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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17950

In the Matter of,

David Pruitt, CPA

Respondent.

**REPLY MEMORANDUM IN FURTHER SUPPORT OF
RESPONDENT DAVID PRUITT'S MOTION FOR A MORE DEFINITE STATEMENT**

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Pursuant to Rule 220(d) of the Securities and Exchange Commission's ("SEC" or the "Commission") Rules of Practice, Respondent David N. Pruitt ("Mr. Pruitt"), through his undersigned counsel, respectfully submits this reply memorandum in further support of his Motion for a More Definite Statement (the "Motion") as to certain allegations in the Order Instituting Administrative and Cease-and-Desist Proceedings ("OIP") pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 102(e)(1)(iii) of the Commission's Rules of Practice dated April 28, 2017.

PRELIMINARY STATEMENT

The Division of Enforcement's (the "Division") Opposition to Respondent's Motion for a More Definite Statement (the "Opposition") highlights the compelling reasons why the Division should be ordered to provide a more definite statement in the OIP. After an almost three-year investigation, the Division either cannot, or will not, provide notice of the books and records alleged to be inaccurate or which internal controls were allegedly circumvented. Rather than provide the notice required to allow a respondent to adequately prepare a defense and avoid trial by ambush, the Division astoundingly suggests that it is not required to identify the allegedly inaccurate books and records because L3 Technologies, Inc. ("L3") is a "large issuer." Equally astounding is the attempt to improperly leave the door open on which internal controls were allegedly circumvented by—for the first time in its Opposition—listing three internal controls, but also including a vague reference to "among others."

Basic notions of fairness and notice require that a person charged with causing books and records to be inaccurate should know what those records are and the Division should not be allowed to conceal these crucial facts or shift their position at trial to gain an unfair advantage. Similarly, the Division should identify the exact internal controls it believes were circumvented.

These critical pieces of information should be readily available to the Division after its lengthy investigation and are necessary to allow Mr. Pruitt to take meaningful discovery and mount a proper defense.

The Division's arguments regarding the access and information Mr. Pruitt was provided before the commencement of this litigation are irrelevant both because Mr. Pruitt's access was not "unfettered" as the Division suggests, and more importantly because such access is not a substitute for a legally sufficient OIP. Moreover, Mr. Pruitt's argument regarding the severity of the potential sanctions directly bears on this Motion. The lack of specificity in the OIP does not allow Mr. Pruitt to properly prepare his defense where his professional reputation and livelihood are at stake. The Court should grant the instant Motion.

ARGUMENT

I. MR. PRUITT DOES NOT SEEK THE DIVISION'S EVIDENCE IN ADVANCE OF THE HEARING

The mandate of an OIP is to "set forth the factual and legal basis alleged therefor in such detail as will permit a specific response thereto." 17 C.F.R. 201.200(b)(3); *see David F. Bandimere*, Admin. Proc. File No. 3-15124, 2013 SEC LEXIS 452, at *3, Order (ALJ Feb. 11, 2013) ("*Bandimere*"). Mr. Pruitt respectfully submits that the OIP fails to meet this standard because it fails to identify with specificity the books and records that the Division alleges were not maintained with the "reasonable detail" required by Section 13(b)(2)(A) and the purportedly circumvented internal control that is the basis for the alleged Section 13(b)(5) violation.¹ These limited and narrow requests do not seek the Division's evidence, but only seek to properly provide notice regarding allegations in the OIP so that Mr. Pruitt is sufficiently informed of the charges against him.

¹ Critically, Mr. Pruitt intends to engage experts to assist in his defense. The experts cannot provide meaningful assistance with an OIP that lacks the necessary details.

The Division confuses the request for proper notice with evidence. Notably, Mr. Pruitt is not asking for witness testimony, documents, or other forms of demonstrative evidence that the Division intends to use in its case, but instead just a few paragraphs in the OIP identifying the actual books and records that are allegedly inaccurate as a result of his conduct and the specific internal controls that were allegedly circumvented.

The cases cited by the Division make clear that Mr. Pruitt is not seeking the Division's evidence or anything that he is not entitled to be provided at this stage. The requests in these cases included specific requests for documentary evidence. *See Jeffrey A. Wolfson*, Admin. Proc. File No. 3-14726, 2012 WL 8702983, at *1, Order (ALJ Mar. 28, 2012) ("*Wolfson*") (requesting identification of e-mails, instances of transactions, legal authorities, certain trading records, and copies of transcripts); *optionsXpress, Inc.*, Admin. Proc. File No. 3-14848, 2012 WL 8704501, at *1, Order (ALJ July 11, 2012) (requesting names and account numbers of certain individuals and a full list of transactions). Unlike the instant matter, these cases denying a motion for a more definite statement sought more than the critical facts underlying the alleged violations.

Moreover, the Division's cases cut against its argument that the information it has provided is sufficient because in each of those cases, the Division ultimately supplied those respondents with additional detail—an outcome that is not unique. *See Wolfson*, 2012 WL 8702983, at *1; *optionsXpress, Inc.*, 2012 WL 8704501, at *2; *Western Pacific Capital Management, LLC*, Admin. Proc. File No. 3-14619, 2012 WL 8700141, at *4, Order (ALJ Feb. 7, 2012). Motions for a more definite statement are often mooted because of the additional information the Division provides to respondents in response to their requests—information which the Division has largely neglected to provide here under the mistaken premise that Mr. Pruitt seeks evidence. *See Aegis Capital, LLC*, Admin. Proc. File No. 3-16463, 2015 SEC

LEXIS 2127, at *3–4, Order (ALJ May 27, 2015); *Houston American Energy Corp.*, Admin. Proc. File No. 3-16000, 2014 SEC LEXIS 3701, at *2–3, Order (ALJ Sept. 30, 2014); *Donald J. Anthony, Jr.*, Admin. Proc. File No. 3-15514, 2013 SEC LEXIS 3907, at *7–8, Order (ALJ Dec. 12, 2013).

II. THE DIVISION ALLEGES BOOKS AND RECORDS VIOLATIONS BUT REFUSES TO IDENTIFY THE SPECIFIC BOOKS AND RECORDS AT ISSUE

The Division’s claim that the OIP contains “sufficient information” regarding the books and records at issue is belied by the OIP which merely recites the statutory language along with the conclusory statement that each provision was violated.² In its Opposition, the Division also cites to a definition of “books, records and accounts” which is unquestionably broad and unbounded. This definition provides no guidance as to the limits of what constitutes a book or record of an issuer. The Division thereafter provides what appears to be a non-exhaustive list of allegations that it claims identify the books, records, and accounts that Mr. Pruitt allegedly falsified or caused to be falsified. This includes the 69 invoices at issue,³ e-mail communications to L3 Corporate and L3’s auditors, and L3’s financial statements. Despite the Division’s argument that the OIP’s allegations “are more than sufficient for Respondent to prepare a defense of the books and records claims,”⁴ this non-exhaustive list yields the opposite conclusion. Mr. Pruitt cannot possibly be expected to prepare a defense when, according to the Division, almost every document or e-mail in connection with this case could be considered a book or record, and the Division can freely shift its reliance on which books or records it chooses to support its case without proper notice to Mr. Pruitt.

² See OIP ¶¶ 43–45; Opposition at 4.

³ The Division characterizes the 69 invoices as “fictitious” and “sham invoices,” but the OIP is silent as to how the content of these invoices were fictitious or a “sham.”

⁴ Opposition at 5.

Absent specificity in the OIP, the Division's overbroad interpretation of what constitutes a book and record under Section 13(b)(2)(A) would deny Mr. Pruitt a meaningful opportunity to confront and challenge these facts since he will never know with certainty what the Division will assert is inaccurate. Such an outcome is prohibited by the Rules of Practice and basic notions of fairness and due process. *See* 17 C.F.R. 201.200(b)(3); *Bandimere*, 2013 SEC LEXIS 452, at *3; *see also Jaffee & Co. v. SEC*, 446 F.2d 387, 394 (2d Cir. 1971); *Brock v. Dow Chem. U.S.A.*, 801 F.2d 926, 930 (7th Cir. 1986).

Furthermore, the Division's Opposition, as well as the OIP, completely sidesteps the statutory requirement that books and records need only be kept in "reasonable detail." Exchange Act § 13(b)(2)(A). The reason it avoids addressing this issue is because the Division cannot deny or explain away the entirely miniscule and admittedly immaterial nature of the revenue it alleges was improper. No matter how the Division tries to spin the facts and theory of its case, it cannot escape the mathematical certainty that the wrongful conduct alleged in the OIP amounted to .0014 or 14/100th of one percent of the revenue that was disclosed on L3's books.

The Division also agrees that L3 is a large issuer, with over \$12 billion in revenue in 2013, yet somehow suggests this fact relieves it from the obligation to provide the requisite detail in the OIP. Specifically, the Division admits that even after a multi-year investigation, L3 is so large that the Division does not know what specific records are allegedly inaccurate.⁵ The Division would turn the pleading burden on its head by shifting it to Mr. Pruitt to try and guess what supports the Division's charges. The Division cannot shirk its obligation to provide the

⁵ Opposition at 5–6.

detail required in the OIP and must make clear the specific books and records it claims are inaccurate.⁶

III. THE DIVISION'S ALLEGATIONS REGARDING INTERNAL CONTROLS REQUIRE MORE DETAIL

The Division also argues that the OIP contains sufficient notice of the internal controls that form the basis for its claims. In support of this statement, the Division can only point to the conclusory allegations in the OIP, which states that “invoices had not been delivered to the U.S. Army, in violation of a specific internal control of L3 that required delivery of invoices,”⁷ and then, for the first time, lists three additional Internal Controls Over Financial Reporting that Mr. Pruitt allegedly circumvented. As with the books and records argument, the Division makes clear this is not intended to be an exhaustive list, as it adds the phrase “among others,” again refusing to identify the critical facts supporting the allegations in the OIP. Mr. Pruitt should not be forced to guess, or choose from a list, the controls the Division might later claim he has circumvented. Nor is it appropriate for such information to be provided at trial when the chance to enlist experts and to gather exculpatory evidence during discovery has been foreclosed. The unfairness of the Division’s approach is highlighted by the fact that L3’s written internal controls span at least 79 pages with almost 500 controls. Surely, the Division must know by now what controls it believes were circumvented. This additional detail must be included in the OIP to prevent the Division from blindsiding Mr. Pruitt at the hearing with a new theory put together at the eleventh hour.

The Division also implies that the availability of a cherry-picked portion of its investigative file prior to these proceedings somehow provided Mr. Pruitt with the notice to

⁶ Moreover, the Division fails to point out that no restatement was required or filed by L3 due to the overall immateriality of the amounts at issue. Far from an admission of liability, the lack of any restatement after a full investigation is overwhelmingly exculpatory.

⁷ OIP ¶ 39; Opposition at 6.

which he is entitled. This however, is no substitute for the requirement that the Division provide sufficient notice in the OIP of its allegations. In fact, during that process, other than the control identified as IR4,⁸ the Division never identified the additional controls it now belatedly alleges were circumvented. The Division should be required to allege these internal controls specifically in the OIP.

IV. THE SIZE OF THE INVESTIGATIVE FILE AND SEVERE NATURE OF THE POTENTIAL PENALTIES ARE PERTINENT TO THIS MOTION

In the time leading up to the hearing in this matter, which is now only eight months away, Mr. Pruitt must review eighty-five thousand documents in the Division's investigative file, take discovery, and prepare his defense to the OIP's allegations. In contrast, the Division has had an almost three-year head start. Despite being aware of these constraints, the Division opposes providing Mr. Pruitt with certain basic information regarding its allegations. The Division's claim that it afforded Mr. Pruitt "with virtually unfettered access to many documents in the Division's investigative file even prior to the commencement of this case"⁹ does not tell the entire story. This access, while hardly unfettered, is not a substitute for a legally sufficient OIP.

Lastly, the Division argues that the potential significant consequences for Mr. Pruitt have no bearing on the Motion. Again, the Division misses the mark. The purpose of the OIP is to provide respondents with sufficient notice of the facts and charges against them so they can prepare a defense. The potential severity of the sanctions is relevant because the lack of specificity in the OIP will not allow Mr. Pruitt to prepare such a defense. Before the Division takes action that could ruin Mr. Pruitt's professional reputation and livelihood, it should be

⁸ It should be noted that the Division relies on IR4 as a control that requires the delivery of an invoice, despite the fact that it does not mention any such delivery requirement.


⁹ Opposition at 7.

required to provide the factual and legal basis supporting its allegations and to adhere to those allegations through the conclusion of these proceedings.

CONCLUSION

For the reasons set forth herein, the Court should grant Mr. Pruitt's Motion and order the Division to provide a more definite statement.

Dated: June 16, 2017
New York, New York

By: 

John J. Carney
Jimmy Fokas
Margaret E. Hirce
Bari R. Nadworny
BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, New York 10111
Telephone: 212.589.4200
Facsimile: 212.589.4201

Attorneys for Respondent David Pruitt

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Respondent.

CERTIFICATE OF SERVICE

I, Bari R. Nadworny, an associate of the law firm of Baker & Hostetler LLP located at 45 Rockefeller Plaza, New York, New York 10111, hereby certify that on the 16th day of June, 2017, I caused to be served a true copy of Reply Memorandum in Further Support of Respondent David Pruitt's Motion for a More Definite Statement via electronic mail upon the following parties and other persons entitled to notice:

Honorable James E. Grimes
Administrative Law Judge
Email: alj@sec.gov
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20459

Paul G. Gizzi, Esq.
Email: gizzip@sec.gov
David Oliwenstein, Esq.
Email: oliwensteind@sec.gov
H. Gregory Baker, Esq.
E-mail: bakerh@sec.gov
New York Regional Office
Securities and Exchange Commission
Brookfield Place
200 Vesey Street, Suite 400
New York, NY 10281


Bari R. Nadworny