

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 4534/January 19, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-17614

In the Matter of

LAURENCE I. BALTER d/b/a :
ORACLE INVESTMENT RESEARCH : ORDER

The Securities and Exchange Commission instituted this proceeding with an Order Instituting Proceedings (OIP) on October 4, 2016, pursuant to Section 8A of the Securities Act of 1933, Section 21C of the Securities Exchange Act of 1934, Sections 203(f) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940. The hearing is expected to last one week and has been set to commence on June 19, 2017, in Hawaii, where Respondent and customer witnesses reside. Under consideration are Respondent's November 4, 2016, Motion for a More Definite Statement; the Division of Enforcement's November 28, 2016, Opposition; and Respondent's December 6, 2016, Reply.

Respondent seeks a more definite statement in five categories: details regarding transactions relating to alleged cherry picking, trading ahead, and violation of diversification and industry concentrations standards (Items 1, 3, and 4); documents, verbal agreements, or testimony regarding the allegation that profits should have been allocated on a "first-day returns" basis regarding the Barbata account[s] (Item 2); and details of Respondent's alleged representations to clients that there would be no double dipping and any alleged violation of such representations on a client by client basis (Item 5).

Morris J. Reiter, Exchange Act Release No. 6108, 1959 SEC LEXIS 588 (Nov. 2, 1959) is the leading Commission case on motions for more definite statement. The case stands for the proposition that "appropriate notice of proceedings is given [in the OIP] when the respondent is sufficiently informed of the nature of the charges against him so that he may adequately prepare his defense, and that he is not entitled to a disclosure of evidence." *Id.* at *5. Respondent's motion is granted in part and denied in part, as discussed below.

Item 1 – Alleged cherry picking. The Division identified the specific documents that support the allegation of cherry picking and offered to explain the data to counsel. Opp'n. at 7; Tashjian Decl., Ex. A at 2-3. The Division has met its obligation as to this item.

Item 2 – Material regarding “first-day returns” calculations. The Division argues that it has no obligation to highlight selected portions of the documents and testimony transcripts regarding this item that it provided to Respondent as part of its Rule 230 production.¹ Opp’n. at 8; Tashjian Decl., Ex. A at 3. It also offered to explain to counsel the analytical methods that it believes should have been used. Tashjian Decl., Ex. A at 3. The Division has met its obligation as to this item.

Item 3 – Alleged trading ahead. The Division identified eighteen specific transactions that support the allegation of trading ahead but stated that it reserved the right to assert that Respondent breached his obligations to advisory clients “based on other trades, as they become known, and the evidentiary record, as it develops in discovery.” Opp’n. at 8; Tashjian Decl., Ex. A at 3-4. The list of eighteen will be considered final unless supplemented by February 17, 2017.

Item 4 – Alleged violation of diversity and concentration standards. The Division stated that its experts would “likely” focus on data contained in documents that it identified by Bates number. Tashjian Decl., Ex. A at 3. It stated that it might be able to provide an itemization of the specific trades by December 16, 2016, or soon thereafter, while reserving the right to ask its experts to analyze other data “as it becomes known, and the evidentiary record, as it develops in discovery.” *Id.* If it has not already done so, the Division should provide the list of specific trades by February 17, 2017, and the list will be considered final as of that date.

Item 5 – Client by client details regarding alleged representations concerning double dipping and alleged violations of such representations. The Division argues that it has no obligation to highlight selected portions of the documents and testimony transcripts regarding this item that it provided to Respondent as part of its Rule 230 production. Opp’n. at 9; Tashjian Decl., Ex. A at 5. The Division has met its obligation as to this item.

IT IS SO ORDERED.

/S/ Carol Fox Foelak
Carol Fox Foelak
Administrative Law Judge

¹ Rule 230 (17 C.F.R. § 201.230) requires the Division to produce its investigative file to respondents.