

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGE IT IN A CIVIL CASE

CASE NUMBER: 2014CP4003389

Alan Wilson

Intergrated Capital Strategies LLC

Securities Commissioner of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 1 July 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Ian Parks Weschler

Margaret Nicole Fox

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court

*Jeanette W. McBride*

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

**RECEIVED**

Case No. 2014-CP-400-3389

JUL 30 2014

ALAN WILSON, SECURITIES )  
COMMISSIONER OF SOUTH )  
CAROLINA, )

Applicant, )

v. )

INTEGRATED CAPITAL )  
STRATEGIES, LLC, )

Respondent. )

**SC Court of Appeals**

**ORDER REQUIRING  
COMPLIANCE WITH A SUBPOENA**

2014 JUN 30 PM 12:06  
RICHLAND COUNTY  
FILED  
CLERK OF COURT

Hearing Date: June 10, 2014  
Presiding Judge: The Honorable G. Thomas Cooper, Jr.  
On Behalf of the Respondent: James M. Griffin, Esq.  
On Behalf of the Applicant: Ian P. Weschler, Esq.

This matter came before the Court as the result of an Application for an Order Requiring Compliance with a Subpoena filed by Alan Wilson, Securities Commissioner of South Carolina (the "Commissioner"). The Commissioner seeks enforcement of an administrative subpoena (the "Subpoena") issued by the Securities Division of the Office of the Attorney General of South Carolina (the "Securities Division") to Integrated Capital Strategies, LLC ("ICS") as part of an investigation under File No. 14023. For the reasons set forth below, the Court grants the Commissioner's Application and ICS is hereby ordered to comply with the Subpoena.

**I. FACTUAL BACKGROUND**

On April 9, 2014, the Securities Division issued the Subpoena to ICS. The Subpoena was addressed to ICS' address in Charlotte, North Carolina, as listed on

**SCANNED**

the website for the North Carolina Secretary of State. The Subpoena sought various documents related to an ongoing investigation being conducted into the offer and sale of securities by Certus Holdings, Inc. and CertusBank, N.A. (collectively, "Certus") in and from South Carolina. The documents sought pursuant to the Subpoena were required to be produced by Friday, April 25, 2014. To date, ICS has declined to produce the records to the Securities Division.

ICS' managers were the founders of and, until their termination in April of 2014, employees of Certus. ICS provided extensive services to Certus both at Certus' Greenville, South Carolina headquarters and elsewhere in and outside the state. Evinced the interrelated relationship between the two companies, not only were ICS' managers executives at Certus, but ICS' records custodian is or was, herself, an employee of Certus.

On April 23, 2014, ICS' attorney contacted the Securities Division and requested an extension of time in which to examine the Subpoena and prepare a response. On Friday, May 2, 2014, representatives of the Securities Division met with ICS' attorney and reiterated the request for documents. On Tuesday, May 6, 2014, ICS formally objected to the subpoena, alleging that the Securities Division lacked jurisdiction over it. On May 23, 2014, the Commissioner applied for and was granted a Rule to Show Cause directed at ICS, and ordering both parties to appear before the Court on June 10, 2014. At the June 10, 2014 hearing, the Court heard arguments from the Commissioner and ICS. This Order follows.

Handwritten signature and initials, possibly "GJ" and "25 2".

## II. LAW AND ANALYSIS

A. The Court has Jurisdiction over this Action and over the Respondent.

The Court has jurisdiction over this action pursuant to Article 6 of the South Carolina Uniform Securities Act of 2005 (the "Securities Act"). As set forth the Securities Act, the mechanism for subpoena enforcement is for the Commissioner to "apply to the Richland County Court of Common Pleas...to enforce compliance." S.C. Code Ann. § 35-1-602(c) (Supp. 2013). Whereupon, the Court may, *inter alia*, "order the production of records." *Id.* Accordingly, the Court is the appropriate venue in which to seek the enforcement of the Subpoena. Moreover, the Uniform Securities Act has been interpreted, consistent with due process, to permit the enforcement of subpoenas issued to foreign actors who have transacted business within the state. *See, e.g., Silverman v. Berkson*, 661 A.2d 1266 (N.J. 1995).<sup>1</sup> Thus, ICS is subject to the power of the Court.

ICS alleges that the Commissioner lacks jurisdiction over it because the Subpoena was not served pursuant to South Carolina's long arm statute. However, as the Subpoena was validly served pursuant to the Securities Act, ICS' assertion is unavailing. Pursuant to S.C. Code Ann. § 35-1-611 (c), the Securities Act permits the service of subpoenas to in-state and out-of-state respondents, through the mailing, return receipt requested, of the document or documents in question to a respondents' address and the execution of an affidavit of compliance. Further, S.C.

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<sup>1</sup> Additionally, as ICS has transacted significant business in this State, it should have reasonably anticipated the possibility of being haled into a South Carolina Court. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

Code Ann. § 35-1-611(d) permits service pursuant to Section 611(c) in any proceeding to which the Commissioner is a party, as he is here. As is evidenced by the Subpoena and its accompanying Certificate of Service and Affidavit of Compliance, the Securities Division followed the requirements for proper service as set forth in the Securities Act when it served the Subpoena on ICS. Therefore, the Court finds that the subpoena was validly served upon ICS.

B. The Commissioner Has Met the Burden for Enforcement of the Subpoena.

When a court's jurisdiction is invoked in a subpoena enforcement action "the scope of issues which may be litigated...must be narrow, because of the important governmental interest in the expeditious investigation of possible unlawful activity." *F.T.C. v. Texaco, Inc.*, 555 F.2d 862, 872 (D.C. Cir. 1977); *see also United States v. Am. Target Adver., Inc.*, 257 F.3d 348, 351 (4th Cir. 2001) (citations and internal quotation marks omitted) ("[A] court's role in enforcing administrative subpoenas is sharply limited."); *RNR Enterprises, Inc. v. SEC*, 122 F.3d 93, 96 (2d Cir. 1997), *cert. denied sub nom, Wells v. S.E.C.*, 522 U.S. 958 (1997) (same); Louis Loss & Joel Seligman, *Fundamentals of Securities Regulation* 1490-1493 (4th Ed. 2004). To that end, the United States Supreme Court has set forth a multi-factor test for judicial enforcement of administrative subpoenas. Under this test, a court should enforce an administrative subpoena when "the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant." *United States v. Morton Salt*, 338 U.S. 632, 650

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(1950); see also *See v. City of Seattle*, 387 U.S. 541, 544 (1967) (*Morton Salt* analysis in the context of a state administrative subpoena); *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1023-24 (D.C. Cir. 1978); *United States v. Powell*, 379 U.S. 48, 57-58 (1964); *State ex rel. Miller v. Publishers Clearing House, Inc.*, 633 N.W.2d 732, 736 (Iowa 2001) (state court employing the same analysis in enforcing an administrative subpoena); S.C. Code Ann § 35-1-602, cmt. 2 (citing 10 Louis Loss & Joel Seligman, Securities Regulation 4917-4937 (3d ed. Rev. 1996) and explaining “[t]he standards for the issuance of subpoenas have been generally established in federal and state securities laws.”). The Court finds that the Subpoena meets each of these factors.

i. The Subpoena is within the Securities Division’s authority.

Pursuant to S.C. Code Ann. § 35-1-602, the Commissioner and his designee, the Securities Division, are vested with broad authority to conduct investigations into possible violations of the Securities Act and to require production of evidence relevant to such investigations. In furtherance of this investigative power, S.C. Code Ann. § 35-1-601(b) permits the Commissioner or his designees to “subpoena witnesses, seek the compulsion of evidence, take evidence, require the filing of statements, and *require the production of any records that the Securities Commissioner considers relevant or material to [an] investigation*” (emphasis added). As is the case with other administrative agencies, the Securities Division’s investigative power, as delegated to it by the Commissioner, is statutory and is analogous to that of a grand jury. *Morton Salt*, 338 U.S. at 642-43; see also *Small Bus. Admin. v. Barron*, 240 F. Supp. 434, 445 (W.D.S.C. 1965); *In re Subpoena*

*Duces Tecum*, 228 F.3d 341, 347 (4th Cir. 2000). Like a grand jury, an administrative agency “can investigate merely on suspicion that the law is being violated, or just because it wants assurance that it is not.” *Morton Salt, supra*; *Myers v. Holshouser*, 214 S.E.2d 630, 637 (N.C.App. 1975) (“The purpose of an administrative investigation is to protect the public; therefore, the public's interest in applying more relaxed criteria for administrative investigations is greater than the regulated person's, firm's, or corporation's right to privacy.”). Consistent with well-established administrative law precedents, the Securities Division is acting within the scope of its legislatively granted authority even where its investigation is based on nothing more than “official curiosity.” *See, e.g., Arthur Young & Co.*, 584 F.2d at 1023-24 & n. 45. In the instant matter, the Securities Division is investigating allegations of securities fraud, and such an inquiry falls directly within its mandate as set forth in the Securities Act.

a. The Securities Division's inquiry is not preempted.

Respondents raise the claim, on behalf of Certus, which is not a party to this action, that the Securities Division's investigation is preempted by the National Bank Act of 1864, 12 U.S.C.A. § 484 (West 2013) (the “NBA”), and the regulations promulgated thereunder by the Office of the Comptroller of the Currency (the “OCC”). The Respondents cite *Cuomo v. Clearing House Ass'n, LLC*, 557 U.S. 519 (2009), for this presumption. In *Cuomo*, the Attorney General of New York sought, pursuant to the State of New York's inherent powers of visitation and without the

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use of a subpoena,<sup>2</sup> information related to *bank lending practices* from a number of nationally chartered banks. Following a suit by the OCC and others, the Supreme Court determined that New York's visitation powers over the bank were preempted by the NBA and the rules promulgated thereunder. Those facts are entirely inapplicable in this action. Further, it is important to note that Certus itself has not raised any objection to the Securities Division's exercise of investigatory jurisdiction, and that ICS, while closely related to Certus, cannot assert any claims on Certus' behalf. In this case, the Securities Division, pursuant to the investigative authority conferred by the General Assembly and granted to it by the Commissioner, is conducting a lawful investigation in order to determine whether or not the Securities Act has been violated. The Securities Division is not seeking to investigate a bank *qua* bank, and therefore is not attempting to exercise the sovereign power of visitation over Certus. It has long been recognized, and the Court agrees here, that such investigations are not preempted by the NBA. *Peoples Bank of Danville v. Williams*, 449 F.Supp. 254, 260 (4th Cir. 1978) (an "SEC inquiry is not a 'visitorial power' within the understanding" of the NBA); *see also Bank of America Nat. Trust & Savings Ass'n v. Douglas*, 70 App.D.C. 221, 227 (D.C. Cir.

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<sup>2</sup> At the time of the enactment of the National Bank Act in 1864, the term visitation "was accordingly understood as the act of examining into the affairs of a corporation by the government itself. Lower courts understood visitation to mean the act of a superior or superintending officer, who visits a corporation to examine into its manner of conducting business, and enforce an observance of its laws and regulations. A State was the visitor of all companies incorporated in the State, simply by virtue of the State's role as sovereign." *Cuomo*, at 526 (2009) (Scalia, J.) (citations and internal quotation marks omitted).

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1939) (SEC subpoena to a bank as part of a securities investigation was not an "exercise of visitorial powers"); *Cuomo*, at 528-29.

b. ICS is subject to the Securities Division's investigatory powers.

Additionally, ICS alleges that the Securities Division has no jurisdiction over it or Certus under the assumption that Certus did not offer or sell securities in South Carolina. However, it is well-settled that the issue of subject matter jurisdiction is "not to be decided in subpoena enforcement actions," as administrative agencies like the Securities Division, "must be free without undue interference or delay to conduct an investigation which will adequately develop a factual basis for a determination as to whether particular activities come within...[its]...regulatory authority." *SEC v. Brigadoon Scotch Distributing Co.*, 480 F.2d 1047, 1053-54 (2nd Cir. 1973); *see also Gardner v. Lefkowitz*, 412 N.Y.S.2d 740, 745 (N.Y.Sup.Ct. 1978) (holding that New York's securities act permits the Attorney General to investigate in order to determine whether or not "the subject being investigated comes within the scope of his authority"). Indeed, "it has long been established that the question of inclusion of a particular person or entity within the coverage of a regulatory statute is generally for initial determination by an agency, subject to review on direct appeal, rather than for a...court whose jurisdiction is invoked to enforce an administrative subpoena." *SEC v. Wall Street Transcript Corp.*, 422 F.2d 1371, 1375 (2nd Cir. 1970), *cert. denied*, 398 U.S. 958 (1970) (citing, *inter alia*, *Powell*, 379 U.S. at 57-58; *FTC v. Crafts*, 355 U.S. 9 (1957); *Endicott*

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*Johnson Corp. v. Perkins*, 317 U.S. 501, 517 (1943) (not even a showing of probable coverage can be required in a subpoena enforcement action)); *see also F.T.C. v. Texaco*, 555 F.2d at 879 ("As a general rule, substantive issues which may be raised in defense against an administrative complaint are premature in an enforcement proceeding."); *SEC v. Vacuum Can Co.*, 157 F.2d 530, 532 (7th Cir. 1946) (citations omitted) ("The purpose of a subpoena is to gather evidence, not prove a pending charge."); 1 Davis, *Administrative Law*, § 4.1 (3rd ed. 1994). Furthermore, it would utterly frustrate the law enforcement purpose of administrative agency investigations to limit an administrative agency's subpoena power to entities within that agency's regulatory jurisdiction, and such a limitation has been universally rejected. *See* 27 A.L.R 1208 (1953); *Freeman v. Fidelity Trust Co.*, 248 F.Supp 487, 492 (E.D. Penn. 1965) ("It is by now abundantly clear that for an administrative agency to exercise subpoena power in aid of its investigatory power, it need not show that it has jurisdiction over the witness subpoenaed."); *United States v. Art Metal-U.S.A., Inc.*, 484 F. Supp. 884, 887 (D.N.J. 1980); *Sandsend Financial Consultants, Ltd. v. Federal Home Loan Bank Board*, 878 F.2d 875 (5th Cir. 1989); *McGarry v. SEC*, 147 F.2d (10th Cir. 1945); *State ex rel. R.R. & Warehouse Commission v. Mees*, 49 N.W.2d 386, 392 (Minn. 1951) (witness subpoenaed by administrative agency need not be under direct regulatory authority of the agency so long as "the information sought is relevant and material to the investigation"). Additionally, the Uniform Securities Act has been interpreted to confer investigative subpoena power over out-of-state entities, which do not come

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under the Securities Commissioner's regulatory authority. *Raymond Lee Organization, Inc. v. Securities Commission*, 543 P.2d 75, (Colo.App. 1975), *rev'd on other grounds*, 556 P.2d 1209 (Colo. 1976) (stating that "[s]uch an investigative procedure is permitted by the holding in *Natural Gas Pipeline v. Slattery*, 302 U.S. 300 [(1937)]."). Accordingly, the Court finds that the Subpoena and the information sought by it are within the Securities Division's delegated authority under the Securities Act.

ii. The information sought is reasonably relevant.

Like the issue of coverage, the issue of relevance is a threshold matter to be determined by the Securities Division. *See, e.g., Arthur Young & Co.*, 584 F.2d at 1031 (the scope of the SEC's subpoena power is "co-extensive" with its investigative power, and that the SEC is given the sole discretion to determine what is relevant to an investigation.). In the context of an administrative subpoena, relevance must be construed broadly as "law enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest." *Morton Salt Co.*, 338 U.S. at 652. Indeed, courts "defer to the agency's appraisal of relevancy, which must be accepted so long as it is not obviously wrong." *RNR Enterprises*, 122 F.3d at 97 (citations and internal quotation marks omitted). To that end, information is relevant to an investigation when it is "not plainly incompetent or irrelevant to any legal purpose." *Endicott Johnson*, 317 U.S. at 509. In the present case, the Securities Division has determined that the information and documents sought from ICS are relevant to its investigation. For instance, the

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billing records, the contracts related to work to be performed on behalf of Certus, and a list of the employees of ICS are each relevant to determine ICS' relationship with Certus. The Securities Division believes these documents, collectively, to be important to the process of determining whether or not Certus or any of its employees committed violations of the Securities Act. When an inquiry such as this is legally authorized and the information sought is relevant to the inquiry, the burden of showing unreasonableness shifts to the Respondent, and such a burden "is not easily met." *Brigadoon Scotch*, 480 F.2d at 1056. ICS has failed to meet that burden as it has not shown the records sought by the Subpoena to be incompetent or irrelevant to any legal purpose. *Endicott Johnson, supra*.

iv. The Subpoena is not too indefinite.

In addition to the factors discussed above, in order for an administrative subpoena to be enforced, it is also necessary that the information sought by it must not be too indefinite. *Morton Salt*, 338 U.S. at 650. Here, the Court finds that the Attachment to the Subpoena clearly sets forth the nature of the documents sought and the timeframe for ICS to produce those documents, thus, Subpoena itself is not too indefinite.




### III. CONCLUSION

Having considered the arguments of both parties and reviewed the extensive case law on the subject of the enforcement of administrative subpoenas, the Court finds that the Subpoena, which was validly issued and served, meets the well-established requirements for judicial enforcement. Accordingly, it is hereby,

**ORDERED** that the Commissioner's Application for an Order Requiring Compliance with a Subpoena is **GRANTED** and Integrated Capital Strategies, LLC shall fully comply the Subpoena served upon it by the Securities Division by producing to the Securities Division any and all documents within its possession, custody, or control responsive to the Subpoena no later than ten days from the issuance of this Order; and

**IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for all purposes necessary and appropriate to insure compliance with this Order.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
The Honorable G. Thomas Cooper, Jr.  
Circuit Court Judge

This 25 day of JUNE, 2014.  
Columbia, South Carolina