

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

UNITED STATES SECURITIES	)	
AND EXCHANGE COMMISSION,	)	
	)	
Movant,	)	
	)	
v.	)	Case No: 17-55
	)	
WYNN A. GUSTAFSON,	)	Judge
	)	
Respondent.	)	

**U.S. SECURITIES AND EXCHANGE COMMISSION’S  
APPLICATION FOR AN ORDER COMPELLING  
COMPLIANCE WITH ADMINISTRATIVE SUBPOENA**

Applicant, the United States Securities and Exchange Commission (“Commission”), respectfully moves this Court, pursuant to Section 22(b) of the Securities Act of 1933, 15 U.S.C § 77v(b), and Section 21(c) of the Securities Exchange Act of 1934, 15 U.S.C. § 78u(c), to enter an Order compelling Wynn A. Gustafson (“Mr. Gustafson”) to comply with an administrative subpoena issued by the Commission requiring him to produce documents.

**I. INTRODUCTION**

This Application seeks to enforce a document production subpoena issued and served upon Wynn A. Gustafson pursuant to an Order Directing Private Investigation and Designating Officers to Take Testimony in the investigation captioned *In the Matter of WAG Trading and Investments Company LLC* (Internal File No. C-08422) (“the WAG Trading Investigation”). The staff of the Commission (the “Staff”) issued a subpoena to

Mr. Gustafson on May 24, 2017 requesting that he produce certain documents. While Mr. Gustafson did produce some documents to the Commission, he has withheld many other documents that are responsive to the subpoena and material to the Staff's investigation. The Staff has contacted Mr. Gustafson repeatedly in attempts to secure these missing documents. Mr. Gustafson has neither produced the documents nor provided the Staff with any reason why he cannot do so.

The Commission has made no prior application to any court for similar relief and now seeks the aid of this Court by means of a summary proceeding. All attempts to obtain voluntary compliance with the subpoena have failed. A summary proceeding is necessary so that the Staff may complete its investigation expeditiously. As set forth below, the Commission has met all of the requirements for judicial enforcement of its subpoena and, therefore, respectfully requests the Court to enter an order compelling Mr. Gustafson to produce documents.

## **II. STATEMENT OF FACTS**

### **A. Wynn A. Gustafson**

Respondent Wynn A. Gustafson is a U.S. citizen who resides in Arden Mills, Minnesota. (Declaration of Trevor Schumacher ("Schumacher Decl.") at ¶ 7.) Mr. Gustafson is the President of WAG Company LLC f/k/a WAG Trading and Investment Company LLC ("WAG Trading"). (*Id.* at ¶ 8.) According to documents produced to the Commission, WAG Trading is in the business of conducting domestic and international transactions buying, selling, and redeeming so-called historical bonds. (*Id.*) It purports to conduct such business in China, Hong Kong, Ghana, Singapore, and Germany. (*Id.*)

## **B. The Commission's Investigation**

On May 4, 2017, the Commission issued an Order Directing Private Investigation and Designating Officers to Take Testimony in the WAG Trading Investigation (the "Formal Order").<sup>1</sup> (Schumacher Decl. ¶ 5.) The Formal Order authorizes the Staff to investigate whether any persons have engaged, are engaging or will engage in violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, by various acts and practices reported in the Formal Order or by any act or practice of similar purport or object. (*Id.* at ¶ 6.) The Formal Order empowers the Staff to, among other things, subpoena witnesses and require parties to produce documents. (*Id.*)

In the course of its investigation, the Staff learned that Mr. Gustafson, through WAG Trading, is in the business of buying and selling financial instruments that purport to be bank notes, foreign government bonds, railroad bonds, and similar instruments. (Schumacher Decl. ¶ 8.) Such documents are often used to perpetuate fraudulent schemes. (*Id.* at ¶ 10, Exh. 1.)

Also in the course of its investigation, the Staff discovered a number of suspicious transactions in Mr. Gustafson's bank accounts. Often, large sums appear to have been deposited and then wired out of Mr. Gustafson's account in quick succession. (Schumacher Decl. ¶ 11.) At least some of the transfers from Mr. Gustafson's bank

---

<sup>1</sup> If the Court so desires, the Commission will provide the Court with a copy of the Formal Order. The Commission respectfully requests an *in camera* review because the investigation is non-public and ongoing.

accounts were wires to foreign entities in China, Hong Kong, or Ghana. (*Id.*) The total amount of suspicious transfers exceeds \$200,000.00. (*Id.*)

According to Mr. Gustafson's sworn testimony, these transfers are loans or investments from private individuals, which are being pooled by third parties in order to obtain a large sum of money held in Mr. Gustafson's name at a foreign financial institution. (Schumacher Decl. at ¶ 15.) Mr. Gustafson was purportedly contacted by an individual located in China going by the name, "Mr. Yuen Leung" in or around 2013. (*Id.*) Mr. Yuen informed Mr. Gustafson that Mr. Gustafson had inherited over \$22 million from an unknown uncle, and the funds were being held for him at Unicaja Bank in Spain. (*Id.*) Mr. Gustafson was told that, in order to release these funds, he would need to pay a tax of several hundred thousand dollars. (*Id.*) Mr. Yuen claimed to be raising money from individuals to pay off the supposed tax, and he claimed to be offering those individuals a return on their investment in exchange for the use of their funds. (*Id.*)

At least some of the transfers into Mr. Gustafson's accounts have been wires from U.S. citizens who appear to be victims of fraudulent schemes, including advance fee schemes. (Schumacher Decl. ¶¶ 12-13.) For example, one individual was told that she had to pay \$210,000 for a "Drug Anti-Terrorist Certificate" in order to release a \$10,500,000 inheritance. (*Id.* at ¶ 14.). This individual was instructed to deposit funds into Mr. Gustafson's bank account. (*Id.*)

**C. Mr. Gustafson's Failure to Provide Documents as Required by the SEC's Subpoena**

On May 24, 2017, pursuant to the Formal Order, the Staff issued a subpoena requiring Mr. Gustafson to produce certain documents to the Commission by June 9, 2017. (Schumacher Decl. at ¶ 17, Exh. 3.) The subpoena called for the production of, among other things, communications between Mr. Gustafson and any persons or entities from which he solicited or received funds. The subpoena also called for documents concerning any accounts held by Mr. Gustafson or by WAG Trading, such as bank statements. (Schumacher Decl. at ¶ 18, Exh. 4.)

On June 8, 2017, Mr. Gustafson transmitted documents to the Commission, together with a cover letter. (Schumacher Decl. at ¶ 19, Exh. 5.) However, he produced only 14 documents. (*Id.* at ¶ 20.) These consisted of (a) articles of incorporation and renewals for WAG Trading, (b) Mr. Gustafson's tax returns, and (c) documentation of two transactions involving financial instruments that Mr. Gustafson referred to as "Historical Documents." (*Id.*) Mr. Gustafson did not produce any bank records or any communications concerning the suspicious transfers in and out of his accounts. (*Id.*)

In response to the Commission's requests that Mr. Gustafson produce to the Commission "[d]ocuments sufficient to disclose all domestic and foreign bank, brokerage, or other financial accounts in your name or for your benefit," and "[d]ocuments concerning all accounts held by you and/or WAG Trading and Investment Company, LLC at all domestic or foreign banks, brokerages, or other financial institutions, including but not limited to account opening documents and periodic or other

statements,” Mr. Gustafson wrote, “I ... only have domestic bank accounts, which I am confident that you already have access to.” (Schumacher Decl. at ¶ 21).

In response to the Commission’s requests that Mr. Gustafson produce to the Commission “[a]ll communications in which you and/or WAG Trading and Investment Company, LLC solicited or received funds from any person or entity,” and “[a]ll communication with any person or entity from whom you and/or WAG Trading and Investment Company, LLC solicited or received funds,” Mr. Gustafson wrote that neither he nor WAG Trading had ever “solicited or received funds *for the sale or trading of any securities, financial instruments, or bonds.*” (Schumacher Decl. at ¶ 22 (emphasis added).) He did not produce any documents responsive to these requests.

On July 26, 2017, pursuant to a Commission subpoena, Mr. Gustafson gave sworn testimony to members of the Commission staff. (Schumacher Decl. at ¶ 23, Exh. 3.) During his testimony, it became clear that Mr. Gustafson had documents, responsive to the subpoena and relevant to the Commission’s investigation, that he had failed to produce. For example, Mr. Gustafson revealed that he had documents relating to the account purportedly set up in his name at Unicaja Bank:

Q. Did you ever see an account balance with 22 million or something like that?

A. Just a screen shot.

Q. You did get a screen shot?

A. That’s what I did. I went in – I logged in online, and there it was. And I made a copy of it. Printed it. Saved it as a PDF.

(Schumacher Decl., Exh. 3 at 70:5-11.) Mr. Gustafson had not previously produced any documents related to the account at Unicaja. When the Staff asked Mr. Gustafson to produce this document, he agreed that he would. (*Id.* at 70:11-15.)

Similarly, during Mr. Gustafson's testimony, he repeatedly referenced written communications he had had with Mr. Yuen, wherein Mr. Yuen had discussed raising money from investors in order to release the \$22 million supposedly being held at Unicaja bank. The Staff repeatedly asked Mr. Gustafson to produce those communications, none of which had previously been produced to the Commission. Each time, Mr. Gustafson agreed that he would do so. For example, the Staff and Mr. Gustafson had the following exchange:

Q. So you said you've raised about \$100,000 from people?

A. Yeah, at least that.

...

A. Yuen would send me an email. And he would say, you know: Expect this deposit in your account ... Then he would give me wiring instructions.

Q. All right. I think those sorts of emails, sir, are exactly the kind of documents that we were looking for in the subpoena.

A. Oh.

Q. If you can send us those – emails.

A. I can forward all them to you.

Q. Please do, sir. I mean, those are exactly the sorts of documents we're looking for.

(Schumacher Dec., Exh. 3 at 57:24-58:18.) Similarly, later in the testimony, the Staff and Mr. Gustafson had the following exchanges:

Q. How would you get the bank account information from Mr. Yuen [about where to wire the money]? Did he send you an email?

A. Yes.

Q. Could you produce those emails to us, sir? And, once again, we think those are exactly the kinds of documents that were called for by the subpoena. We would really like to see those emails.

A. Yeah, I can forward them all on to you. I believe I still have them.

(*Id.* at 97:15-23.)

Q. We see eight payments for \$113,900 [going out to Guangzhou Gentle Foreign Trade]. Does that sound about right?

A. That could – yeah. That’s probably about right.

Q. How did you learn about Guangzhou Gentle Foreign Trade?

...

A. He had sent me the email to send the wire.

Q. Mr. Yuen?

A. Yes.

Q. Once again, please send us those emails. We would like to see those.

A. Okay.

(*Id.* at 99:20-100:7.)

After Mr. Gustafson’s sworn testimony, the Commission staff e-mailed Mr. Gustafson several times to remind him to produce the requested documents. Specifically, on July 28, 2017, a member of the Commission staff asked Mr. Gustafson to “send the



documents we requested of you on Wednesday as soon as possible.” (Schumacher Decl. at ¶ 27, Exh. 7.)

On August 24, having not received any additional documents from Mr. Gustafson, a member of the Commission Staff wrote, “[w]e still have not received the documents you promised us. As we have discussed, these documents are clearly responsive to the subpoena served on you. Please send them to us by the close of business on August 30, 2017.” (Schumacher Decl. at ¶ 28, Exh. 7.) In the same e-mail, the Staff member advised, “[w]e will seek a court order compelling production of these documents if you fail to produce them to us.” (*Id.*)

On August 25, the Staff specifically requested “all of your emails or other communications with Mr. Yuen,” and “all documents including screenshots ... regarding your Unicaja bank account.” (Schumacher Decl. at ¶ 29, Exh. 7.) The Staff further advised, “if we do not receive the documents responsive to the subpoena served on you by Friday, September 8<sup>th</sup>, we will seek an order of the Court.” (*Id.*)

As of October 30, 2017, Mr. Gustafson has not produced any documents to the Commission other than the documents included in his initial production on June 8, 2017. (Schumacher Decl. at ¶ 30.)

### **III. ARGUMENT**

#### **A. This Court May Resolve This Matter Through a Summary Proceeding.**

The Commission may seek an order requiring compliance with a subpoena upon application because subpoena enforcement proceedings are generally summary in nature. *See United States v. McDonnell Douglas Corp.*, 751 F.2d 220, 229 (8th Cir. 1984); *see*

also *EEOC v. Tempel Steel Co.*, 814 F.2d 482, 485 (7th Cir. 1987) (subpoena enforcement proceedings “are designed to be summary in nature”); *SEC v. Sprecher*, 594 F.2d 317, 320 (2d Cir. 1979). “Questions concerning agency subpoenas should be promptly determined so that subpoenas, if valid, may be speedily enforced.” *SEC v. First Security Bank*, 447 F.2d 166, 168 (10th Cir. 1971) (citing *United States v. Davey*, 426 F.2d 842, 845 (2d Cir. 1970)).

Furthermore, jurisdiction to resolve this matter properly lies with this Court. Section 22(b) of the Securities Act and Section 21(c) of the Exchange Act authorize the Commission to seek, and any federal court to issue, an order compelling compliance with Commission subpoenas upon application by the Commission. *See* 15 U.S.C. §§ 77v(b), 78u(c). More specifically, Section 21(c) of the Exchange Act provides that “the Commission may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring ... the production of books, papers, correspondence, memoranda, and other records.” 15 U.S.C. § 78u(c). Because Mr. Gustafson resides in Arden Mills, Minnesota, jurisdiction and venue properly lie within the District of Minnesota. *Id.*

**B. The SEC Meets the Requirements for Judicial Enforcement of the Subpoena.**

A district court is bound to enforce an administrative subpoena if the information sought “[1] is within the authority of the agency, [2] the demand is not too indefinite and [3] the information sought is reasonably relevant.” *United States v. Morton Salt Co.*, 338

U.S. 632, 652 (1950); *see also SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1021 (D.C. Cir. 1978). “An affidavit from a government official is sufficient to establish a prima facie showing that these requirements have been met.” *In re McVane*, 44 F.3d 1127, 1136 (2d Cir. 1995). Here, because the SEC has met these criteria, and Mr. Gustafson cannot show unreasonableness, the Court should enforce the subpoena.

Congress has authorized the SEC to conduct investigations in its discretion to determine whether any person has violated, is violating, or is about to violate the provisions of the federal securities laws. *See* 15 U.S.C. §§ 77t(a), 78u(a)(1). In order to carry out this task, Congress endowed the Commission with broad investigatory powers. *See Arthur Young & Co.*, 584 F.2d 1018, 1023 (D.C. Cir. 1978); *see also Commodity Futures Trading Commission v. Tokheim*, 153 F.3d 474, 477 (7th Cir. 1998) (quoting *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950)) (stating that the Commission can “investigate merely on suspicion that the law is being violated, or even just because it wants assurance that is not”). Those investigatory powers include the ability to subpoena witnesses and require the production of documents that the Commission deems relevant to its investigation. *See* 15 U.S.C. §§ 77s(c), 78u(b).

Pursuant to the statutes cited above, the Commission issued a Formal Order to conduct the WAG Trading Investigation. The Formal Order states that the investigation’s purpose is to determine, among other things, whether WAG Trading and others violated the anti-fraud provisions of the federal securities laws. The subpoena served upon Mr. Gustafson was issued pursuant to that Formal Order and, therefore, is consistent with the Commission’s administrative procedures.

The information sought from Mr. Gustafson is relevant and not indefinite. The Commission is only required to make a minimal showing of relevance. As long as the evidence sought is not plainly irrelevant to any lawful purpose, the subpoena should be enforced. *Arthur Young & Co.*, 584 F.2d at 1029. It is the burden of the opposing party to establish that the subpoena is unreasonable. See *SEC v. Blackfoot Bituminous, Inc.*, 622 F.2d 512, 515 (10th Cir. 1980); *SEC v. Brigadoon Scotch Distrib. Co.*, 480 F.2d 1047, 1056 (2d Cir. 1973). That burden, however, is “not easily met” when the SEC’s inquiry is legally authorized and the information is relevant to the inquiry. *Brigadoon Scotch*, 480 F.2d at 1056.

In this case, the documents sought are relevant to the Commission’s investigation. Mr. Gustafson – a man who is in the business of buying and selling types of financial instruments that can be used in fraudulent schemes – has had hundreds of thousands of dollars flowing through his bank accounts from private U.S. citizens to various foreign entities. The Commission requires additional evidence in order to determine whether these transactions are part of a fraudulent scheme or other violation of the federal securities laws. Obtaining Mr. Gustafson’s documents will help the Staff complete its inquiry.

The scope of the Commission’s production request is not overly broad or otherwise unreasonable. Mr. Gustafson has not objected to the subpoena. In fact, during his testimony, Mr. Gustafson agreed to produce the requested documents, and did not provide the Staff with any reasons why he could not do so. Mr. Gustafson has now had more than four months to comply with the document requests. The Staff has repeatedly

warned him that, if he did not comply voluntarily, the Staff would have to bring a subpoena enforcement action. It is clear that Mr. Gustafson has chosen not to comply with the Staff's subpoena and, as a result, the Staff has no other remedy than the judicial enforcement of the subpoena.

**WHEREFORE**, the United States Securities and Exchange Commission respectfully requests that this Court issue an Order:

- A. Directing Wynn A. Gustafson to produce to the Commission Staff all documents responsive to the Commission's subpoena;
- B. Granting the Commission such other and further relief as may be necessary and appropriate to achieve compliance with the subpoena and with any Order the Court issues in its enforcement thereof; and
- C. Permitting service of all Orders on Mr. Gustafson by overnight express mail or electronic mail.

Dated: October 31, 2017

Respectfully submitted,

/s/ Ariella O. Guardi

Charles J. Kerstetter (PA No. 67088)  
Ariella Omholt Guardi (IL No. 6297336)  
United States Securities and Exchange Commission  
175 West Jackson Boulevard, Suite 1450  
Chicago, Illinois 60604  
Telephone: (312) 353-7390  
guardia@sec.gov  
*Attorneys for Plaintiff*

Craig Baune (331727)

Assistant United States Attorney  
District of Minnesota  
600 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55414  
Telephone: (612) 664-5600  
Craig.baune@usdoj.gov  
*Local Counsel*