

# **Exhibit F**

GIBSON DUNN

Gibson, Dunn & Crutcher LLP  
1050 Connecticut Avenue, N.W.  
Washington, DC 20036-5306  
Tel 202.955.8500  
www.gibsondunn.com

Brian Richman  
Direct: +1 202.887.3505  
Fax: +1 202.530.9508  
BRichman@gibsondunn.com

September 8, 2021

VIA ELECTRONIC MAIL

Mark Tallarico  
Senior Counsel  
Office of the General Counsel  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: Freedom of Information Act Appeal – Request No. 20-02109-FOIA

Dear Mark:

Thank you for a productive conversation this morning on our Freedom of Information Act request. As discussed, we are prepared to further clarify and refine our request to assist the Staff in its search for responsive records.

In our September 4, 2021 letter, we explained that, in a series of recent enforcement actions, the Commission had taken the position that certain convertible debt lenders were actually “dealers” subject to registration under the Securities and Exchange Act of 1934. *See SEC v. Keener*, No. 20-cv-21254 (S.D. Fla. filed Mar. 24, 2020); *SEC v. Fierro*, No. 3:20-cv-2104 (D.N.J. filed Feb. 26, 2020); *SEC v. River N. Equity LLC*, No. 1:19-cv-1711 (N.D. Ill. filed Mar. 11, 2019); *SEC v. Almagarby*, No. 17-cv-62255 (S.D. Fla. filed Nov. 17, 2017). We then sought seven categories of records from January 1, 2017 to the present. These categories are reproduced below, with further clarifications to requests 2, 3, and 6 underscored:

1. Any memorandum addressing whether convertible debt lenders must register as “dealers.” This request is limited to memoranda produced by or furnished to (a) the Office of General Counsel, (b) Division of Corporation Finance, or (c) Division of Enforcement personnel in the Washington office, the Salt Lake City Regional Office, the Miami Regional Office, or the Chicago Regional Office.
2. Any email communications between Commission personnel and third-parties (external to the Commission) concerning whether convertible debt lenders must register as “dealers.” This request is now limited to email communications to, from, copying, or blind

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copying (a) members of the litigation or investigation teams in Keener, Fierro, River North, or Almagarby or (b) personnel in the Division of Corporation Finance working on File No. S7-24-20 (“Rule 144 Holding Period and Form 144 Filings,” RIN 3235-AM78, Securities Act Release No. 10,911, Exchange Act Release No. 90,773).

3. Any documents or communications concerning the Commission’s authorization to file the enforcement actions in *Keener, Fierro, River North, or Almagarby*. ~~This request is limited to documents or communications that were produced or that occurred after the Commission authorized the filing of the action that the document or communication concerns.~~ This request is now limited to documents or communications that were produced or that occurred within seven calendar days after the Commission authorized the filing of the enforcement actions in *Keener, Fierro, River North, or Almagarby*. The scope of this request is now further limited such that the Staff may limit its search to (a) the offices of the Commissioners, (b) to the Office of General Counsel, and (c) to the Division of Enforcement personnel working on *Keener, Fierro, River North, or Almagarby*.
4. Any communications between (a) Division of Enforcement personnel in the Salt Lake City Regional Office and (b) Division of Enforcement personnel in either the Miami Regional Office or the Chicago Regional Office. This request is limited to communications that contain both the words “convertible” and “dealer.”<sup>1</sup>
5. Any documents or communications of James Thibodeau (including any communications that are to, from, copying, or blind copying James Thibodeau) that contain both the words “dealer” and “convertible.”
6. ~~Any communications between (a) Division of Enforcement personnel and (b) Division of Corporation Finance personnel or Office of General Counsel personnel containing both the words~~

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<sup>1</sup> For all requests, please include the singular and plural of all terms – so, for example, a request seeking documents containing the word “dealer” should include documents containing the word “dealer” or the word “dealers.”

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“dealer” and “convertible,” including (but not limited to) any such communications between Division of Enforcement personnel and John Fieldsend or Sean Harrison. Any communications to, from, copying, or blind copying Division of Enforcement personnel (a) that contain both the words “dealer” and “convertible” and (b) that are to, from, copying, or blind copying Division of Corporation Finance personnel or Office of General Counsel personnel. This request includes (but is not limited to) any such communications between Division of Enforcement personnel and John Fieldsend or Sean Harrison.

7. Any email communications: (a) that are between Commission personnel and email accounts ending in “@thebasilelawfirm.com”; and (b) that contain both the words “dealer” and “convertible.”

\* \* \*

We understand that some of these requests concern Division of Enforcement records, pending enforcement actions, or both. However, we wish to remind the Staff that the “agency cannot apply a ‘blanket exemption’ for ‘all records relating to an ongoing investigation.’” *Inst. for Justice v. IRS*, 941 F.3d 567, 574 (D.C. Cir. 2019) (quoting *Citizens for Responsibility & Ethics in Wash. v. U.S. Dep’t of Justice*, 746 F.3d 1082, 1096 (D.C. Cir. 2014)). That “records responsive to [our] request [may be] in a legitimate law enforcement file” is not sufficient to “justify withholding.” *Crooker v. ATF*, 789 F.2d 64, 66 (D.C. Cir. 1986) (Ginsburg, J.).

We hope this clarification is helpful and are happy to discuss if you have any questions or concerns. As always, if the Commission withholds any information as exempt from disclosure, we nevertheless request “[a]ny reasonably segregable portion” of the information that is not exempt, including, for example, the senders, receivers, subject lines, and dates of communications. 5 U.S.C. § 552(b); *see, e.g., Property of the People, Inc. v. Dep’t of Justice*, 2021 WL 3052033, at \*3 (D.D.C. July 20, 2021) (rejecting an agency’s attempt to withhold all records “within an informant file” and ordering the agency to “revisit its decisions on segregability . . . and release any reasonably segregable portions”).

Sincerely,



Brian Richman