

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
(ATLANTA DIVISION)**

**UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,**

Plaintiff,

v.

DRIVE PLANNING, LLC et al.,

Defendants,

and

**JACQUELINE BURKHALTER, et
al.,**

Relief Defendants.

Civil No. 1:24-cv-3583-VMC

**PLAINTIFF SECURITIES AND EXCHANGE
COMMISSION'S NOTICE OF ONGOING INVESTIGATION**

Plaintiff United States Securities and Exchange Commission ("SEC") respectfully submits this notice to advise the Court that its staff intends to continue investigating conduct of certain individuals and entities that are not parties to this action. For the reasons stated below, the filing of the Complaint should not restrict the SEC's ongoing efforts to determine whether non-parties have violated the securities laws and to fulfill its statutory responsibility of protecting investors.

As background, the SEC filed the Complaint against Defendants Drive

Planning, LLC and Todd Burkhalter on August 13, 2024. (ECF No. 1.) The SEC alleged that Defendants engaged in a Ponzi scheme in which they raised more than \$300 million from investors. (*Id.*) The SEC also named Relief Defendants who received proceeds from the allegedly fraudulent scheme. (*Id.*) The SEC sought emergency relief, including an asset freeze and the appointment of a Receiver, which the Court granted by consent. (ECF Nos. 2, 10-11.)

In light of the particular facts of this case, SEC staff intend to continue investigating whether other individuals and entities not named as defendants or relief defendants in the Complaint violated the securities laws and/or received proceeds from the allegedly fraudulent activity at issue. SEC staff may, among other things, issue investigative subpoenas for documents and testimony, and the SEC staff may also continue to gather evidence provided on a voluntary basis.

The filing of this emergency action should not prevent the SEC from continuing its investigation as to these third parties. Section 21(a) of the Securities Exchange Act of 1934 grants the SEC independent authority to investigate potential securities law violations, including through the SEC's own subpoena power. *See* 15 U.S.C. § 78u(a). The filing of the Complaint does not abrogate that statutory authority. In fact, courts have long recognized that an administrative agency may use its independent subpoena power to investigate individuals and entities while litigation is pending, at least where—as here—the agency is not using extra-judicial means to

circumvent the discovery process in the pending litigation. *See, e.g., Linde Thomson Langworthy Kohn & Van Dyke, P.C. v. Resolution Trust Corp.*, 5 F.3d 1508, 1518 (D.C. Cir. 1993); *Bowles v. Bay of N.Y. Coal & Supply Corp.*, 152 F.2d 330, 331 (2d Cir. 1945); *SEC v. F.N. Wolf & Co., Inc.*, 1993 WL 568717, at *2 (S.D.N.Y. Dec. 14, 1993); *SEC v. Life Partners Holdings, Inc.*, No. 12-cv-00033-JRN, 2012 WL 12850253, at *2 (W.D. Tex. Aug. 17, 2012).

The need for the SEC to continue its investigation is essential in this case. The SEC filed suit on an emergency basis to preserve investor funds and to ensure that Defendants did not engage in any further wrongdoing. (ECF No. 2.) In seeking such relief, the SEC did not foreclose the possibility that others may also have violated the securities laws and/or received proceeds from the allegedly fraudulent activity at issue. The SEC staff intends to continue investigating and evaluating whether there are any such individuals or entities. *See, e.g., SEC v. Woods*, Civil Action No. 1:21-cv-3413-SDG (N.D. Ga.) (ECF No. 25 at 14) (permitting the SEC to continue its investigation after issuing preliminary injunction in Ponzi scheme case).

If, during its ongoing investigation, the SEC staff obtains documents or sworn investigative testimony that is discoverable in this litigation, the SEC will produce it to the Defendants and Relief Defendants as requested in the normal course of discovery. The SEC may also utilize such information in accordance with its list of routine uses.

The SEC does not seek relief in this Notice. Although SEC staff generally do not disclose their investigative plans, in light of the particular facts and circumstances here, the SEC staff in their discretion wish to advise the Court of their intent to continue the investigation of non-parties which, for the reasons above, should not be prevented by the filing of this emergency enforcement action.

Dated: August 22, 2024

Respectfully submitted,

/s/ Harry B. Roback

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CERTIFICATION OF COMPLIANCE

This is to certify that the foregoing was prepared using Times New Roman 14-point font in accordance with Local Rule 5.1 (B).

/s/ Harry B. Roback
Harry B. Roback

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2024, the foregoing was served on counsel of record for Defendants and Relief Defendants using the Court's ECF system.

/s/ Harry Roback _____
Harry Roback
Senior Trial Counsel
Securities and Exchange Commission