

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15215

In the Matter of

JAMES S. TAGLIAFERRI,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION TO
AMEND THE ORDER INSTITUTING
PROCEEDINGS AND BRIEF IN SUPPORT

DIVISION OF ENFORCEMENT
Nancy A. Brown
H. Gregory Baker
Securities and Exchange Commission
New York Regional Office
200 Vesey Street, Suite 400
New York, New York 10281
(212) 336-1023 (Brown)

July 16, 2015

Preliminary Statement

The Division of Enforcement (the "Division") respectfully moves the Commission to amend the Order Instituting Proceedings ("OIP") in this proceeding against Respondent James S. Tagliaferri ("Respondent" or "Tagliaferri") pursuant to Commission Rule of Practice 200(d), and respectfully submits this memorandum of law in support. The Division seeks to amend the OIP in three respects:

1. To add the criminal conviction of Respondent -- which arose from a criminal indictment alleging the same facts set forth in the OIP -- as a separate basis for establishing Tagliaferri's charged violations of the securities laws and for imposing the requested relief, including but not limited to associational bars pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act");

2. To withdraw the Division's penalty claim given the sentence of 72 months imprisonment and three years supervised release imposed on Tagliaferri by the Judgment entered in the criminal action against him; and

3. To withdraw the Division's claim for disgorgement and prejudgment interest in light of the forfeiture and restitution orders entered in the criminal action that require Tagliaferri to pay over \$20 million.¹

Granting this relief will allow the Division to more efficiently establish Tagliaferri's liability for the allegations contained in the OIP, provide an additional basis to impose the requested relief, and give account to the sanctions already imposed on Respondent through the criminal action.

In support of its Motion, the Division also respectfully submits herewith the Declaration of Nancy A. Brown, executed July 16, 2015 ("Brown Decl."), with exhibits, and the Declaration of Christopher Ferrante, executed July 16, 2015 ("Ferrante Decl.").

¹ The proposed Amended OIP also contains minor revisions reflecting Tagliaferri's current status. It is submitted herewith as Brown Decl., Ex. F in redlined form, marked to show changes from the original OIP, and as Brown Decl., Ex. G in final form.

Background

The OIP Allegations

On February 21, 2013, the Commission issued the OIP. It alleged that from 2007 until at least 2010, Tagliaferri, acting through Commission-registered investment adviser, TAG Virgin Islands, Inc., and, later, its successor by merger, TAG Virgin Islands, LLC (collectively “TAG”) routinely used his discretionary authority over client accounts to cause clients to purchase promissory notes issued by various private companies controlled by, or otherwise affiliated with, “Individual A.” Tagliaferri failed to disclose to those clients that in exchange for purchasing those notes for his clients’ accounts, he was receiving kickbacks from Individual A. (Brown Decl., Ex. A (OIP) ¶¶ 2, 14-16, 19.) During the same period, Tagliaferri similarly failed to disclose the kickbacks he earned from International Equine Acquisitions Holdings, Inc. (“IEAH”) for causing still other TAG clients to invest in notes issued by it. (*Id.* ¶¶ 4, 17, 18, 19.)

The OIP further alleges that when Individual A or his affiliated companies defaulted on the notes, Tagliaferri caused other TAG clients to purchase thinly traded public company securities from Individual A or his brother, and used the proceeds of those sales to pay the interest or principal on the notes due to the note-holding TAG clients. (Brown Decl., Ex. A (OIP) ¶¶ 3, 20-22.)

Finally, the OIP alleges that Tagliaferri misappropriated \$5 million in client funds, transferring them to a private equity fund, UMS Partners Fund II, L.P. (“UMS”) for the purported purchase of UMS notes. But no notes were ever issued to TAG or TAG clients. (Brown Decl., Ex. A (OIP) ¶¶ 4, 23, 24.)

The Parallel Criminal Action, the Stay and the Conviction

On March 11, 2013, the ALJ issued an Order Staying Proceedings (“Stay Order”) on the Motion of the United States Attorney’s Office for the Southern District of New York (“USAO”),

pending the resolution of a parallel criminal action brought against Tagliaferri, United States v. Tagliaferri, 13 Cr. 115 (RA) (S.D.N.Y.) (the “Criminal Action”), pursuant to Commission Rule of Practice 210(c)(3). In the Superseding Indictment filed April 8, 2014 in the Criminal Action (Brown Decl., Ex. B (the “Indictment”), the USAO charged Tagliaferri with investment advisor fraud, securities fraud, wire fraud and violations of the Travel Act, on nearly identical allegations of wrongdoing as those alleged in the OIP. On July 24, 2014, the jury returned a verdict finding Respondent guilty on 12 counts, including four counts of wire fraud, six counts of violations of the Travel Act and one count each of investment advisor fraud and securities fraud. (Brown Decl., Ex. C (Criminal Action Judgment).) On February 13, 2015, Tagliaferri was sentenced to 72 months incarceration and three years supervised release, and ordered to forfeit \$2,500,000 and certain real property he owned in the U.S. Virgin Islands. (Id., Exs. C (Criminal Action Judgment); D (Order of Forfeiture), at 2.) On July 2, 2015, the Criminal Action Court further ordered Tagliaferri to pay \$ 20,887,196.53 in restitution. (Id., Ex. E (Restitution Order) at 1.)

The counts of the indictment upon which Tagliaferri was convicted arose from the same conduct as alleged herein. For example, the investment advisor fraud count incorporated the following allegations, among others:

- “At all times relevant to this Indictment, JAMES TAGLIAFERRI, the defendant, provided investment advisory services to clients through various companies that Tagliaferri managed and controlled . . . TAG Virgin Islands, Inc., and its successor, TAG Virgin Islands, LLC. (together, “TAG”) . . . At all times relevant to this Indictment, TAG . . . was a registered investment adviser with the U.S. Securities and Exchange Commission.”

(Brown Decl., Ex. B (Indictment) ¶¶ 1-2.)

- “From at least in or about 2007 through at least in or about 2010, JAMES TAGLIAFERRI, the defendant participated in a scheme to defraud his investment advisory clients. . . .
 - a. Without his clients’ knowledge or consent, TAGLIAFERRI received for his own benefit, and the benefit of his company, millions of dollars in payments in exchange for placing his clients’ money in

investments in either (i) [IEAH]², or (ii) one of various companies affiliated with [Individual A]³ and [Individual A]'s brother. . .

b. At various times, TAGLIAFERRI used his clients' funds for his own interests – rather than his clients' best interests – by causing clients to purchase securities from other accounts that TAGLIAFERRI controlled. TAGLIAFERRI executed these transactions in order to generate money to meet the cash needs of TAG and other companies with which TAGLIAFERRI was affiliated.

c. In order to deceptively obtain client funds for this purpose, TAGLIAFERRI executed a complex series of trades among and between his clients' accounts to generate cash. . . . First, in order to generate cash from client accounts, TAGLIAFERRI caused certain clients to purchase securities from other client accounts over which TAGLIAFERRI also exercised control (“Intermediary Accounts”). These Intermediary Accounts were held in the name of certain of the [companies affiliated with Individual A]. Second, once client funds were transferred to these Intermediary Accounts, TAGLIAFERRI used these funds for his own benefit, including to pay back other clients who were demanding their money and to pay for expenses of companies with which TAGLIAFERRI was affiliated.

d. Also as part of the scheme, TAGLIAFERRI caused to be placed in certain client accounts false and fraudulent securities (the “Sub Notes”). The Sub Notes provided that [UMS]⁴ was obligated to pay certain TAG clients. According to the Sub Notes, this obligation was premised on a purported promissory note between [UMS] and TAG which obligated [UMS] to make payments to TAG. As TAGLIAFERRI well knew, however, this promissory note between [UMS] and TAG did not exist.”

(Brown Decl., Ex. B (Indictment) ¶ 12.)

On June 1, 2015, Judge Elliot lifted the stay in this case. By Order dated June 10, 2015, Judge Elliot delayed Respondent's time to answer the OIP in light of the pending restitution hearing in the Criminal Action and the Division's stated intention to make the instant motion to amend the OIP based on the Criminal Action Orders and Judgment.

² The Indictment calls IEAH, “Company 1.”

³ The Indictment calls Individual A, “Associate 1.”

⁴ The Indictment calls UMS, “Company 3.”

ARGUMENT

A. **The OIP Should Be Amended to Add Tagliaferri's Criminal Conviction as an Additional Basis to Find Respondent Liable and to Impose the Requested Relief**

Under Rule of Practice 200(d)(1), the Commission may “at any time, upon motion by a party, amend an order instituting proceedings to include new matters of fact or law,” and such amendments “should be freely granted, subject only to consideration that other parties should not be surprised nor their rights prejudiced.” Matter of Charles K. Seavey, Advisers Act Rel. No. 1925A, 2001 WL 228030, at *2 (SEC Mar. 9, 2001) (citation omitted). The Commission has already held that amending an OIP to add a respondent’s criminal conviction “can neither surprise nor prejudice” a respondent. Id.

Tagliaferri can claim neither surprise nor prejudice here. First, because his criminal convictions arise from the same facts as those alleged in the OIP, he cannot claim surprise. (Compare Brown Decl., Ex. A (OIP) ¶¶ 2-4) with id. Ex. B (Indictment) ¶¶ 1-2, 12.) Nor can Tagliaferri claim prejudice. Tagliaferri has not yet filed an answer to the existing OIP, and his obligation to do so has been stayed by the Hearing Officer until the Commission resolves the instant motion.

In addition, granting the motion will make these proceedings more efficient. The criminal conviction provides an independent basis for remedial sanctions. See Exchange Act § 15(b)(6)(A) (providing for a range of associational bars)⁵; and Advisers Act § 203(f) (same). Thus, it is more efficient to resolve all issues related to this conduct in a single proceeding. Matter of Robert David Beauchene, Exchange Act Rel. No. 68974, 2013 WL 661619, at *2 (SEC Feb. 25, 2013).

⁵ The Division alleged that Tagliaferri acted as an unregistered broker in selling securities to his advisory clients. (Brown Decl., Ex. A (OIP) ¶¶ 15, 17, 27.) Thus Exchange Act Section 15(b) applies even though Tagliaferri was not associated with a registered broker-dealer. Matter of Dale J. Engelhardt, Exchange Act Rel. No. 64389, 2011 WL 1681678, at *2 n. 2 (SEC May 4, 2011) (finding that 15(b)(6) applies to unregistered persons acting as brokers).

B. Withdrawal of the Penalty, Disgorgement and Prejudgment Interest Claims Is Appropriate

The OIP should also be amended to withdraw the monetary relief claims -- penalty, disgorgement and prejudgment interest -- in light of the monetary and incarceration sanctions already imposed on Tagliaferri in the Criminal Action.

In the Criminal Action, Tagliaferri was sentenced to a prison term of 72 months, with three years supervised release based on identical conduct to that alleged in the Commission's case against him. (Brown Decl., Ex. C (Criminal Judgment).) Because the policies of retribution and deterrence will already have been served here, no additional penalties are necessary. Matter of Daniel J. Gallagher, Exchange Act Rel. No. 70305, 2013 WL 4716026, at *1 (SEC Sep. 3, 2013) ("We have additionally determined, as an exercise of our discretion, to grant the Division's request to withdraw the OIP's civil penalty claim, given Gallagher's prison sentence and period of supervised release.").

Similarly, the Commission should exercise its discretion to amend the OIP to withdraw the disgorgement and prejudgment interest claims in light of the orders of forfeiture and restitution imposed on Tagliaferri in the Criminal Action. Tagliaferri has been ordered to pay \$2.5 million as forfeiture and an additional \$20+ million more in restitution. (Brown Decl., Ex. C (Criminal Action Judgment) at 7; Ex. E (Restitution Order) at 1.) In the original OIP, the Division alleged that Tagliaferri earned \$3.35 million in unlawful kickbacks (id., Ex. A ¶¶ 16, 17), misappropriated \$5 million in client funds (id. ¶ 4) and earned an indeterminate amount of fees from clients during the period in which he engaged in his fraudulent activities (id. ¶ 12). According to the Division's calculation, TAG collected \$4,361,000 in fees from all clients during the relevant period. (Ferrante Decl. ¶¶ 2-3.) Thus, if the Division were able to show that every TAG client was, in some fashion, defrauded, and was defrauded throughout the alleged period, the maximum ill-gotten gains the Division would seek in this matter as disgorgement is

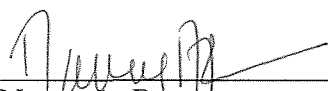
approximately \$12,711,000 -- an amount nearly doubled by the forfeiture and restitution orders already imposed by the District Court in the Criminal Action. In similar circumstances, where the amount ordered in restitution equals or exceeds that recoverable as disgorgement, the Commission has accepted settlement offers and ordered its disgorgement and prejudgment interest claims “deemed satisfied” by the restitution orders imposed in parallel criminal actions against the same respondent. E.g., *Beauchene*, 2013 WL 661619, at *2; see also *SEC v. GLR Capital Mgmt., LLC*, Lit. Rel. No. 23204, 2015 WL 737724, at *1 (Feb. 23, 2015) (announcing entry of consent judgment in Commission civil injunctive action imposing disgorgement and prejudgment interest that were deemed satisfied in light of restitution orders entered against advisor in parallel criminal action); *SEC v. Wwebnet, Inc.*, Lit Rel. No. 23177, 2015 WL 271262, at *1 (Jan. 22, 2015) (same). The Commission should exercise its discretion in this case to deem the disgorgement and prejudgment interest claims against Tagliaferri satisfied by the forfeiture and restitution orders already imposed, and to grant the Division’s motion to amend the OIP to withdraw those claims.

CONCLUSION

For the reasons set forth above, the Division respectfully requests that the Commission grant its motion to amend the OIP: (1) to add Tagliaferri's criminal conviction as a basis for finding him liable for the charged securities laws violations and for imposing the requested relief against him in this action; and (2) to withdraw the penalty claim against Tagliaferri; and (3) to withdraw the disgorgement and prejudgment interest claims, each as set forth in the Proposed Amended Order Instituting Proceedings.

Dated: July 16, 2015
New York, NY

Respectfully submitted,

By: 
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H. Gregory Baker
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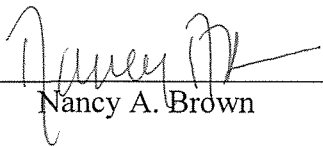
CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the Division's Motion to Amend the OIP and Brief in Support, and the Declarations of Nancy A. Brown and Christopher Ferrante in Support, to be served on Respondent, James S. Tagliaferri, this 10 day of July 2015, by causing the same to be mailed to him by US Postal Service Express Mail at the following address:

James S. Tagliaferri

[REDACTED ADDRESS]

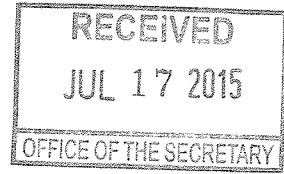
Beaver, WV [REDACTED]



Nancy A. Brown



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July 16, 2015

Via UPS Overnight

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Re: In the Matter of James S. Tagliaferri;
Admin. Proc. File No. 3-15215

Dear Mr. Fields:

Enclosed for filing are an original and three copies of the Division's Motion to Amend the Order Instituting Proceedings and Brief in Support, together with the Declarations of Nancy A. Brown and Christopher Ferrante in Support.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy A. Brown", written over a horizontal line.

Nancy A. Brown
Senior Trial Counsel

Enclosures

cc (w/ encls.): James S. Tagliaferri, Respondent