

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2732/May 27, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16463

In the Matter of

AEGIS CAPITAL, LLC,
CIRCLE ONE WEALTH MANAGEMENT, LLC,
DIANE W. LAMM,
STRATEGIC CONSULTING ADVISORS, LLC, AND
DAVID I. OSUNKWO

ORDER ON MOTION FOR MORE
DEFINITE STATEMENT

The Securities and Exchange Commission issued an Order Instituting Cease-and-Desist Proceedings (OIP) in March 2015. As is pertinent to this Order, the allegations in the OIP relate to compliance services Respondents Strategic Consulting Advisors, LLC, and David I. Osunkwo provided to Respondents Aegis Capital, LLC, and Circle One Wealth Management, LLC.

Strategic Consulting and Mr. Osunkwo have filed a motion for a more definite statement. The Division of Enforcement opposes the motion.

Strategic Consulting and Mr. Osunkwo make three arguments. First, they assert that the OIP does not set forth a proper legal theory by which Strategic Consulting can be found liable for the acts of Mr. Osunkwo. Motion at 3. The Division responds that Mr. Osunkwo's role as a principal at Strategic Consulting allows his acts to be imputed to Strategic Consulting. Opp'n at 3.

Second, Strategic Consulting and Mr. Osunkwo say the Division has "engage[d] in improper group pleading." Motion at 4. As to this argument, they assert that the OIP groups the alleged violations of Strategic Consulting and Mr. Osunkwo with other Respondents, and does not make clear whether the allegations only focus on Circle One's 2010 Form ADV or whether they also relate to Aegis's 2009 Form ADV. *Id.* They also argue that the allegation that Mr. Osunkwo failed to personally review Circle One's records to verify its assets under management ascribes to him a duty he did not have. *Id.* at 5.

In response to this second argument, the Division clarifies that its allegations concern the 2010 Forms ADV for Aegis and Circle One. Opp'n at 2-3. It says the OIP alleges Strategic Consulting and Mr. Osunkwo caused Aegis's violations of Section 204 of the Investment

Advisers Act of 1940 because Aegis did not timely file its 2010 Form ADV. *Id.* at 3. As to Circle One, the Division says the OIP alleges that Strategic Consulting and Mr. Osunkwo violated Section 207 of the Advisers Act by (1) overstating Circle One's assets under management and advisory accounts in Circle One's 2010 Form ADV; (2) misrepresenting that Circle One's chief investment officer certified as true the contents of the 2010 Form ADV; and (3) forging Circle One's chief investment officer's signature on the 2010 Form ADV. *Id.* at 3-4. The Division does not mention Aegis's 2009 Form ADV or address the argument that the OIP improperly ascribes a duty to Mr. Osunkwo to verify Circle One's assets under management.

Third, Strategic Consulting and Mr. Osunkwo argue that the allegation that Mr. Osunkwo forged the signature of the chief investment officer of Circle One is "inflammatory and not supported by" allegations of an intent to defraud. Motion at 6-7. The Division responds that it is merely required in the OIP to sufficiently inform a respondent "of the charges so that he or she may adequately prepare a defense." Opp'n at 4. It also says that it is not required to list the evidence supporting its allegations. *Id.* According to the Division, the OIP meets this standard because it alleges that (1) Circle One's chief investment officer gave Mr. Osunkwo "an estimate" of Circle One's assets under management and advisory accounts for purposes of preparing the 2010 Form ADV; (2) Mr. Osunkwo "caused" the Form ADV to state the chief investment officer had certified that the Form ADV was "true and correct"; and (3) Mr. Osunkwo "forged" the chief investment officer's signature to the Form ADV when that officer had only provided an estimate. *Id.* at 4-5.

The Division's response has largely mooted Mr. Osunkwo's and Strategic Consulting's motion. First, they now know that the Division is relying on a theory imputing certain of Mr. Osunkwo's actions to Strategic Consulting.¹ As to the second argument, the Division has clarified that its allegations concern the 2010 Forms ADV for Aegis and Circle One. And, the implication of the fact that Division does not mention Aegis's 2009 Form ADV or any possible duty Mr. Osunkwo might have to audit and verify Circle One's assets under management is clear. The Division is not relying on Aegis's 2009 Form ADV to demonstrate that Mr. Osunkwo and Strategic Consulting are liable and the Division is not contending that Mr. Osunkwo had a duty to audit and verify Circle One's assets under management.

As to the third argument, allegations in an OIP are sufficient if they "inform[]" a respondent "of the nature of the charges against him so that he may adequately prepare his defense." *Morris J. Reiter*, Exchange Act Release No. 6108, 1959 SEC LEXIS 588, at *5 (Nov. 2, 1959); see 17 C.F.R. § 201.200(b)(3). A respondent "is not entitled to a disclosure of evidence." *Morris J. Reiter*, 1959 SEC LEXIS 588, at *5. The OIP and the Division's arguments, noted above, are sufficient to inform Mr. Osunkwo and Strategic Consulting of the allegations against them.

¹ It should go without saying that in issuing this Order, I am not evaluating whether the Division's evidence is sufficient to carry its burden or whether its legal theories have any merit. To the extent Mr. Osunkwo's and Strategic Consulting's motion amounts to an attack on the Division's evidence or its legal theories, that sort of attack can be presented in briefing after the hearing or, if Respondents request and I grant leave, through a motion for summary disposition.

For the foregoing reasons, the motion for more definite statement is DENIED.

James E. Grimes
Administrative Law Judge