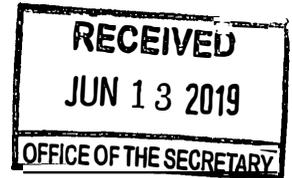


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-18867

In the Matter of

DANIEL JOSEPH TOUIZER,

Respondent.

DIVISION OF ENFORCEMENT'S
BRIEF IN OPPOSITION TO
RESPONDENT DANIEL JOSEPH
TOUIZER'S MOTION FOR MORE
DEFINITE STATEMENT

The Division of Enforcement ("Division") submits the following Brief in Opposition to Respondent Daniel Joseph Touizer's Motion for More Definite Statement.

I. INTRODUCTION

In this proceeding based on a criminal conviction pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Respondent Daniel Joseph Touizer has moved for a more definite statement. However, the Order Instituting Proceedings ("OIP") specifies the conviction at issue and summarizes the facts underlying the Division's contentions that Touizer was associated with a broker at the time of the misconduct and that associational and penny stock bars are appropriate. This is more than sufficient to allow Touizer to prepare his defense, and the Commission should deny his motion.

II. STATEMENT OF FACTS

From approximately 2010 to 2017, Touizer worked as an unregistered broker, effecting securities transactions for others. OIP § II.A.1. He also hired unregistered brokers to help him solicit stock investments in companies he controlled. *Id.* These companies included Omni Guard, Infinity Diamonds, Infinity Direct Insurance (d/b/a Corvina Holdings), Wheat Capital

Management, and Wheat Self-Storage Partners I, II, and III, which are penny stocks. *Id.* Touizer is not currently registered with the Commission in any capacity, nor was he ever associated with a Commission-registered broker-dealer. *Id.*

On May 11, 2018, Touizer pled guilty to one count of conspiracy to commit wire and mail fraud in violation of 18 U.S.C. § 1349 before the United States District Court for the Southern District of Florida, Case No. 17-60286-CR-Bloom. OIP § II.B.2. He was subsequently sentenced to a 68-month prison term. *Id.*

In connection with his guilty plea, Touzier made detailed admissions concerning his misconduct. According to Touizer, he solicited investments for his companies through fraudulent and misleading statements to investors, statements which he made or directed his employees and co-conspirators to make. OIP § II.B.3. He directed and oversaw his employees, who solicited investors in “phone rooms” and sometimes used fictitious names in an effort to sell the stock in the companies Touizer controlled. *Id.* Touizer himself acted as the “closer” on nearly all of the stock sales. *Id.* Touizer also paid and directed a co-conspirator to pose as an investor and falsely tell investors that the co-conspirator’s investment in Touizer’s companies made a significant profit for him. *Id.* Touizer and the individuals that he hired, oversaw, and controlled falsely told investors that the companies were profitable and safe. *Id.* They falsely told investors that their funds would be used for working capital and to pay for sales and marketing expenses, when the funds were actually used in part to start new ventures and pay new investors. *Id.* They also told investors that no commissions or fees would be charged, yet they used investor funds to pay themselves undisclosed commissions and fees. *Id.*

III. ARGUMENT

Under Rule 220(d) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(d), a party may move "for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite." The Commission considers such a motion against the backdrop that "[t]he OIP must inform the respondent of the charges in enough detail to allow the respondent to prepare a defense, but it need not disclose to the respondent the evidence upon which the Division intends to rely." *Rita J. McConville*, Exch. Act Rel. No. 51950, at 23, 2005 WL 1560276 (June 30, 2005). A motion for a definite statement is thus properly denied when the OIP gives the respondent "fair notice of the claims lodged and the grounds upon which those claims rest" *Id.*

Here, the OIP clearly provides fair notice of the grounds of this proceeding, which arises under Exchange Act § 15(b)(6)(A):

With respect to any person . . . at the time of the alleged misconduct, who was associated . . . with a broker . . . the Commission, by order, shall [sanction the person] if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—

* * * *

(ii) has been convicted of any offense specified in [Exchange Act § 15(b)(4)(B)] within 10 years of the commencement of the proceedings under this paragraph

The OIP provides Touizer with the information he needs at this stage. The OIP details the conviction at issue, namely, Touizer's May 11, 2018 conviction for mail and wire fraud conspiracy. OIP § II.B.2. The OIP also summarizes Touizer's admissions, which establish that at the time of the misconduct he was acting as a person associated with a broker within the meaning of Exchange Act § 3(a)(18). OIP § II.B.3. These same facts show that associational and penny

stock bars are appropriate. *See Shreyans Desai*, Exchange Act Rel. No. 80129, at 6, 2017 WL 782152 (Mar. 1, 2017) (“Absent extraordinary mitigating circumstances, an individual that has been convicted of fraud cannot be permitted to remain in the securities industry.”) (citation and quotation omitted). Therefore, the OIP puts Touizer on notice of the claim against him in sufficient detail to allow him to prepare a defense.

Touizer’s arguments in favor of his motion evince a misunderstanding of this proceeding. His claim that the OIP does not plead fraud with particularity is of no moment because the Division is not pursuing a claim under the securities laws’ anti-fraud provisions; rather, the Division contends that under Exchange Act § 15(b), sanctions are appropriate because of Touizer’s already admitted criminal fraud. He also claims that nothing in the OIP “makes clear why the action is appropriate,” but as explained above the OIP expressly alleges all the matters pertinent to the proceeding. Finally, Touizer’s statement that nothing in the Order shows why the transactions “are not exempt transactions under 10(b)(5) [sic] of the Securities Act [sic]” is nonsensical. To the extent Touizer is claiming the stock sales he orchestrated were exempt from registration under § 5 of the Securities Act of 1933, even if true this would not impact the issue of whether he was a person associated with a broker under the Exchange Act.

CONCLUSION

For the reasons set forth above, the Division requests that the Commission deny Touizer’s motion for a more definite statement.

June 12, 2019

Respectfully submitted,



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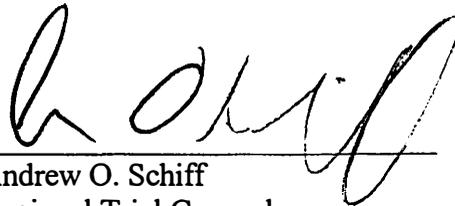
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CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303. In addition, service was made via electronic mail and that a true and correct copy of the foregoing has been served on this 12th day of June 2019, on the following persons entitled to notice:

VIA EMAIL AND OVERNIGHT UPS

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