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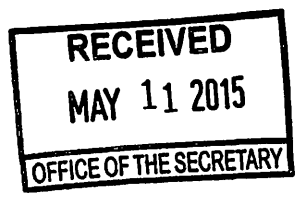
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16316

In the Matter of

PAUL J. POLLACK and MONTGOMERY STREET RESEARCH, LLC,

Respondents.

DIVISION OF ENFORCEMENT'S *MOTION IN LIMINE* TO EXCLUDE CERTAIN TESTIMONY AND EXHIBITS

The Division of Enforcement ("Division"), by and through undersigned counsel, hereby files this *Motion in Limine* to Exclude Certain Testimony and Exhibits pursuant to Rules 320, 321, and 326 of the SEC's Rules of Practice, 17 C.F.R. § 201.320, 321 and 326, and the General Prehearing Order entered January 26, 2015 by the Honorable Cameron Elliot.

INTRODUCTION

Respondents' Witness and Documents List [First Amended] ("Amended Witness List" and "Amended Exhibit List") seeks testimony from several witnesses – and identifies 1,400 "chat room" discussions as exhibits – that are irrelevant and immaterial to any fact that is of consequence to the claims asserted in this matter. In addition, Respondents seek testimony from a witness who may potentially provide unqualified expert opinions.

Accordingly, the Division respectfully requests that the testimony and exhibits described herein be excluded.

STATEMENT OF RELEVANT FACTS

A. Background of the Case

The Order Instituting Proceedings ("OIP") in this action was filed on December 16, 2014. *See* Exhibit A. The Division alleges that Respondents committed violations of the federal securities law while providing services to Arete Industries, Inc. ("Arete").

In particular, the Division alleges that after Respondents were hired by Arete, Paul J. Pollack created a false appearance of market activity in Arete's stock by repeatedly engaging in wash trading through his control of several brokerage accounts. *See* Exhibit A, ¶¶ 20-29. The Division also alleges that Mr. Pollack and Montgomery Street Research ("Respondents") acted as unregistered brokers by raising funds on behalf of Arete in two private placements. *See* Exhibit A, ¶¶ 8-19.

B. The Respondents' Amended Witness and Amended Exhibit Lists

On May 4, 2015, Respondents provided the Division with an Amended Witness and Exhibit List, which included twelve named witnesses, two additional categories of witnesses, and five categories of exhibits. *See* Exhibit B. Among other individuals, Respondents' intend to call (1) David L. Mau to testify about "insider trading by persons owning Arete stock and the use of 'chat rooms' for numerous pumpings of volume of Arete stock at the instructions of Prosser, Davis and other agents of Prosser, and his knowledge of unauthorized use of investor funds by Arete, Prosser, Davis and Gamber for personal gain"; (2) Gerald Kieft to "testify about The Arete Research Reports he prepared for Prosser"; (3) Greg Kapoustin to "testify about his analyst reports on Arete"; (4) Sam Chase to "testify about his attempts to raise money for Arete"; and (5) Jim Chincholl to "testify about 'chatroom discussions' to pump up the volume of Arete" and "sources of and statements made about Arete." Respondents' Amended Exhibit List also contemplates the

use of 1,400 "chat room discussion about Arete." The Division objects to the proposed testimony of these five individuals and the use of 1,400 anonymous discussions regarding Arete as irrelevant and immaterial to the claims asserted in the OIP.

In addition, despite notifying the Division and this Court that they "will not be calling an expert to furnish a report or testify," (*see* Exhibit C) the Respondents included one witness, Glen Dailey, who will purportedly "testify about the trading volumes and activity of Pollack in Arete stock." The Division objects to Mr. Dailey's proposed testimony to the extent he provides unqualified expert testimony.

ARGUMENT

SEC Rules of Practice 320 and 326 relate to the admissibility, scope, and form of evidence in SEC administrative proceedings. Rule 320, "Evidence: Admissibility," states that "[t]he Commission or the hearing officer may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial or unduly repetitious." 17 C.F.R. § 201.320. The Court's General Prehearing Order in this matter repeated that "[e]vidence that is irrelevant, immaterial or unduly repetitious is inadmissible." *See* Exhibit D, ¶ 7 (citing 17 C.F.R. § 201.320.). Rule 326, "Evidence: Presentation, Rebuttal and Cross-Examination" provides that it is within the hearing officer's discretion to determine what evidence may be submitted.

A. Certain Testimony from David Mau and Any Testimony from Gerald Kieft, Greg Kapoustin, Sam Chase and Jim Chincholl Should Be Excluded.

As made plain in the OIP, this case is about Mr. Pollack's pattern of manipulative trading in Arete stock and Respondents' collective activities as unregistered brokers in connection with two private placements of Arete stock. Respondents' Amended Witness List includes contemplated testimony from several witnesses that is entirely irrelevant and immaterial to these claims.

Respondents' intend on calling Mr. Mau to testify about "insider trading" and "use of 'chat rooms' for numerous pumpings of volume of Arete stock", as well as "unauthorized use of investor funds by Arete, Prosser, Davis and Gamber for personal gain." Putting aside whether Mr. Mau's proposed testimony on "insider trading" calls for an impermissible legal conclusion, these topics are immaterial to the claims in the OIP and any conceivable defense of Respondents. Indeed, Mr. Mau's testimony on these topics is not even relevant. Put simply, Respondents in this case are Mr. Pollack and Montgomery Street Research. It is their obligation to defend the claims against *them*, not pursue immaterial and irrelevant claims against *others* who are not charged in this matter.

Respondents' efforts to deflect attention from their own conduct does not stop there. They also intend on calling Jim Chincoll to testify about "'chatroom discussions' to pump up the volume of Arete [and] sources of and statements made about Arete." Again, the allegations of manipulation are levied against Mr. Pollack and the relevant evidence lies in his trading records, not anonymous message boards. Nothing in these message boards could provide any conceivable defense for Mr. Pollack's trading patterns or Respondents unregistered broker activity on behalf of Arete. Respondents also seek testimony from Sam Chase about "his attempts to raise money for Arete" even though Mr. Chase's purported efforts on behalf of Arete are not at issue here. Finally, Respondents intend on calling Gerald Kieft and Greg Kapoustin to testify about Arete "research reports" and "analyst reports", respectively. Testimony about chatroom discussions, efforts of others to raise money on behalf of Arete, and analyst and research reports not-at-issue is simply not relevant to Mr. Pollack's alleged manipulation or the work that Respondents did on behalf of Arete. Accordingly, the proposed testimony enumerated above should be excluded as "irrelevant" and "immaterial" pursuant to SEC Rule of Practice 320 and the General Prehearing Order issued in this matter.

B. Any Expert Testimony from Glen Dailey Should Be Excluded.

Respondents have indicated that Glen Dailey "will testify about the trading volume and activity of Pollack in Arete stock." The documentary record in this case reveals that Mr. Dailey has had no contact with Arete or made any investments in Arete. Mr. Dailey has not been identified as an expert in this matter and Respondents have not submitted the required information necessary to designate him as an expert under SEC Rule of Practice 222(b).[1] Indeed, Respondents notified the Division and this Court that they "will not be calling an expert to furnish a report or testify." *See* Exhibit C. Because Mr. Dailey cannot testify as an expert in this proceeding, his testimony should be limited to facts that he has personal knowledge of and lay testimony. Mr. Dailey may not properly offer any testimony that constitutes expert opinion, *i.e.*, testimony based upon any scientific, technical, or other specialized knowledge he may have, and such testimony should be excluded as improper.[2] More specifically, to the extent that Mr. Dailey testifies about the market generally, the market in Arete specifically, or the trading patterns of Mr. Pollack, that testimony should be excluded.

C. All "1400 'Chat Room' Discussions About Arete" Should Be Excluded.

Respondents Amended Exhibit List identifies, among four other vaguely enumerated categories, "approximately 1400 'chat room' discussions about Arete." Anonymous message board discussions cannot make any fact regarding Mr. Pollack's

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[1] SEC Rule of Practice 222(b) provides: "*Expert Witness*. Each party who intends to call an expert witness shall submit, in additional to the information required by paragraph (a)(4) of this rule, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, and a list of publications authored or co-authored by the expert."

[2] Federal Rule of Evidence 701 regarding *Opinion Testimony by Lay Witness* provides that "If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: . . . (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702."

trading in Arete stock or Respondents' alleged efforts as unregistered brokers on behalf of Arete any more or less probable. Therefore, these broadly-defined "discussions" should be excluded as "irrelevant" and "immaterial" pursuant to SEC Rule of Practice of 320 and the General Prehearing Order issued in this matter.

CONCLUSION

For the reasons stated above, the testimony sought by Respondents from Messrs. Mau, Kieft, Kapoustin, Chase and Chincholl, as well as 1,400 message board discussions should be excluded as irrelevant and immaterial. In addition, because Mr. Dailey cannot testify as an expert in this proceeding, his testimony should be limited to facts that he has personal knowledge of and lay testimony.

Respectfully submitted this 8th day of May, 2015.

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SERVICE LIST

On May 8, 2015, the foregoing **DIVISION OF ENFORCEMENT'S *MOTION IN LIMINE* TO EXCLUDE CERTAIN TESTIMONY AND EXHIBITS** was sent to the following parties and other persons entitled to notice:

Securities and Exchange Commission
Brent Fields, Secretary
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(By Facsimile and original and three copies by UPS)

Honorable Cameron Elliot
100 F Street, N.E.
Mail Stop 2582
Washington, D.C. 20549
(By Email and UPS)

J. Randle Henderson, Esq.
16506 F.M. 529
Suite 77095
Houston, TX 77095
(By Email pursuant to the parties' agreement)

Nicole L. Nesvig

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No.

INVESTMENT COMPANY ACT OF 1940
Release No.

ADMINISTRATIVE PROCEEDING
File No.

In the Matter of **PAUL J. POLLACK and MONTGOMERY STREET RESEARCH, LLC,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 9(b) OF THE INVESTMENT COMPANY ACT OF 1940, AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 9(b) of the Investment Company Act of 1940 ("Investment Company Act") against Paul J. Pollack ("Pollack") and Montgomery Street Research, LLC ("Montgomery Street") (collectively, "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. SUMMARY

1. Pollack, through an entity he solely owns and controls, Montgomery Street, served as an outside consultant to Issuer A, a company quoted on OTC Link that is engaged in the acquisition and development of oil and natural gas reserves. In exchange for services provided to Issuer A, Pollack received various compensation, including more than 600,000 shares of Issuer A common stock.

2. From approximately July 2011 through June 2012, Pollack created a false appearance of market activity in Issuer A's stock by engaging in approximately 100 wash trades through his control of eight brokerage accounts at five broker-dealers. In addition, Respondents acted as unregistered brokers by raising funds on behalf of Issuer A in two private placements. Specifically, in Issuer A's common stock offering and preferred stock offering, Respondents raised over $2.5 million from 11 investors. Among other things, Respondents identified and solicited potential investors, provided financial information regarding the issuer, fielded investor inquiries, and with respect to the preferred stock offering, they received transaction-based compensation. Throughout their fund-raising for the issuer, Respondents were not registered as brokers nor associated with a registered broker-dealer. By virtue of this conduct, Montgomery Street violated Section 15(a) of the Exchange Act, and Pollack violated Sections 9(a)(1), 10(b) and 15(a) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder.

B. RESPONDENTS

3. **Paul J. Pollack ("Pollack")**, age 54, resides in Phoenix, Arizona. From approximately 1989 to 2001, Pollack was a registered representative associated with broker-dealers registered with the Commission. However, during the relevant period, Pollack was not registered with the Commission as a broker-dealer or associated with a registered broker-dealer. Pollack participated in an offering of Issuer A stock, which is a penny stock. Issuer A issued 45,000 shares to Pollack.

4. **Montgomery Street Research, LLC ("Montgomery Street")** is a Nevada limited liability company with its principal place of business in Phoenix, Arizona, that purports to provide equity research and consulting services. Pollack formed Montgomery Street in 2005, and he has been its sole owner and managing member since its inception. Montgomery Street is not, and has never been, registered with the Commission in any capacity. Montgomery Street participated in an offering of Issuer A stock, which is a penny stock.

C. OTHER RELEVANT ENTITIES

5. **Bhog Partners, LLC ("Bhog Partners")** is a Wyoming limited liability company that has been solely owned and controlled by Pollack since its formation in March 2012. Bhog Partners has no operations, but rather was created to allow for the deposit and trading of micro-cap stock in brokerage accounts controlled exclusively by Pollack and under Bhog Partners' name. Issuer A issued 200,000 shares to Bhog Partners. Bhog Partners has never been registered with the Commission in any capacity.

6. **Toro Holdings, LLC ("Toro Holdings")** is a Nevada limited liability company that has been solely owned and controlled by Pollack since its formation in 2006. Toro Holdings has no operations, but rather was created to allow for the deposit and trading of micro-cap stock in brokerage accounts controlled exclusively by Pollack and under Toro Holdings name. Issuer A issued 200,000 shares to Toro Holdings. Toro Holdings has never been registered with the Commission in any capacity.

7. **Giddy-Up Partners, LLC ("Giddy-Up Partners")** is a Nevada limited liability company that has been solely owned and controlled by Pollack since its formation in 2008. Giddy-Up Partners has no operations, but rather was created to allow for the deposit and trading of micro-cap stock in brokerage accounts controlled exclusively by Pollack and under Giddy-Up Partners name. Issuer A issued 220,000 shares to Giddy-Up Partners. Giddy-Up Partners has never been registered with the Commission in any capacity.

D. POLLACK AND MONTGOMERY STREET ACTED AS UNREGISTERED BROKERS

8. In March 2010, Issuer A entered into a letter agreement with Montgomery Street (the "Letter Agreement") for a three-year term beginning on March 2, 2010. Pursuant to the Letter Agreement, Montgomery Street was to provide "general advice to the Company, its growth strategies, and position within the public capital markets." In exchange for these services, Montgomery Street was to receive "$500,000 to be paid in the form of 80,000,000 shares of [Issuer A] Common Stock." On April 18, 2011, Issuer A declared a 1:100 reverse split of Issuer A stock, changing the number of shares due Montgomery Street under the Letter Agreement from 80,000,000 to 800,000.

9. Notwithstanding the vague characterization of the services contained in the Letter Agreement, Issuer A in fact hired Respondents to raise money and to make introductions to potential investors.

10. Issuer A conducted two private placements of its securities during the three-year term of the Letter Agreement. The first offering was a sale of common stock to raise funds to cover expenses associated with Issuer A's pursuit of listing on a national exchange. The second offering was a sale of preferred stock and was designed to raise funds to purchase certain assets.

11. From approximately November 2010 through April 2011, Respondents participated in effecting transactions in Issuer A's common stock through their involvement at key points in the chain of distribution. Pollack, acting on behalf of Montgomery Street, among other things:

a. Identified prospective investors;

b. Solicited prospective investors in phone calls, emails, and meetings;

c. Provided prospective investors with common stock offering materials, including subscription agreements; and

d. Directed interested investors how to complete Issuer A's common stock subscription agreement and provide funds to Issuer A.

12. In addition, at Pollack's direction, an independent contractor serving as an analyst at Montgomery Street ("Analyst A") described Issuer A's business plan to potential investors; prepared investment highlights on behalf of Issuer A; distributed models regarding Issuer A's

financial prospects to potential investors; fielded investor inquiries; and provided wiring instructions to interested investors.

13. Following solicitation by Respondents, nine investors purchased a total of $445,000 of Issuer A's common stock, constituting 74% of the $600,000 total amount raised in the offering.

14. From approximately August 2011 through November 2011, Respondents participated in effecting transactions in Issuer A's preferred stock through their involvement at key points in the chain of distribution. Pollack, acting on behalf of Montgomery Street, among other things:

a. Assisted in formulating key aspects of the offering, including the convertible stock yield, the aggregate amount sought by Issuer A in the offering, and the structure as a preferred stock offering;

b. Identified prospective investors;

c. Solicited prospective investors in phone calls, emails, and meetings;

d. Explained and fielded questions regarding Issuer A's operations, financial condition, and business prospects;

e. Provided prospective investors with preferred stock offering materials, including subscription agreements; and

f. Directed interested investors how to complete Issuer A's preferred stock subscription agreement and provide funds to Issuer A.

15. In addition, at Pollack's direction, Analyst A continued to maintain and distribute models regarding Issuer A's financial prospects to prospective investors.

16. Following solicitation by Respondents, three investors purchased a total of $2,100,000 of Issuer A's preferred stock, constituting 40% of the $5,200,000 total amount raised in the offering.

17. In connection with the preferred stock offering, Pollack and the CEO of Issuer A reached an oral agreement whereby Issuer A was to pay Respondents 5% of the value of Issuer A's preferred stock purchased by Pollack and Montgomery Street investors. Pursuant to their oral agreement, Respondents later received approximately $105,000 in transaction-based compensation from Issuer A.

18. Pollack and entities controlled by Pollack received 665,000 of the 800,000 shares of Issuer A common stock due pursuant to the Letter Agreement:

a. Toro Holdings was issued 100,000 shares of Issuer A common stock on or about April 28, 2011. The value of those shares on that date was $760,000;

b. Toro Holdings was issued an additional 100,000 shares of Issuer A common stock on or about June 16, 2011. The value of those shares on that date was $415,000;

c. Giddy-Up Partners was issued 120,000 shares of Issuer A common stock on or about June 16, 2011. The value of those shares on that date was $498,000;

d. Giddy-Up Partners was issued an additional 100,000 shares of Issuer A common stock on or about August 1, 2011. The value of those shares on that date was $430,000;

e. Bhog Partners was issued 200,000 shares of Issuer A common stock on or about August 23, 2011. The value of those shares on that date was $660,000; and

f. Pollack was issued 45,000 shares of Issuer A common stock on or about June 4, 2013. The value of those shares on that date was $8,100.

19. The total value of the shares issued to Pollack and his various entities pursuant to the Letter Agreement was $2,771,100.

E. POLLACK MANIPULATED THE VOLUME OF ISSUER A STOCK

20. From approximately December 2010 through October 2012, Pollack had exclusive trading authority over at least ten online brokerage accounts at five broker-dealers. Seven of these accounts were in the name of three entities that Pollack solely-owned and controlled, including three accounts in the name of Montgomery Street; three accounts in the name of Toro Holdings; and one account in the name of Bhog Partners.

21. From December 31, 2010 through October 8, 2012, in open market transactions, the ten Pollack-controlled accounts bought a total of 5,347,557 Issuer A shares and sold a total of 5,661,051 shares for net proceeds of $808,478.73.

22. During that period, Pollack conducted 4,341 transactions in Issuer A stock on 300 trading days. On 140 of the 300 trading days, the Pollack-controlled accounts were responsible for over 50% of the reported Issuer A trading volume. On 19 of the 300 trading days, the Pollack-controlled accounts were responsible for over 90% of reported Issuer A trading volume.

23. From at least July 2011 through June 2012, eight Pollack-controlled accounts manipulated the market for Issuer A stock by engaging in the practice of wash trading. Wash trading is the purchase and sale of a security, either simultaneously or within a short period of time, that involves no change in the beneficial ownership of the security, as a means of creating artificial market activity. Specifically, Pollack placed buy (or sell) orders for Issuer A stock in one account he controlled, and then simultaneously or within a short period of time entered sell (or buy) orders for Issuer A stock at the exact same price in the exact same or virtually identical quantities in another account he controlled. These paired transactions had no economic impact on Pollack's

position in Issuer A. By repeatedly making wash trades in the stock of Issuer A, Pollack, intended to and did, create a false or misleading appearance of active trading in the stock of Issuer A.

24. Pollack's creation of a false or misleading appearance of active trading in the stock of Issuer A, an otherwise thinly traded stock, also applied upward pressure on the price of Issuer A stock.

25. Some of Pollack's wash trades in Issuer A during July 2011 illustrate his manipulative pattern:

a. On July 18, 2011 at 9:38:48, Pollack placed an order through his Toro Holdings Account #1 to *buy* 1500 shares of Issuer A at $4.20 per share. Just 18 seconds later, at 9:39:06, Pollack placed an order through his Toro Holdings Account #2 to *sell* 1500 shares of Issuer A at $4.20 per share;

b. Similarly, on July 27, 2011, at 13:47:03, Pollack placed an order through his Montgomery Street Account #1 to *buy* 500 shares of Issuer A at $4.78 per share. Just 15 seconds later, at 13:47:18, Pollack placed an order through his Toro Holdings Account #2 to *sell* 500 shares of Issuer A at $4.78 per share.

26. Pollack's wash trades on August 15, 2011 further illustrate his manipulative pattern. On that day, Pollack conducted eight wash trades in three accounts he controlled, and Pollack's trading was responsible for 99.06% of Issuer A's total reported volume. Notably, seven of his eight wash trades were separated by thirty seconds or less.

Pollack Wash Trades on August 15, 2011

ACCOUNT	TICKER	ORDER DATE	ORDER TIME	TRADE TIME	SELL/BUY	PRICE	QUANTITY
Toro Holdings Account 1	Issuer A	08/15/2011	10:22:38	10:25:02	Buy	$3.25	200
Toro Holdings Account 1	Issuer A	08/15/2011	10:24:06	10:25:02	Buy	$3.25	1000
Montgomery St Account 1	Issuer A	08/15/2011	10:24:49	10:25:02	Sell	$3.25	1200
Toro Holdings Account 1	Issuer A	08/15/2011	10:28:05	10:28:15	Buy	$3.30	500
Montgomery St Account 1	Issuer A	08/15/2011	10:28:11	10:28:15	Sell	$3.30	500
Toro Holdings Account 1	Issuer A	08/15/2011	13:45:30	13:46:04	Buy	$3.20	1999
Montgomery St Account 1	Issuer A	08/15/2011	13:45:52	13:46:04	Sell	$3.20	2000
Montgomery St Account 2	Issuer A	08/15/2011	13:50:12	13:50:55	Buy	$3.25	1500
Montgomery St Account 1	Issuer A	08/15/2011	13:50:27	13:50:55	Sell	$3.25	1500
Montgomery St Account 1	Issuer A	08/15/2011	13:52:35	13:52:57	Buy	$3.30	500
Montgomery St Account 1	Issuer A	08/15/2011	13:52:45	13:52:57	Sell	$3.30	500
Toro Holdings Account 1	Issuer A	08/15/2011	14:44:27	14:44:38	Buy	$3.49	501
Montgomery St Account 1	Issuer A	08/15/2011	14:44:34	14:44:38	Sell	$3.49	501
Montgomery St Account 1	Issuer A	08/15/2011	14:44:34	14:45:50	Sell	$3.49	499

Toro Holdings Account 1	Issuer A	08/15/2011	14:45:28	14:45:50	Buy	$3.49	500
Montgomery St Account 2	Issuer A	08/15/2011	15:10:17	15:11:05	Buy	$3.25	2000
Montgomery St Account 1	Issuer A	08/15/2011	15:10:47	15:11:05	Sell	$3.25	2000

27. Pollack engaged in this manipulative strategy repeatedly. From approximately July 2011 through June 2012, Pollack conducted approximately 100 wash trades in Issuer A stock where the buy/sell orders came within 90 seconds of one another, and where the price and quantity were identical or virtually identical. In 85 of those instances, the buy/sell orders came within 60 seconds of one another. In many cases, Pollack's wash trade orders were placed only seconds apart.

28. None of the 100 wash trades by the various Pollack-controlled accounts involved a change in the beneficial ownership of the security. In 31 of the 100 wash trades, the *same* Pollack-controlled entity placed virtually identical buy/sell orders, using different brokerage accounts. In the other 69 wash trades, Pollack placed virtually identical buy/sell orders through some combination of personal accounts and accounts of entities that he controlled. In numerous instances, Pollack bought and sold the stock of Issuer A in multiple accounts on the same day.

29. During the period in which Pollack's wash trades created a false or misleading appearance of active trading in the stock of Issuer A (July 18, 2011 through June 19, 2012), he obtained net trading proceeds in the stock of approximately $369,686.23.

F. VIOLATIONS

30. As a result of the conduct described above, Pollack willfully violated Section 9(a)(1) of the Exchange Act, which prohibits any person from engaging in wash sales "[f]or the purpose of creating a false or misleading appearance of active trading in any security other than a government security, or a false or misleading appearance with respect to the market for any such security. . ."

31. As a result of the conduct described above, Pollack willfully violated Section 10(b) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

32. As a result of the conduct described above, Pollack and Montgomery Street willfully violated Section 15(a)(1) of the Exchange Act, which makes it unlawful for any broker or dealer to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security unless such broker or dealer is registered with the Commission pursuant to Section 15(b) of the Exchange Act (or, if a natural person, associated with a registered broker-dealer other than a natural person).

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II hereof are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 15(b) of the Exchange Act including, but not limited to, disgorgement and civil penalties pursuant to Section 21B of the Exchange Act;

C. What, if any, remedial action is appropriate in the public interest against Respondents pursuant to Section 9(b) of the Investment Company Act including, but not limited to, disgorgement and civil penalties pursuant to Section 9 of the Investment Company Act; and

D. Whether, pursuant to Section 21C of the Exchange Act and Section 9 of the Investment Company Act, Respondents should be ordered to cease and desist from committing or causing violations of and future violations of Sections 9(a)(1), 10(b), and 15(a) of the Exchange Act and Rules 10b-5(a) and 10b-5(c) thereunder, whether Respondents should be ordered to pay a civil penalty pursuant to Section 21B(a) of the Exchange Act and Section 9(d) of the Investment Company Act, and whether Respondents should be ordered to pay disgorgement pursuant to Sections 21B(e) and 21C(e) of the Exchange Act and Section 9 of the Investment Company Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondents as provided for in the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Brent J. Fields
Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING

File No. 3-16316

In the Matter of

PAUL J. POLLACK and

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RESPONDENTS

PAUL J. POLLACK AND

MONTGOMERY STREET

RESEARCH, LLC'S WITNESS

AND DOCUMENT LISTS

[FIRST AMENDED]

I.

Respondents, Paul J. Pollack and Montgomery Street Research, LLC submit their First Amended Witness and Exhibit List in compliance with Judge Elliot's Order and under agreement with the Division of Enforcement.

II.

RESPONDENTS' WITNESS LIST

1. Kurt L. Gottschall
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1961 Stout St., #1700
Denver, Colorado 80294
Mr. Gottschall will be called to testify regarding the authenticity or origin of documents and/or the Securities and Exchange Commission's investigation of Respondents, Donald W. Prosser, Charles B. Davis, Charles L. Gamber and Nicholas L. Scheidt.

2. Mike McCasland
Computershare
350 Indiana Street, Suite 750
Golden, Co 80401
Mr. McCasland will be called to testify regarding Arete stock issuances to Mr. Pollack and/or his entities, as well as issuances to Prosser, Davis and Gamber and/or their co-conspirators.

3. David L. Mau
c/o Heather Hendrix, Esq.
Hendrix Law Office, PLLC
70 Val Vista Drive, Suite A3-418
Gilbert AZ 85296
Mr. Mau will be called to testify regarding work performed by Montgomery Street Research for Arete, his discussions with Mr. Prosser regarding Arete business plans, loans promised, sought and obtained by Arete. He will further testify about his knowledge of insider trading by persons owning Arete stock and the use of "chat rooms" for numerous pumpings of volume of Arete stock at the instructions of Prosser, Davis and other agents of Prosser, and his knowledge of unauthorized use of investor funds by Arete, Prosser, Davis and Gamber for personal gain.

4. Gerald Kieft will testify about The Arete Research Reports he prepared for Prosser.
Wall Street Resources
3545 SW Corporate Parkway
Palm City Fl 34990

5. Glen Dailey will testify about the trading volumes and activity of Pollack in Arete stock.
White Ocean Capital LLC
521 Fifth Avenue Suite 1700
New York NY 10175

6. Paul Silver Compliance will testify about Pollack issuances of Arete stock to Pollack
Wall Street Resources
3545 SW Corporate Parkway
Palm City FL 34990

7. John Hurry will testify on difficulty of clearing Arete stock for trading
Scottsdale Capital Advisors
7170 McDonald Drive
Scottsdale AZ 85253

8. Greg Kapoustin will testify about his analyst reports on Arete
AlphaBeta Works
One Sansome Street
San Francisco, CA 94104

9. Sam Chase will testify about his attempts to raise money for Arete
Masynda Corp
3827 Roswell Road 100a
Marietta GA 30062

10. Jim Chincholl will testify about "chatroom discussions" to pump up the volume of Arete.
Smokin Brew BBQ Also will testify about sources of and statements made about Arete.
[redacted]
Parker, CO 80134

11. Peter Berta (contact information to be furnished) will testify about his mother's or his family's investment in Arete.

12. Theodore Wachtell (contact Information to be furnished) will tetsify about his first learning of Arete from Peter Berta.

3. Any witness identified by the Division of Enforcement.

4. Any witness necessary for rebuttal.

III.

RESPONDENTS' EXHIBIT LIST

1. Respondents' Demonstrative Exhibits.

2. Any documents necessary for rebuttal or impeachment.

3. Any documents necessary to establish foundation or authenticity.

4 Any document listed by the Division of Enforcement.

5. Approximately 1400 "chat room" discussions about Arete (to be produced to Division as soon as received from provider) .

Dated: May 4 , 2015.

Respectfully submitted,

s/ J. Randle Henderson

J. Randle Henderson
16506 F. M. 529
Suite 115-107
Houston, Texas 77095
713 870 8358 Ph.
281.758.0545 Fax
jrh@hendersonrandy.com
Counsel to Respondents

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy has been served on the Division of Enforcement, Gregory Kaspar, Esq. on this the 4th day of May, 2015, via electronic transmission, and an original and three (3) copies to:

Securities and Exchange Commission
Brent Fields, Secretary
100 F Street, N. E.
Mail Stop 1090
Washington, D. C.

Honorable Cameron Elliot
100 F Street, N. E.
Mail Stop 1090
Washington, D. C. 20549

s/ J. Randle Henderson

J. Randle Henderson

From:	J. Randle Henderson
To:	Kasper, Gregory; Ricchiute, Marc
Cc:	Elliot, Cameron
Subject:	Pollack: OIP; Admin Proc File No. 3-161316
Date:	Friday, April 24, 2015 1:57:58 PM

Gentlemen and Your Honor:

Please be advised that Respondents will not be calling an expert to furnish a report or testify at the evidentiary hearing beginning June 1, 2015

J. Randle Henderson, Counsel to Respondents
16506 F. M. 529
Suite 115-107
Houston Texas 77095
713.870.8358 Ph. 281.758.0545 Fax

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

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2558 / January 26, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16316

In the Matter of PAUL J. POLLACK AND MONTGOMERY STREET RESEARCH, LLC	GENERAL PREHEARING ORDER

On December 16, 2014, the Securities and Exchange Commission (Commission) issued an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP), pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 9(b) of the Investment Company Act of 1940 against Respondents Paul J. Pollack and Montgomery Street Research, LLC. The hearing is scheduled to commence on June 1, 2015, in Phoenix, AZ.

In this order, I set forth some of the general rules and guidelines I intend to follow leading up to the hearing and during the hearing. Any objection to these general rules and guidelines may be made by written motion or, if appropriate, orally during any prehearing conference.

1. Settlement. If the parties desire a settlement conference with an administrative law judge (ALJ), they should jointly file a motion for a settlement conference, and a Settlement ALJ may be appointed. *E.g.*, *Airtouch Communic'ns, Inc.*, Admin. Proc. Rulings Release No. 2253, 2015 SEC LEXIS 271 (Jan. 23, 2015). The Settlement ALJ will not discuss any representations or submissions of the parties with the presiding ALJ. The parties must agree to waive the following rights: (1) the right to claim bias or prejudgment by the Settlement ALJ based on any views expressed during the settlement process; (2) the right to a public proceeding (because the settlement process will not be open to the public); (3) the right to a proceeding on the record (because the settlement process will not be recorded stenographically); and (4) the right to an *inter partes* proceeding (because the Settlement ALJ may confer with the parties *ex parte*).

2. Personal or sensitive information. Administrative hearings are presumptively public, as are their filings. 17 C.F.R. § 201.301. Thus, unless a party moves for confidential treatment or for a protective order, any filing is considered public, as it would be in

federal district court. Although the Commission currently has no rules regarding what personal information should not appear in a filing, exercise caution. Omit personal or sensitive information if there is no real need for it.

3. Subpoenas.[1] Pursuant to Rule 232(b), when I receive a request for a subpoena, I review it to determine if the subpoena is unreasonable, oppressive, excessive in scope, or unduly burdensome. 17 C.F.R. § 201.232(b). If I find it colorably objectionable, I generally issue an order in which I solicit the parties' views on the matter. If I do not find it objectionable, I wait two or three business days, and if no party notifies me that it objects to the subpoena, I sign the subpoena and return it to the requesting party. If a party does object, it should notify this Office immediately, and I will set a briefing schedule for any motion to quash. Because I view the briefing schedule set forth in Rule 232 as too slow, any briefing schedule on a party's motion to quash will normally require the filing of such a motion within five business days of the order setting the briefing schedule, and the filing of any opposition within three business days thereafter. No reply brief is permitted. 17 C.F.R. § 201.232(e)(1).

4. Exhibit lists. Exhibit lists shall be exchanged and filed by all parties and should include all documents that a party expects to use in the hearing for any purpose. This includes documents that are relevant only for impeachment purposes or that are presumptively inadmissible, such as investigative testimony or other prior sworn statements. Comprehensive exhibit lists prevent other parties from being surprised in the middle of the hearing, and also make it easier for me to track the various documents that the parties use during the hearing.

5. Expert reports and testimony. Expert witness disclosures must, at minimum, comply with Rule 222(b), including the provision of a "brief summary" of an expert's expected testimony. 17 C.F.R. § 201.222(a)(4), (b). I prefer to streamline the hearing by substituting the expert's report for direct testimony. Thus, expert reports should be as specific and detailed as those presented in federal district court pursuant to Federal Rule of Civil Procedure 26. The filing of the expert's report according to the prehearing schedule constitutes the filing, in essence, of the expert's direct testimony. During the hearing, the expert is not subject to direct examination, and is simply sworn in and proffered for cross-examination. However, I have entertained requests for brief direct examination of a party's expert.

6. Prior sworn statements. There is no general prohibition on hearsay in Commission administrative proceedings. *See* 17 C.F.R. § 201.320. Prior sworn statements, however, are generally inadmissible. *See* 17 C.F.R. §§ 201.235. The prior sworn statement of a party, though, is an exception to the exception, and may be admissible. *See id.* I entertain, but do not automatically grant, motions by the Division of Enforcement (Division) to admit the investigative testimony or other sworn statement

[1] Forms for subpoenas to produce and to appear are available at http://www.sec.gov/alj.

of a respondent. Admitting such a statement, and then examining the respondent only on those issues not already covered by the statement, may streamline the hearing.

7. Laying a foundation. Evidence that is irrelevant, immaterial, or unduly repetitious is inadmissible; all other evidence is presumptively admissible. 17 C.F.R. § 201.320. Thus, I do not generally require a party to lay a foundation for admission of an exhibit, nor is there a need to call a document custodian as a witness. A party may nonetheless lay a foundation if it desires, and doing so may enhance the probative value of a piece of evidence. For example, although there is no blanket prohibition on hearsay, its weight is evaluated in light of a multi-factor test, and laying a foundation with that test in mind may be appropriate. *See Joseph Abbondante*, 58 S.E.C. 1082, 1101 & n.50 (2006) (describing multi-factor hearsay test), *pet. denied*, 209 F. App'x 6 (2d Cir. 2006).

8. Start of the hearing. I generally do two things at the very beginning of the hearing. First, I rule on any pending motions, particularly motions in limine. Second, I rule on as many evidentiary objections as possible, and admit or exclude as many exhibits as I can, which greatly streamlines the hearing. The parties should therefore be prepared at the start of the hearing to orally address pending motions and evidentiary objections. In general, any prehearing objection that I do not resolve at the outset will be handled in the "traditional" way, that is, its proponent should lay a foundation and then, if an exhibit, offer it in evidence. The objecting party may then renew its objection.

9. Hearing schedule. Although the precise hearing schedule depends on the circumstances, I generally start the day at 9:00 or 9:30 a.m., and continue until at least 5:00 p.m. I generally take one break in the morning, lasting about fifteen minutes, and at least one break in afternoon, also lasting about fifteen minutes. I generally break for lunch between noon and 12:30 p.m., for about one hour and fifteen minutes. I am flexible if the parties desire a different schedule.

10. Form of objections. I discourage speaking objections, because they have a tendency to suggest answers to witnesses. On the other hand, it is helpful if an objection includes at least some articulated basis. Thus, my preferred form of objection is "objection," followed by no more than five or six words explaining the basis. For example, "objection – vague," "objection – asked and answered," or "objection – assumes facts not in evidence," are all acceptable ways of objecting.

11. Examination.

    a. In general, the Division puts its case on first, because it has the burden of proof. The respondent then presents his case, although I am flexible about permitting the parties to proceed in some other order, and to take witnesses out of order.

b. The Rules do not explicitly provide for motions for judgment as a matter of law, and I do not entertain them except in extraordinary circumstances. *See Rita Villa*, 53 S.E.C. 399, 404 (1998) (permitting dismissal at the conclusion of Division's case in "extraordinary circumstances"). As a result, I do not strictly enforce the rule that a respondent does not present any evidence until the Division rests. Instead, if the Division calls a witness that a respondent also wishes to call as a witness, the respondent should cross-examine the witness as if he were calling the witness in his own case. This means that cross-examination may exceed the scope of direct examination. Indeed, I generally do not enforce the scope rule at all, and I allow multiple redirects and recrosses, until the testimony of the witness is completely exhausted by all parties. This way, a witness need only testify once, and need not be recalled just for a respondent's case.

c. A respondent as a witness is the exception to 11(b), *supra*. I am flexible regarding the manner of presenting respondent testimony, so long as the parties agree on it. For example, if the Division calls a respondent as its last witness, the parties may agree that respondent's counsel conducts the direct examination, followed by the Division's cross-examination, which may exceed the scope of direct. In the absence of any agreement, respondent testimony proceeds in the traditional way, that is, the respondent is called as a witness and examined potentially multiple times.

d. In general, cross-examination may be conducted by leading questions, even as to Division witnesses that a respondent wishes to call in her own case. However, counsel may not lead their client. Thus, if a respondent is called as a witness in the Division's case, that respondent's counsel may not ask leading questions on cross-examination. Similarly, if a Commission employee is called as a witness for a respondent, the Division (or whoever represents the employee, such as the Office of General Counsel) may not ask leading questions on cross-examination.

12. Practice tips. Depositions in civil cases, and sworn testimony during investigations, are far more common than Commission administrative hearings, and I have found that certain deposition practices have unfortunately crept into hearings. I offer these practice tips as helpful suggestions to move a case along efficiently.

a. Avoid leading questions on direct. Properly formulated non-leading questions do not always come naturally, and it is easy to fall into the habit, as in a deposition, of asking leading questions all the time. However, leading questions during direct of non-hostile witnesses are objectionable, and I sustain objections to them. Repeated leading questions, followed by meritorious objections, followed by rephrased questions, slow down the hearing needlessly, and are easily prevented.

b. Hit the high points on cross. The purpose of discovery is to explore the case; the purpose of a hearing is to present the case. It is a waste of hearing resources to bring out on cross every jot and tittle of minutiae that is colorably helpful to your case. Your cross will be much more memorable and powerful if you emphasize the strong points, and marginalize the tangential points.

c. Do not comment on the evidence. You may be able to get away with sarcasm during a deposition, but sarcasm during a hearing, particularly during cross-examination, just makes you look petty and unprofessional. The post-hearing briefs provide ample opportunity to explain your skepticism in detail.

13. Be civil. Civility between counsel streamlines every proceeding, and makes my job much easier. A willingness to communicate respectfully with opposing counsel is a sign of strength, not a sign of weakness. Although there is no meet-and-confer requirement in the Rules, I encourage the parties to attempt to reach agreement on anything they reasonably can. If you cannot reach agreement, I will resolve the matter, but if you do disagree, try not to be disagreeable about it.

SO ORDERED.

Cameron Elliot
Administrative Law Judge