



UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16318

In the Matter of :
:
:
MICHAEL W. CROW, :
ALEXANDRE S. CLUG, :
AURUM MINING, LLC, :
PANAM TERRA, INC., and :
THE CORSAIR GROUP, INC., :
:
Respondents. :
:

DIVISION OF ENFORCEMENT'S MEMORANDUM OF LAW
IN OPPOSITION TO RESPONDENTS'
MOTION FOR A MORE DEFINITE STATEMENT

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February 9, 2015

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The Division of Enforcement respectfully submits this memorandum of law in opposition to the motion for a more definite statement filed by Respondents Michael W. Crow, Alexandre S. Clug, Aurum Mining, LLC, PanAm Terra, Inc., and The Corsair Group, Inc.

PRELIMINARY STATEMENT

Despite the detailed allegations of fraud in the Order Instituting Proceedings (“OIP”), Respondents argue that they have been “deprive[d] of the sufficient information of the claims asserted against them.” Resp. Br. at 2. Respondents are wrong. The OIP describes each of the fraudulent offerings in detail, and the offering documents, investor communications, and Respondents’ misrepresentations and omissions are identified with particularity. OIP ¶¶ 27-60. Respondents have received more than enough information regarding the allegations against them to allow for an adequate defense, and they fail to cite to any authority supporting their arguments. In addition, their motion does not posit any additional information or facts they need to defend this action. As a result, Respondents’ motion for a more definite statement should be denied.

ARGUMENT

I. The Standards for a Motion for a More Definite Statement

The OIP is required to contain “the factual and legal basis alleged therefore in such detail as will permit a specific response.” Rule of Proc. 200(b)(3). Although Rule 220(d) allows for a motion for a more definite statement, the standard for pleading is clear: a pleading must only “sufficiently inform[] [a respondent] of the nature of the charges so that he or she may adequately prepare a defense; however, a respondent is not entitled to a disclosure of evidence in advance of the hearing.” *In the Matter of Wolfson, et al.*, 103 S.E.C. Docket 1153, 2012 WL 8702983 (Mar. 28, 2012) (citation omitted); *see also In the Matter of optionsXpress, Inc., et al.*, S.E.C. Docket 419, 2012 WL 8704501 (July 11, 2012) (denying motion where the Division met

burden to inform “respondents of the charges against them so they can prepare a defense;” refusing to require Division to disclose evidence or theory of the case). Accordingly, “once the factual basis of the allegation is sufficiently known by a respondent, any additional information is considered evidence to which a respondent is not entitled prior to hearing.” *Western Pacific Capital*, 102 S.E.C. Docket 3633, 2012 WL 8700141, *2 (Feb 7, 2012).

II. The Factual Allegations in the OIP Are Sufficiently Particular

Respondents’ motion focuses on eight paragraphs in the OIP relating to Aurum Mining (allegations relating to PanAm Terra and Corsair Group are excluded from Respondents’ motion). They argue that “no specificity is provided as to what misrepresentations are contained” in Aurum Mining’s private placement memoranda (PPMs), the Update Letters, and a Confidential Information Memorandum (CIM). Apart from this vague allegation of “no specificity,” however, Respondents do not identify any specific information not in the OIP that they need for their defense.

The OIP alleges material misrepresentations and omissions in the offering documents and in investor communications. The misrepresentations and omissions in the August and December 2011 PPMs include Crow’s background; use of investor proceeds; test results and financial projections; and acquisition of Peru properties. OIP ¶¶ 27-46. These PPMs also state that investor funds would be escrowed until \$1 million had been raised and certain “closing conditions” had been met and, although the closing conditions were never achieved, Crow and Clug told investors that the conditions were satisfied. OIP ¶¶ 28-39. Crow and Clug also told investors that Aurum had acquired an interest in a property in Brazil and completed testing, which was not true. OIP ¶¶ 36-38.

The 2012 and 2013 PPMs and Update Letters misled investors about Aurum's ownership interests in Peru and about the prospects for success. The OIP identifies specific false statements in the PPM and Update Letters, and alleges that these statements were contradicted by two geological reports that Crow and Clug commissioned. OIP ¶¶ 47-60.

With regard to the CIM, Respondents claim that “[t]here were a number of drafts of the CIM and Respondents are unsure as [to] which document” the OIP refers to. Resp. Mot. at 4. The Division rectified this apparent confusion. On February 5, 2015, the Division emailed to Respondents' counsel a copy of the CIM, which had been marked as an exhibit and shown to Crow in his investigative testimony.

To provide more detail to the Respondents would not clarify any allegations but would catalogue the evidence the Division plans to use to prove its case. As a federal court explained in applying the more exacting pleading requirements imposed by Federal Rule of Civil Procedure 9(b), a plaintiff “need not allege specific details of every alleged fraud”; rather it “must provide some representative examples of the alleged misconduct.” *SEC v. Morris*, No. 4:12-CV-80 (CEJ), 2012 WL 6822346 at *4 (E.D. Mo. Sept. 21, 2012) (denying motion to dismiss or, in the alternative, for a more definite statement).

Respondents fail to cite a single case in which a Court granted a motion for a more definite statement based on nothing more than a vague allegation that “no specificity is provided.” Their brief cites to only two cases from the 1950s, and in both cases respondents' motions were denied. *Morris J. Reiter*, 39 S.E.C. 484, 1959 WL 59479 (1959) (denying motion for a bill of particulars); *Charles M. Weber*, 35 S.E.C. 79, 1953 WL 44090 (1953) (denying motion for a bill of particulars). In more recent cases, ALJs have routinely denied motions for a more definite statement in applying the standard that “a respondent is entitled to be sufficiently

informed of the charges against him so that he may adequately prepare his defense.” *E.g.*, *Miguel A. Ferrer*, Rel. No. 706, 2012 WL 8704497, *4 (June 13, 2012) (denying more definite statement motion because “[t]he OIP is clear, unambiguous and detailed”).

Finally, apart from Respondents’ boilerplate assertion that “no specificity is provided,” they fail to point to anything that they need to mount a defense that is missing from the OIP (apart from their claim that they were “unsure” of the correct CIM, which the Division addressed). The fact that Respondents do not identify any particular type of information that they claim is missing from the OIP demonstrates that the OIP provides enough detail to allow for a defense.

CONCLUSION

The Division respectfully requests that the Court deny the Respondents’ motion for a more definite statement.

Dated: New York, NY
 February 9, 2015

Respectfully submitted.

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