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To: Attorney General Michael A. Delaney

From: Deputy Secretary of State David M. Scanlan  
Senior Assistant Attorney General James T. Boffetti

Date: January 25, 2010

Subject: Financial Resources and Assistance and DOJ involvement in 2003.

You had charged us with the task of examining the role of a DOJ attorney in June, 2003, involving the Bureau of Securities Regulation's (Bureau) investigation into Financial Resources and Assistance (Financial Resources). We spoke with two individuals: Senior Assistant Attorney General Suzanne Gorman and Attorney Jeffrey Spill from the Bureau. We also reviewed the DOJ file relating to Gorman's interactions with Spill between September, 2002 and June, 2003.

At the time, Gorman was acting as legal counsel for the Bureau. On September 5, 2002, the attorneys met to discuss the on-going investigation into the activities of Financial Resources, the status of settlement talks and an up-coming administrative hearing. Spill sought advice from Gorman about contacting investors to provide them with appropriate information about the investigation. As a result of that meeting, a letter was sent to investors at the end of 2002 or early 2003. According to Spill, he continued to provide periodic updates to Gorman. Gorman has no recollection of that meeting or subsequent conversations.

In June, 2003, Spill again met Gorman because the situation with Financial Resources appeared to be deteriorating. Gorman kept contemporaneous notes of that meeting. Following the meeting, Spill sent a confirming letter to Gorman. Spill asserted that during their meeting he discussed with Gorman the option of the Attorney General's Office taking action under RSA 421-B:23.<sup>1</sup> Under the statute as it existed at that time, the authority to act under RSA 421-B:23

<sup>1</sup> At the time, RSA 421-B:23 I (b) stated, "The attorney general may, with or without prior administrative action by the secretary of state, bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The court shall not require the attorney general to post a bond."

That section was amended in 2003, effective August 16, 2003 to read: "The attorney general **or secretary of state or his or her designee** may, with or without prior administrative action by the secretary of state, bring an

I(b) rested with the Attorney General. That statute was amended on June 17, 2003, effective August 16, 2003, to allow the Secretary of State, as well as the Attorney General to act.<sup>2</sup> At the same time, the statute was amended to specifically include an asset freeze as a remedy. According to Spill, an asset freeze would have been the preferred path to take since a Bureau hearing officer could only order rescission, he could not force a liquidation. Spill does not remember Gorman's specific response, but is sure she did not commit to taking action under that statute. Gorman has no independent recollection of that meeting or any request for action under 421-B:23 I(b). Her notes reflect that they discussed facts underlying the investigation, but contain no mention of the statute or any request for action by the Attorney General's Office. Gorman asserted that such a request would have triggered a higher-level review within the

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action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. **In addition, the court may issue an order for other appropriate or ancillary relief, to include an asset freeze, accounting, writ of attachment, writ of general or specific execution, and an appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets.** The court shall not require the attorney general or secretary of state to post a bond.

<sup>2</sup> The legislative history indicates that Gorman testified before the House Committee on Commerce on March 7, 2003. She expressed her opinion that the Attorney General's Office and Securities enjoyed a very good relationship and that the Attorney General's office has legal authority in regards to all departments in the state. She further testified that she did not anticipate any problems with the amendments and suggested the bill should be written to include both the Attorney General's office as well as the Secretary of State. She expressed a hope that both agencies would work together.

Representative Speiss provided written testimony that stated, in part, that the relevant sections "allows the Secretary of State to petition the court directly for appropriate orders to protect assets. Both these sections alleviate the requirement to work through the Attorney General's office to achieve court action in a timely manner."

On April 22, 2003, Mark Connolly, Director of Securities Regulation, testified before the Senate Committee on Banks that the proposed changes "makes our operation more efficient in terms of how we operate." He further testified that "it allow us to act a little more quickly in terms of enforcement activities that we currently engage in."

Spill testified that the proposed changes "allows the bureau to take enforcement action along with and in conjunction with the Attorney General's Office. This section was addressed by the Attorney General's office over in the House. The initial version of the bill allowed for the Secretary of State's office to have enforcement authority whereas the bill before did not. The amendment allowed for the Secretary of State's office or the Attorney General's office to take enforcement action so the Attorney General's office would not lose jurisdiction. The reason for this requested change is on cases where we needed to act quickly or on cases where the resources of the Attorney General could not provide assistance, the Secretary of State's office would be allowed to go into court and enforce subpoenas, enforce orders of the bureau and to freeze and appoint receivers for assets."

Spill further testified, "The way the law originally read, when it came to enforcement action, enforcing our own orders or subpoenas or asking a receiver to step in and to freeze assets that jurisdiction was in the Attorney General's office. We found that at times that was cumbersome because at times they were short of resources and could not assist or would have a time delay in assisting. We thought it would be a better use of resources for us to have authority from the Attorney General's office but allowing us along with the Attorney General's office to have jurisdiction."

Representative Speiss also testified before Senate banking committee that, "Commerce paid particular interest to sections 9 and 10 because the Attorney General's office raised some questions that would make, that they had concerns about. Loosing powers as it relates to issuing subpoenas."

Attorney General's Office. There is no indication that such review occurred. Spill sent a packet of information to Gorman on the same day they met. Gorman has no recollection of reviewing that information.

On June 17, 2003, Spill wrote a letter to Gorman about the meeting they had on June 12, 2003. In that letter, Spill wrote, "I will wait to hear from you regarding the issue of securing assets for the benefits of the investors. Our hearing date remains 7/8/2003." Spill indicated that he wrote that letter because Gorman had not given him an affirmative response to his request for the Attorney General's Office to act under RSA 421-B:23 and seize assets of Financial Resources. It was his opinion that such action would have obviated the need for the administrative hearing and he indicated that he emphasized the date of the hearing in his letter in hopes that a decision might be made prior to the commencement of the hearing.

Gorman does not remember reviewing that letter. She does not dispute, based on that language, that it is possible that she and Spill discussed 421-B:23.

The administrative hearing was held on July 24, 2003. There was no expectation that Gorman would attend, and she did not. Spill remembered several calls to Gorman after the hearing but has no recollection of renewing his request for the Attorney General's Office to seize assets, most likely because he was awaiting an order from the hearings officer. Gorman has no recollection of those conversations.