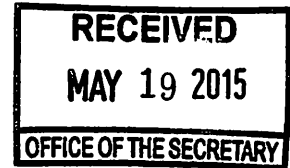


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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16463



In the Matter of

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

DIVISION OF
ENFORCEMENT'S
RESPONSE TO
MOTION FOR MORE
DEFINITE
STATEMENT

The Division of Enforcement (“the Division”) responds to the Motion for More Definite Statement filed by Respondents David I. Osunkwo (“Osunkwo”) and Strategic Consulting Advisors, LLC (“SC Advisers”) (collectively “Moving Respondents”) as follows:

FACTS

The allegations underlying the claims against the Moving Respondents are straightforward. The Order Instituting Proceedings in this matter alleges that Aegis Capital, LLC (“Aegis Capital”) and Circle One Wealth Management, LLC (“Circle One”), two investment advisers (collectively “Registrants”), retained SC Advisers to provide consulting services, including preparing, reviewing, and filing Forms ADV, and to make available a principal of its firm to be appointed and serve as Registrants’ Chief Compliance Officer (“CCO”). OIP ¶¶ 1-2, 8. Pursuant to that agreement, Osunkwo, an attorney and principal at SC Advisers, was designated as Registrants’ CCO. Id. In this role, he was responsible for preparing, reviewing, and filing Registrants’ Forms ADV. Id.

The OIP further alleges that, pursuant to its agreement with Registrants, Osunkwo specifically was responsible for, among other compliance-related matters, preparing, reviewing, and filing a Form ADV for Circle One for the year ended December 31, 2010. OIP ¶ 13. In that Form ADV, Circle One reported that it had \$182,000,000 in AUM and 1,289 advisory accounts. OIP ¶ 14.

The Division alleges that the 2010 Form ADV for Circle One materially overstated Circle One's assets under management ("AUM") and advisory accounts. OIP ¶ 17. Further, the OIP alleges that, when preparing and filing this report for Circle One, Osunkwo did not personally review Circle One's records to determine Circle One's AUM and number of advisory accounts. OIP ¶ 15. Instead, Osunkwo relied exclusively on information provided to him by Circle One's Chief Investment Officer ("CIO"), whom Osunkwo knew had little to no involvement with Registrants' investment advisory client accounts. *Id.* Osunkwo collected the information from the CIO only hours before the filing deadline, and knew from the CIO's message that the information was only intended to be an estimate. When Osunkwo filed Circle One's 2010 Form ADV, he misrepresented that the CIO certified the contents of Circle One's Form ADV to be true and correct, and forged the CIO's electronic signature on the filing. OIP ¶ 16. Based on these factual allegation, the OIP alleges that Circle One, SC Advisors and Osunkwo willfully violated Section 207 of the Advisers Act, which makes it "unlawful for any person willfully to make any untrue statement of a material fact in any registration application or report filed with the Commission under Section 203, or 204, or willfully to omit to state in any such application or report any material fact which is required to be stated therein." OIP ¶ 25.

With respect to Aegis, the OIP alleges that Osunkwo was the firm's CCO pursuant to Registrants' agreement with SC Advisors. OIP ¶ 8. The OIP alleges that Aegis failed to file an

annual update to its Form ADV for the December 31, 2010 year end. OIP ¶ 12. Based on these factual allegations, the OIP alleges that Aegis violated, and SC Advisors and Osunkwo caused violations of, Section 204 of the Advisers Act and Rule 204-1(a)(1) thereunder, which require registered investment advisers to amend their Form ADV “[a]t least annually, within 90 days of the end of [their] fiscal year ... [and] [m]ore frequently, if required by the instructions to Form ADV.” OIP ¶ 23.

DISCUSSION

A. The OIP Adequately Pleads SC Advisors Liability.

The Moving Respondents first contend that the OIP does not sufficiently allege any legal theory under which SC Advisors could be held responsible for Osunkwo’s misconduct. Motion at 3-4. But the OIP alleges that, during the relevant time, SC Advisors contracted to provide CCO services to Registrants, Osunkwo was a principal of SC Advisors and that SC Advisors designated Osunkwo as the CCO for the Registrants. OIP ¶¶ 6-7. Accordingly, Osunkwo’s conduct in his role as Registrants’ CCO is imputed to SC Advisors. SEC v. Manor Nursing Ctrs., Inc., 458 F.2d 1082, 1089, n.3, 1096-97 nn.16-18 (2d Cir. 1972); SEC v. Morgan Keegan, 768 F.3d 1233, 1249 (11th Cir. 2012).

B. The OIP Adequately Alleges the Theories of Liability for the Moving Respondents with respect to the Forms ADV at Issue.

The Moving Respondents next contend that the OIP does not specify the theory of liability with respect to the Forms ADV at issue. Motion at 4-6. Not True. The OIP alleges that the Moving Respondents caused Aegis’ violations of Section 204 of the Advisers Act by failing to file timely a Form ADV for that firm for the December 31, 2010 year end. OIP ¶¶ 12, 23. The OIP also alleges that the Moving Respondents violated Section 207 of the Advisers Act by materially overstating Circle One’s AUM and advisory accounts in the firm’s 2010 Form ADV

OIP ¶ 17. The OIP further alleges that the Moving Respondents violated this statute by misrepresenting that the firm's CIO had certified the contents of the 2010 Form ADV to be true and correct. OIP ¶ 15. In fact, Osunkwo knew that that the information the CIO had provided regarding the firm's AUM and client advisory accounts, which Osunkwo copied in the 2010 Form ADV, was only an estimate. Id. Finally, the OIP alleges that the Moving Respondents violated this statute when Osunkwo forged the CIO's electronic signature on this Form ADV. OIP ¶ 16.

C. The OIP Alleges Sufficient Facts Regarding Osunkwo's Forgery of the CIO's Signature to the 2010 Circle One Form ADV.

The Moving Respondents lastly contend that the OIP does not allege sufficient facts to show how Osunkwo forged the CIO signature. While no such factual detail is required, the OIP provides adequate detail of the Division's claim.

SEC Rule of Practice 200(b)(3) requires that the Order Instituting Proceedings contain "a short and plain statement of the matters of fact and law to be considered and determined." This rule requires the Division to sufficiently inform the Respondent of the charges so that he or she may adequately prepare a defense. The rule does not, however, require the Division, in advance of the hearing, to disclose the evidence on which it intends to rely at the hearing. Charles M. Weber, 35 S.E.C. 79 (1953); J. Logan & Co., 38 S.E.C. 827 (1959); M. J. Reiter Co., 39 S.E.C. 484 (1959). Accordingly, the Division has no duty "to go into such detail in a bill of particulars as to include therein the nature of the oral testimony which the [Division] intends to produce." In re Samuel B. Franklin & Co., Inc., Release No. APR – 21 (May 24, 1968) 52 S.E.C. Docket 34.

Here, the OIP alleges that Circle One's CIO provided Osunkwo with an estimate of the firm's AUM and advisory accounts for the 2010 Form ADV. OIP ¶ 15. Nevertheless, Osunkwo,

caused the final version of that report to state, falsely, that the CIO had certified the contents of that report to be true and correct. OIP ¶ 16. Osunkwo forged the CIO's signature to that report by including an electronic signature of the CIO, when the CIO had only provided an estimate of the client accounts and AUM. Id.

CONCLUSION

For the reasons stated herein, the Court should deny the Motion for More Definite Statement.

This 18th day of May, 2015.



M. Graham Loomis
Regional Trial Counsel

CERTIFICATE OF SERVICE

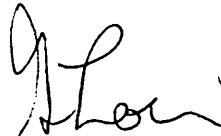
Undersigned Counsel for the Division of Enforcement hereby certifies that he has served a copy of the foregoing by electronic mail and by United Parcel Service addressed as follows:

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