Mr. Pinniger. Id. at 22-23. However, Mr. Wormser also noted that while, as a general matter, counsel are required to sign-off on disclosure and marketing materials, in the case of Class V III there was no "formal sign-off process." Id. at 23. Notwithstanding this observation, Mr. Wormser concluded the drafting of the marketing materials for Class V III, followed the "usual collaborative approach" including review and edit by counsel. Id.

On March 7, 2012, the Commission served a subpoena on Citigroup commanding the production of certain documents Citigroup previously withheld based upon the attorney client privilege. Specifically, the Commission requested that Citigroup "Produce the documents identified and listed on the 608-page Privilege Log dated May 22, 2011, In The Matter of Citigroup, Inc., File No. HO-10740, which reflect all communications to or from Brian H. Stoker

and all communications related to the Class V Funding III CDO." Exh. W.[1] On March 27, 2012, Ms. Buergel, on behalf of Citigroup, objected to the requested production, asserting attorney client privilege and, for the first time, attorney work product, and stated it was Citigroup's understanding that Stoker was not asserting reliance on the advice of counsel as an affirmative defense.[2] Exh. X.

ARGUMENT

I. Legal Standard For Determining If A Waiver Of A Privilege Has Occurred

"'[A] party cannot partially disclose privileged communications or affirmatively rely on privileged communications to support its claim or defense and then shield the underlying communications from scrutiny by the opposing party.'" In re Sims, 534 F.3d 117, 132 (2d Cir. 2008), citing In re Grand Jury, 219 F.3d 175, 182 (2d Cir. 2000).

The attorney-client privilege protects communications between a client and his or her attorney that are intended to be, and in fact were, kept confidential for the purpose of obtaining or providing legal advice. In re Cnty. of Erie, 473 F.3d 413, 419 (2d Cir. 2007). The privilege's underlying purpose is "to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice." Upjohn Co. v. United States, 449 U.S. 383, 389 (1981). The privilege should be narrowly construed because it renders relevant information undiscoverable. In re County of Erie, 473 F.3d at 418 (citing Fisher v. United States, 425 U.S. 391, 403 (1976)). The party asserting

[1] On March 30, 2012, undersigned counsel clarified for counsel for Citigroup that the subpoena sought any communications between Stoker or anyone else involved in the structuring and marketing of Class V Funding III and counsel providing advice on the marketing materials, including the offering circular and flip book.

[2] On Citigroup's May 22, 2011 privilege log, attorney work product was not identified as a basis for withholding the documents.

the privilege bears the burden of establishing its essential elements. von Bulow by Auersperg v. von Bulow, 811 F.2d 136, 144 (2d Cir.1987); U.S. v. Mejia, 655 F.3d 126, 132 (2d Cir 2011).

The courts have recognized that implied waiver of the attorney client privilege may be found where the privilege holder "asserts a claim that in fairness requires examination of protected communications." U.S. v. Bilzerian, 926 F.2d 1285, 1292 (2d Cir. 1991) (emphasis added). Fairness considerations arise when the party attempts to use the privilege both as a shield and a sword. In re von Bulow, 828 F.2d 94, 103 (2d Cir. 1987); Bilzerian, 926 F.2d at 1292. "'[A] party cannot partially disclose privileged communications or affirmatively rely on privileged communications to support its claim or defense and then shield the underlying communications from scrutiny by the opposing party.'" In re Sims, 534 F.3d at132 , quoting In re Grand Jury, 219 F.3d at 182. "The quintessential example is the defendant who asserts an advice-of-counsel defense and is thereby deemed to have waived his privilege with respect to the advice that he received." In re Kidder Peabody Sec. Litig., 168 F.R.D. 459, 470 (S.D.N.Y.1996); see also Bilzerian, 926 F.2d at 1292; Joy v. North, 692 F.2d 880, 893-94 (2d Cir.1982); United States v. Exxon Corp., 94 F.R.D. 246, 248-49 (D.D.C.1981); In Re Grand Jury Proceedings, 219 F.3d at 182-83.

II. Stoker Waived His Attorney Client Privilege With Respect To Legal Advice Concerning The Disclosures In The Marketing Materials For Class V III

There is really no issue that Stoker waived any attorney client privilege he may have had with respect to legal advice he received concerning the adequacy of the disclosures in the marketing materials for Class V III. In his investigative testimony, Stoker specifically stated he relied on counsel to ensure the offering documents were accurate. Exh. L at 70-72. In his submission to the Commission, Stoker's counsel argued that, "it was reasonable for Mr. Stoker to believe that experienced internal and external counsel were focused on the risk factors and other

legal disclosures [in the disclosure documents.]" Exh. N at 36. To support this statement, counsel affirmatively disclosed privileged communications in the form of e-mails between Stoker and other Citigroup employees and counsel. In addition, both of Stoker's experts opine as to the role of counsel in reviewing disclosure and marketing materials in support of his defense.

Finally, Stoker asserted in his sixth affirmative defense that he "reasonably relied on Citigroup's institutional processes to ensure adequate review – both legal and managerial…" Dkt. No. 33, ¶ 88. Although Stoker did not use the magic words, "reliance upon advice of counsel," this defense undeniably raises the specter that Stoker reasonably relied on the advice of counsel. Stoker's attempt to obscure the true nature of his sixth affirmative defense by couching it in terms of reasonable reliance on "institutional processes" does not change the fact that ultimately he is claiming to have relied upon counsel's advice concerning the adequacy of the disclosures in the Class V III marketing materials for which he was responsible and that he affirmatively used to market Class V III. An "institutional process" has no relevance to whether Stoker acted in good faith reliance on advice of counsel unless the "process" resulted in legal advice upon which Stoker could reasonably rely.

When Stoker elected to make partial disclosures of privileged communications and to affirmatively assert reasonable reliance on advice of counsel as a defense to the allegations against him, he waived any attorney client privilege he may have had with respect to all legal advice he received concerning Class V III. "A defendant may not use the privilege to prejudice his opponent's case or to disclose some selected communications for self-serving purposes." United States v. Bilzerian, 926 F.2d at 1292; In re Grand Jury, 219 F.3d at 182.

III. Citigroup Waived Its Attorney Client Privilege With Respect To Any Legal Review Or Advice Concerning The Marketing Materials For Class V III

While "a corporation must act through [its] agents," Commodity Future Trading Comm'n v. Weintraub, 471 U.S. 343, 348 (1985), it does not necessarily follow that a corporate officer testifying in his *individual* capacity can waive the corporate privilege without that entity's consent. Indeed, in the reverse situation, where a corporation waives its privilege but an officer wishes to assert that privilege as to his communications with corporate counsel courts have held that the privilege belongs to the corporation, not to the individual. See United States. v. Int'l Bd. Of Teamsters, Chauffeurs, warehousemen and Helpers of Am. AFL-CIO, 119 F.3d 210 at 215 (2d Cir. 1997). However, in this case, Citigroup also waived any attorney client privilege it may have had concerning the marketing materials for Class V III when it made partial disclosures of privileged documents and permitted Stoker to use privileged communications to defend against the Commission's allegations.

On May 17, 2009 and October 12, 2009, Citigroup produced documents from Stoker's electronic mail bearing bates numbers CITI 15571628-16130304 and CITI 18013761-18994148. Exhs A,B. On June 25, 2009, Citigroup produced electronic mail of Keith Pinniger bearing bates numbers CITI17384984-17651704. Exh. C. Thereafter, on four separate occasions, Citigroup asserted the attorney client privilege as a basis for clawing back documents it produced, claiming they were inadvertently disclosed. However, on none of those occasions did Citigroup seek to claw back any of the documents produced from Stoker's and Pinniger's electronic mail. A number of documents contained in Citigroup's productions are electronic mail communications between Stoker, Pinniger, other Citigroup employees, and counsel reviewing the Class V III offering materials. Exh. D. On May 22, 2011, Citigroup provided a 608-page privilege log containing 7407 assertions of the attorney client privilege. There are 3552 entries of attorney

client privilege for electronic mail communications between Stoker, Pinniger, other Citigroup employees and counsel from September 1, 2006 and February 28, 2007, related to legal review of "deal document terms," and other assorted legal advice entries.

As demonstrated above, where a party selectively discloses certain privileged or work product material, but withholds similar (potentially less favorable) material, both the attorney client privilege and attorney work product protection may be waived by the conduct of the parties and fundamental fairness may require a more complete disclosure. See, e.g., In re Grand Jury Proceedings, 219 F.3d at 182–84 (discussing privilege waiver); In re John Doe Corp. v. United States, 675 F.2d 482, 489 (2d Cir. 1982) ("A claim that a need for confidentiality must be respected in order to facilitate the seeking and rendering of informed legal advice is not consistent with selective disclosure when the claimant decides that the confidential materials can be put to other beneficial purposes."); United States v. Nobles, 422 U.S. 225, 239–40 (1975) (work product waiver). Similarly, voluntary disclosure to the government has been found to result in waiver. See In re Sealed Case, 676 F.2d 793, 824 (D.C.Cir.1982). In addition, where a corporation has disseminated information to the public that reveals parts of privileged communications or relies on privileged reports, courts have found the privilege waived. See, e.g., In re John Doe Corp., 675 F.2d at 488-89; Granite Partners, L.P. v. Bear Stearns & Co., 184 F.R.D. 49, 53-55 (S.D.N.Y.1999) (published report relied on privileged information); In re Kidder Peabody , 168 F.R.D. at 469-73.

During the course of the Commission's investigation in this case, Citigroup provided the Commission some sub-set of communications between its employees and counsel concerning legal advice related to Class V III. Although Citigroup was extremely vigilant in clawing back documents protected by the attorney client privilege that were inadvertently disclosed during the

Commission's investigation, it did not claw back any of the potentially privileged documents relating to legal advice about Class V III that it disclosed when it provided the Commission Stoker's and Pinniger's e-mails. At the same time, Citigroup withheld numerous documents based on a claim of attorney client privilege that are identified as containing legal advice "re deal document terms," many of which either came from or were sent to Stoker and/or Pinniger during the time period when Class V III was being structured and marketed. See, e.g., Exh. Y.

Citigroup's attorney was present and, in fact, was representing Stoker when Stoker testified concerning his purported reliance on counsel in preparing the marketing materials for Class V III. Further, since Citigroup and Stoker claim to have a common interest or joint defense, it must be assumed that Citigroup knew Stoker would and did submit, as part of his Wells submission, documents related to the role of legal counsel in preparing and approving the marketing materials for Class V III in his Wells submission.[3]

The events described above paint a clear picture of two litigants, Stoker and Citigroup, acting in concert to use the attorney-client privilege as both a sword and a shield against the Commission in its attempt to enforce the securities laws. Citigroup's interest and Stoker's interest in asserting reasonable reliance on advice of counsel as a defense are clearly aligned. A "'joint defense privilege, more properly identified as the 'common interest rule,' . . . has been described as 'an extension of the attorney client privilege'" "which serves to protect the confidentiality of communications passing from one party to the attorney for another party where a joint defense effort or strategy has been decided upon and undertaken by the parties and their respective counsel." In re Wagar, No. 1:06–MC127, 2006 WL 3699544, at * 11 (N.D.N.Y. Dec. 13, 2006) (citation omitted); United States v. Schwimmer, 892 F.2d 237, 243 (2d Cir.1989);

[3] It does not appear that Ms. Buergel continued to represent Stoker at the time he provided his Wells Submission to the Commission.

TIFD III–E, Inc. v. United States, 223 F.R.D. 47, 49 (D.Conn.2004) ("The common interest rule extends the attorney client privilege to privileged communications revealed to a third party who shares a common legal goal with the party in possession of the original privilege. . . . The parties need not be actively involved in litigation; they must, however, demonstrate cooperation in formulating a common legal strategy."). "Paramount to the common interest doctrine, there must be a commonality of interest amongst the members to the agreement and each party must reasonably understand that the communications are provided in confidence." In re Wagar, 2006 WL 3699544, at *11. "The Second Circuit adheres to a strict interpretation of the common-interest rule such that '[o]nly those communications made in the course of an ongoing common enterprise and intended to further the enterprise are protected.'" United States v. Salvagno, 306 F.Supp.2d 258, 271 (N.D.N.Y .2004).

The Commission has alleged that both Citigroup and Stoker violated Section 17(a) of the Securities Act of 1933 and Citigroup's liability could be predicated on a finding that Stoker, as an agent of Citigroup acting within the scope of his employment, violated Section 17(a). Therefore, if Stoker is successful in asserting reasonable reliance on advice of counsel as a defense, it would potentially absolve Citigroup of liability. Citigroup's stake in Stoker's defense of advice of counsel explains its willingness to disclose some documents relating to that advice but not others. In addition, twice during discovery in this matter, Ms. Buergel, counsel for Citigroup, has represented witnesses during their deposition in this case and denied counsel for the Commission the opportunity to question these witnesses regarding preparation sessions attended by both counsel for Stoker and counsel for Citigroup, citing a "common interest privilege."

Citigroup's selective disclosure of otherwise privileged material concerning legal advice on Class V III, acts as a waiver of any attorney client privilege it may have had with respect to any

documents that contain legal advice concerning Class V III. To rule otherwise would allow Citigroup to engage in the type of "hide-and-seek manipulation of confidences" that the law abhors. In re Sealed Case, 676 at 818, quoting 8 John H. Wigmore, Evidence, § 2326 at 638 (1961).

The prejudice to the Commission resulting from allowing Citigroup to selectively claim the attorney client privilege to withhold otherwise relevant evidence is patent. The only way for the Commission to effectively probe the reasonable of Stoker's alleged reliance on advice of counsel or even his supposed reliance on the "process" of obtaining that advice is to have access to all the documentary evidence related to that advice. The law is well-settled that in order for a defendant to claim he acted in good faith upon the advice of counsel there must be evidence that "he made a complete disclosure to counsel." Markowski v. SEC, 34 F.3d 99, 104-05 (2d Cir. 1994); SEC v. O'Meally, No. 06-cv-6483, 2010 WL3911444, at *4 (S.D.N.Y. Sep. 29, 2010). The only way the Commission can defend against Stoker's vague references to the advice he received from counsel concerning the sufficiency of the disclosures in the Class V III marketing materials is to be able to review the documents demonstrating what Stoker told counsel and what advice he was given. Without that information the Commission is in the position of having to play a game of legal blind man's bluff concerning the supposed legal "process" on which Stoker claims he relied. Thus fundamental fairness dictates that Citigroup be required to disclose all relevant communications between counsel and Stoker or anyone else at Citigroup concerning Class V III.

In the alternative, if the Court finds that neither Citigroup or Stoker waived their attorney client privilege and deny the Commission access to the documents it needs to respond to Stoker's defense, the Court should preclude Stoker from making any claim that he reasonably relied on the advice of counsel when he drafted and disseminated the offering circular and pitch book for

Class V III and preclude him from presenting any evidence referring to his reliance on advice of counsel.

Stoker and Citigroup, while operating under a common interest or joint defense privilege, have selectively waived favorable attorney client materials and then invoked the attorney client privilege to shield a further, more detailed scrutiny of the underlying matter. Stoker then claimed as a defense to the allegations against him that he reasonably relied on the advice of counsel. Stoker has attempted to bolster his defense by having both his experts comment on the alleged normal process of having legal counsel involved in drafting and reviewing marketing materials for investment vehicles such as Class V III—even though they did not have access to any of the documents that would demonstrate what, if any legal advice was provided with respect to Class V III. However, because Citigroup has refused to disclose all the communications between legal counsel and Stoker, Pinniger or other Citigroup employees concerning Class V III, the Commission is placed in the impossible position of attempting to respond to a defense of advice of counsel without knowing the nature of the requests for advice that were made by Stoker or the advice that was received in response to those requests. In this situation, fairness dictates that Stoker should not be permitted to claim he reasonably relied on advice of counsel while the Commission is denied access to the evidence that could rebut his claim. See Granite Partners, L.P. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., No. 96-cv-7874, 2002 WL 737482, at *3 (S.D.N.Y. Apr. 26, 2002); Trouble v. Wet Seal, 179 F. Supp.2d 291, 304 (S.D.N.Y. 2001).

In addition, Stoker should be precluded from asserting advice of counsel because, he has must show that "he made a complete disclosure to counsel, sought advice as to the legality of his conduct, received advice that his conduct was legal, and relied on that advice in good faith." Markowski, 34 F.3d at 105. In this case, the issue is whether Stoker received legal advice

concerning the adequacy of the disclosures in the marketing materials for Class V III. Therefore, in order for Stoker to establish the predicate for claiming reliance on advice of counsel, he must identify, with specificity, what information was provided to legal counsel concerning the disclosures that were made as well as any facts that may affect the adequacy of the disclosures, and what advice he received concerning those disclosures. Stoker cannot bear this burden by merely making vague references to the "process" without actually providing evidence of the specific communications with legal counsel concerning the adequacy of the disclosures in the marketing materials for Class V III.

CONCLUSION

For the reasons set forth above, the Court should grant the Commission's motion to compel production of any communications identified on Citigroup's May 22, 2011 privilege log between employees at Citigroup or any of its affiliates and legal counsel relating to legal advice concerning the marketing materials related to a Class V Funding III, including the offering circular and pitch book. In the alternative, the Court preclude Stoker from asserting as a defense that he reasonably relied on advice of counsel and preclude him from presenting any evidence, documentary or testimonial, referring to reliance on advice of counsel.

Dated: Washington, D.C.
April 5, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on April 5, 2012.

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