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** **Respondents.**	**MOTION FOR A MORE DEFINITE STATEMENT**

Pursuant to Rule 220(d) of the Securities and Exchange Commission's Rules of Practice Respondents Strategic Consulting Advisors, LLC ("Strategic Consulting") and David I. Osunkwo (collectively the "Respondents") requests that the Division of Enforcement (the "Division") be ordered to provide a more definite statement of certain aspects of its claims against them because the current claims contain ambiguities that prevent the Respondents from reasonably defending themselves and conducting meaningful discovery.

The OIP's allegations against the Respondents are impermissibly vague in three respects:

(1) The OIP fails to set forth any legal theory by which Strategic Consulting can be held responsible for the alleged misconduct of Osunkwo.

(2) The OIP engages in improper group pleading and does not specify what specific Form ADV's (years and entities) it seeks to hold Respondents responsible for.

(3) The OIP does not contain any allegations to support the claim that Osunkwo forged the electronic signature of Circle One Wealth Management, LLC's ("Circle One") Chief Investment Officer on the 2010 Form ADV. This unsupported claim is highly inflammatory and unduly prejudicial.

I. Background

On March 30, 2015 the Securities and Exchange Commission (the "Commission") filed its Order Instituting Administrative and Cease-and-Desist Proceedings pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934, Sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940 and Section 9(b) of the Investment Company Act of 1940 (the "OIP"), which commenced this proceeding against Strategic Consulting and Osunkwo.

This Motion is intended to relate only to the allegations against Strategic Consulting and Osunkwo. The OIP alleges that Strategic Consulting and Osunkwo caused violations of Section 204 of the Advisers Act and Rule 204-2(a) thereunder. Section 204 of the Advisers Act and Rule 204-1(a)(1) require registered investment advisers to amend their Form ADV "[a]t least annually, within 90 days of the end of [their] fiStrategic Consultingl year ... [and] [m]ore frequently, if required by the instructions to Form ADV." The OIP also alleges that Strategic Consulting 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.

II. Argument

It is well-established that respondents in administrative proceedings are entitled to be sufficiently informed of the charges against them so that they may adequately prepare their defense; however, respondents are not entitled to a disclosure of evidence in advance of the hearing. *See Charles M. Weber*, 35 S.E.C. 79 (1953); *see also M.J. Reiter Co.*, 39 S.E.C. 484 (1959). This has been called the "distinction between allegations and evidence." *Western Pacific Capital Management, LLC*, Administrative Proceedings Rulings Release No. 691 (Feb. 7, 2012). Rule 200(b) of the Commission's Rules of Practice states that the OIP "shall set forth the factual and legal basis alleged therefore in such detail as will permit a specific response thereto." 17 C.F.R. § 201.200(b).

(1) The OIP Fails to Set Forth any Legal Theory by which Strategic Consulting can be Held Responsible for the Alleged Misconduct of Osunkwo.

SEC Rule 206(4)-79c) promulgated pursuant to Section 206 of the Investment Advisers Act requires registered investment advisers to appoint a single *natural* person as a firm's Chief Compliance Officer. While Osunkwo is a natural person Strategic Consulting is not. The OIP makes no allegations that Strategic Consulting directly did anything that was improper and the allegations against Strategic Consulting appear to be wholly derivative of the conduct of Osunkwo. However the OIP provides no statutory or other legal support for its unique allegations that Strategic Consulting can be held derivatively liable for the conduct of Osunkwo. Strategic Consulting is prohibited by Rule 206(4)-7(c) from acting as the Chief Compliance Officer of a registered investment advisor and the OIP fails to set forth any legal theory under which Strategic Consulting can be held liable for the conduct of Osunkwo. Accordingly, the Division should be ordered to clarify the legal theory underlying its claims

against Strategic Consulting or, alternatively, be ordered to drop Strategic Consulting as a respondent.

(2) The OIP Engages in Improper Group Pleading and Does Not Specify What Specific Form ADV's (Years and Entities) It Seeks to Hold Respondents responsible for Nor Does It Explain Source of Duty Applicable to Osunkwo for "Personally Reviewing" Circle One's Records to Calculate AUM.

The OIP makes no specific factual allegations of wrongdoing against Osunkwo and Strategic Consulting and instead engages in improper group pleading when it alleges violations by Osunkwo and other respondents. For example the OIP talks about "Osunkwo's and Lamm's failures" (Paragraph 2); "Osunkwo's and Lamm's conduct" (Paragraph 17). Likewise in the "Violations" section of the OIP Osunkwo and Strategic Consulting are grouped together with Aegis Capital, LLC ("Aegis") (Paragraph 23) and all of the other respondents (Paragraph 25). *See United States Commodity Futures Trading Comm'n v. M25 Inv.*, Inc. No. 3:09-CV-1831-M, 2010 WL 769367 (N.D. Tex. Mar. 6, 2010) (granting motion to dismiss where CFTC used group pleading by combining all of the defendants and occasionally combining unspecified representatives as well nor connecting adequately the particular defendants with knowing or reckless conduct necessary to establish scienter).

In addition, the OIP is unclear as to whether the allegations related to Osunkwo and Strategic Consulting relate only to Circle One's 2010 Form ADV or whether they also relate to Aegis's 2009 Form ADV. The OIP's failure to make specific factual allegations against Osunkwo and Strategic Consulting makes it impossible for these two respondents to present a meaningful defense or engage in effective discovery and trial preparation as to the time frame of the alleged misconduct at issue let alone who, either Lamm or Osunkwo, was responsible for what acts. On the one hand for purposes of the 2009 ADV filed for Aegis Capital it states that Osunkwo did so "based on information obtained from Lamm" (the COO) (OIP Paragraph 11), it

appears that for purposes of the 2010 ADV filed for Circle One Osunkwo "relied exclusively on information provided to him by Circle One's Chief Investment Officer" and that Osunkwo did not personally review Circle One's records to determine Circle One's AUM. (OIP Paragraph 15)

Finally, in this same regard, the OIP's conclusory allegations that Osunkwo failed to personally review Circle One's records to determine its AUM ascribes responsibilities to Osunkwo as Chief Compliance Officer beyond preparation of the ADV, but rather suggests a broad duty to audit and verify the AUM for purposes of the ADV. The Commission's broad allegations would shift responsibility from the principals of the registrants who verify the ADV to Osunkwo as chief compliance officer without any basis for such a duty. Regardless of the Commission's allegations that Osunkwo "forged" the signature of the CIO, which are insufficient as set forth below, the Commission's duty-shifting to Osunkwo as possessing de-facto obligation to verify the AUM ignores that the Commission does not allege and cannot allege that Osunkwo was ever an "authorized individual who participated in managing or directing its affairs" absent which he could not have signed the ADV so as to obligate himself to verify the information. *See* Form ADV – General Instructions, No. 7 (instructing that ADV must be signed by "an authorized individual who participates in managing or directing your affairs"). In sum, someone other than Osunkwo had to sign the Form ADV and the Commission has not alleged that Osunkwo had the requisite responsibility as to transfer the duty to verify the information to him. Accordingly, Osunkwo requests that the Commission clarify these allegations as well as to the legal duty upon which Osunkwo as Chief Compliance Officer had to personally verify the AUM figures, let alone every other shred of information, in the ADV. As a predicate matter, an enforcement action, or any other action, may not be sustained on the basis of

a duty that does not exist as a matter of law. *Dirks v. SEC*, 463 U.S. 646, 647, 665-66 (1983) (reversing SEC sanctions against defendant for insider trading where defendant had no legal duty to abstain from use of insider information he obtained) .

(3) The OIP Does Not Contain Any Allegations to Support the Claim that Osunkwo Forged the Electronic Signature of Circle One's Chief Investment Officer on the 2010 Form ADV.

The OIP's conclusory allegation that Osunkwo "forged" the electronic signature of Circle One's Chief Investment Officer on the 2010 Form ADV (Paragraph 16) is inflammatory and not supported by any allegations to show that Osunkwo electronically signed the form with any intent to defraud, a necessary element of a forgery claim. Forgery is generally defined as falsely making, completing or altering a written instrument with intent to defraud, deceive or injure another (*See, e.g.* New York Penal Law Section 170.05 defining forgery). *See also* 18 U.S.C. § 510 (forging endorsements on treasury checks or securities of the US requiring intent to defraud). The OIP's conclusory assertion does not cite any specific provision of the Advisers Act or other federal securities laws as to the legal standards the elements of a claim for forgery, much less make any factual allegations that Osunkwo electronically signed the Form ADV with any intent to defraud, deceiver or injure another and, accordingly, the Division should be ordered to either amend the allegation with specific facts regarding his knowledge and intent or remove it.

In addition, under Form ADV Instructions No. 7– someone with authorization in management was required to sign the Form ADV and the Commission has not alleged, because it cannot, that Osunkwo was authorized to sign the Form ADV nor that Lamm or the Chief Investment Officer were not authorized persons. In sum, someone in management at registrant (such as Lamm) had to sign the ADV and the Commission's allegations ascribe an intent to

defraud to Osunkwo while alleviating anyone in management at the registrant (such as Lamm) for responsibility for signing the Form ADV. If the Commission is going to take the position, then, that Osunkwo embarked on such a scheme to defraud, it should at least back up its allegations with specific statements regarding his intent to deceive in doing so and that apparently neither Lamm nor anyone else in management had any obligation to sign the ADV so Osunkwo must have been acting on his own. As presently pleaded, this does not make sense.

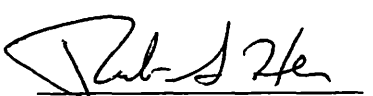
III. Conclusion

Based upon the foregoing, Respondents respectfully request that the Division be ordered to amend the OIP to make a more definite statement and, if unable to do so, the charges against Respondents as presented in the OIP should be dismissed.

Dated: New York, New York
May 11, 2015

Respectfully submitted,

MEYERS & HEIM LLP

By: 

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CERTIFICATE OF SERVICE

I, Robert G. Heim, certify that on the 11th day of May, 2015 I caused a true and correct copy of the Motion for a More Definite Statement of Respondents Strategic Consulting Advisors, LLC and David I. Osunkwo to be filed and served in the manner indicated on the following:

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