

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS  
Release No. 4467/December 19, 2016

ADMINISTRATIVE PROCEEDING  
File No. 3-17651

In the Matter of

ADRIAN D. BEAMISH, CPA

ORDER DENYING RESPONDENT'S  
MOTION FOR MORE DEFINITE  
STATEMENT

On October 31, 2016, the Securities and Exchange Commission issued an order instituting proceedings (OIP) against Respondent pursuant to Section 4C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice. On November 23, 2016, Respondent submitted a motion for a more definite statement. On November 29, 2016, I denied the motion in part and directed the Division of Enforcement to respond to the remainder of the motion. *See Adrian D. Beamish, CPA*, Admin. Proc. Rulings Release No. 4397, 2016 SEC LEXIS 4413. The Division filed its opposition on December 6, 2016, and Respondent submitted his reply on December 14, 2016.

Respondent first contends that the OIP fails to allege "a basic standard to which Mr. Beamish allegedly failed to conform," and that "more detail must be given as to what audit procedures Mr. Beamish failed to implement, and how [that failure] is inconsistent with applicable audit standards." Motion at 6-7. Respondent also seeks more detail regarding ten specific issues. *See Motion at 8.*

Respondents in administrative proceedings are entitled to be informed of the charges against them in enough detail to allow them to prepare a defense, but are not entitled to a disclosure in the OIP of what evidence the Division intends to rely on at the hearing. *See Rita J. McConville*, 58 S.E.C. 596, 627 (June 30, 2005), *pet. denied*, 465 F.3d 780 (7th Cir. 2006). The OIP adequately "identifies more than two dozen specific audit and disclosure standards against which respondent's conduct should be measured" and explains how Respondent allegedly failed to meet those standards. Opp'n at 9; *see generally* OIP; *see also* 17 C.F.R. § 201.200(b)(3). Rule 102(e) does not require the Division to plead or prove "what Mr. Beamish supposedly 'should have done' with the benefit of hindsight," it only requires the Division to plead and prove that Respondent's conduct was unreasonable or highly unreasonable under that Rule. Reply at 10; *see Kevin Hall, CPA*, Exchange Act Release No. 61162, 2009 WL 4809215, at \*7 (Dec. 14, 2009) ("[T]he Commission does not evaluate actions or judgments in the light of hindsight."). And I agree with the Division that Respondent's ten requested details are more appropriately disclosed in an expert report than in an OIP. *See Opp'n at 9-10.*

In fact, some of the requested details are actually in the OIP, or can be readily inferred from it. As one example, the Motion seeks “the disclosure language that at a minimum should have been used in Fund III’s audited financial statements”; but according to the OIP, the audited financial statements for 2012 alone failed to mention that advanced management fees had already exceeded the expected future management fees for the remaining life of the fund, and omitted all reference to the December 31, 2012, promissory note intended to cover the advanced management fees (and that the note was subsequently “withdrawn”). *Compare* Motion at 8, *with* OIP at ¶¶ 30-31. As another example, the Motion seeks “the specific auditing standards applicable to private fund audits”; but such standards are identified throughout the OIP, and the OIP clearly alleges that both GAAP and GAAS applied. *Compare* Motion at 9, *with, e.g.*, OIP at ¶¶ 3, 13, 15.

Respondent next contends that he requires identification of members of the investing public protected by the Division’s actions in this proceeding (given Respondent’s assertion that the audited fund’s investors did not include the general public), an explanation of “how the private investors in Fund III qualify (if at all) as public investors,” and details on the effects the audited financial statements “did or did not have on the readers” of those statements. Motion at 10-11. Neither Rule 200(b) nor Rule 102(e)(1)(ii) can be read as requiring such information in the OIP. *See* 17 C.F.R. §§ 201.102(e)(1)(ii), (iv)(B), .200(b). And Respondent apparently is aware of the identities of the fund’s investors, so there is no need for the Division to identify them again. *See* Motion at 9 (characterizing the financial statements’ “discrete audience” as “a small group of highly sophisticated, professional investors”); Opp’n at 11 n.5. Nor is there any need to specify how the investors were individually misled, because reliance is not an element of a Rule 102(e)(1)(ii) violation. *See* 17 C.F.R. § 201.102(e)(1)(ii), (iv)(B); *see also* 15 U.S.C. § 78d-3(a)(2); *cf. SEC v. Blavin*, 760 F.2d 706, 711 (6th Cir. 1985) (to prove violation of antifraud provisions, “the Commission is not required to prove that any investor actually relied on the misrepresentations”).

Respondent lastly contends that the OIP should include additional facts about the fund’s investment adviser, general partner, and management company. *See* Motion at 13-16; OIP at ¶¶ 6-9. But it is undisputed that Respondent served as audit partner for the audits in suit, so it seems unlikely that he does not already know the pertinent facts about his former client’s affiliates. *See* Answer at ¶ 14; *see also* Motion at 15 (listing the names of three persons sanctioned for misconduct related to operation of the fund); Reply at 5 (Respondent’s team “ascertain[ed] that there was adequate value in the General Partner’s capital account balance”). In any event, Respondent does not adequately explain how not knowing these facts hinders him from preparing his defense. *See* Motion at 13-16; Reply at 8-11. I note that the recently amended Rules of Practice permit the parties to clarify the facts of the case by way of deposition. *See* 17 C.F.R. § 201.233.

In sum, Respondent has not shown his entitlement to a more definite statement. Respondent’s motion for a more definite statement is therefore DENIED.

---

Cameron Elliot  
Administrative Law Judge