

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

Administrative Proceedings Rulings
Release No. 6557 / May 1, 2019

Administrative Proceeding
File No. 3-15124

In the Matter of

**David F. Bandimere and
John O. Young**

**Order on Respondent's
Motion to Strike**

In March 2019, I granted in part the motion for a more definite statement filed by Respondent David F. Bandimere.¹ I directed the Division of Enforcement to supplement the order instituting proceedings (OIP) and ordered Bandimere to file an answer to the new information provided by the Division.² The Division filed a response to the order and Bandimere filed a supplemental answer. In his supplemental answer, he also moves to strike portions of the Division's response. The caption to Bandimere's answer does not indicate that his answer includes a motion to strike. He also has not supported his motion with "a written brief of the points and authorities [he] relie[s] upon," as required by Rule of Practice 154(a).³ The Division has not responded to Bandimere's filing.

In its response to my order, the Division (1) identified investors to whom Bandimere allegedly sold securities; (2) identified investors to whom he allegedly made material misrepresentations or omissions and the statements

¹ *David F. Bandimere*, Admin. Proc. Rulings Release No. 6500, 2019 SEC LEXIS 491 (ALJ Mar. 15, 2019).

² *Id.* at *11. Among other matters, I directed the Division to provide "the specific alleged statements as to each investor that were rendered misleading by the omission" of certain red flags listed in the OIP. *Id.* I also directed the Division to tell Bandimere "when [he] allegedly learned of" the red flags. *Id.*

³ 17 C.F.R. § 201.154(a).

he allegedly made to them; and (3) stated the date by which Bandimere allegedly learned of certain red flags. Bandimere takes issue with the second and third categories of information provided.

As to investors to whom Bandimere allegedly made material misrepresentations or omissions, Bandimere argues that in several instances, the Division fails to set out statements made by Bandimere.⁴ To the extent Bandimere argues that the Division has not identified who made the statements described in its supplement, he is mistaken. The Division prefaces the second category by stating “[b]elow are the ... investors to whom ... Bandimere allegedly made material misrepresentations or omissions, *along with* the specific alleged statements to each investor that were rendered misleading by omissions.”⁵ In other words, except when the Division specifically describes a statement as being made by other individuals, the Division alleges that Bandimere made each listed misrepresentation or omission.

Whether the Division has failed to provide “specific alleged statements,” however, is another matter. Of the bullet points Bandimere challenges, he is correct that the following do not provide “*specific* alleged statements”:

Investor	Statement
Richard Moravec	<ul style="list-style-type: none"> • Bandimere made presentation regarding IV Capital in which Bandimere introduced Parrish and Parrish demonstrated purported trading (made between February and June 2008 during meeting at Bandimere’s home) • General statements regarding investment returns (made between January and July 2008)
David A. Loebe	<ul style="list-style-type: none"> • Bandimere generally answered Loebe’s questions about IV Capital and UCR, said positive things (done throughout course of investments, location unknown)
Robert Loren Blackford	<ul style="list-style-type: none"> • Explained how investments worked, interest rates, and returns (made in multiple conversations in or around January and February 2008, over

⁴ Answer at 3–6.

⁵ Resp. to Order at 4 (emphasis added).

telephone)

- Explained IV Capital and UCR investment structure and operation (made in January 2009 at Blackford's home)

John Davis

- Generally answered Davis's questions about UCR investment (throughout course of investment, locations unknown)

But the Division has otherwise provided specific information and these statements appear to be contextual. Indeed, the use of the words "general" and "generally" belie any argument that the Division was attempting, in some of the bullets above, to provide specific information. Viewing the information in the above bullet points as contextual means there is no reason to strike them and I decline to do so.⁶

The Division's second bullet point related to investor David Loebe states "IV Capital returns were guaranteed, good investment, Loebe was led to believe it was safe (made in or around May 2009 at Bandimere's home)."⁷ To the extent the Division claims Loebe was "led to believe" by Bandimere's assertions that "returns were guaranteed" and IV Capital was a "good investment," this disclosure is sufficient. If the Division alleges that Loebe was instead "led to believe" by other, unspecified statements, the Division may not rely on those unspecified statements to meet its burden to establish liability.

Similarly, the Division's first bullet point related to investor John Davis states "Explained how UCR investments worked, contributing to fund that would leverage investments and involved traders (made in or around March

⁶ Given the order directing the Division to provide specific statements, the Division may not rely on unspecified statements generally described in the bullet points listed above in attempting to meet its burden to demonstrate liability. Because any such unspecified statements could nonetheless be relevant in any public-interest analysis—in the evident Bandimere is found liable—the Division may, however, present evidence about unspecified statements. *See Nature's Sunshine Prod., Inc.*, Securities Exchange Act Release No. 59268, 2009 WL 137145, at *6 n.27 (Jan. 21, 2009) (explaining that the Commission may consider "matters that fall outside the OIP, in assessing appropriate sanctions").

⁷ Resp. to Order at 5.

2009 at Bandimere’s home).”⁸ If the Division contends that Bandimere falsely told Davis that UCR would “contribut[e] to [a] fund that would leverage investments and involved traders,” the disclosure is sufficient. If the Division alleges that Bandimere’s explanation was false in a different, unspecified manner, it may not rely on unspecified statements related to that explanation to meet its burden to establish liability.

Bandimere’s remaining challenges to the Division’s disclosure of statements are rejected.

Moving to the disclosure related to when Bandimere allegedly learned of certain red flags, Bandimere argues that instead of alleging the latest date by which he learned of the red flags, the Division should have alleged the earliest date he knew of them. But in his motion for a more definite statement, Bandimere requested an order requiring the Division to provide “the dates by which Mr. Bandimere was aware of the facts which the Division claims were material.”⁹ The Division has done just that. Moreover, Bandimere has not cited any precedent that supports his argument.¹⁰ This aspect of Bandimere’s motion is denied.

Bandimere’s motion is denied.

James E. Grimes
Administrative Law Judge

⁸ *Id.* at 6.

⁹ Mot. for More Definite Statement at 6.

¹⁰ Answer at 6–7.