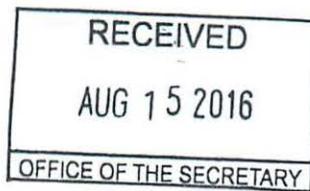


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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17342

In the Matter of

RD LEGAL CAPITAL, LLC and
RONI DERSOVITZ,

Respondents.

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

The Division of Enforcement ("Division") respectfully submits this Memorandum of Law in Opposition to Respondents RD Legal Capital, LLC's ("RDLC") and Roni Dersovitz's Motion for a More Definite Statement ("Respondents' Motion"), pursuant to the Commission's Rule of Practice 220(d), 17 C.F.R. § 201.220(d).

Preliminary Statement

The question presented by a motion for a more definite statement is whether an Order Instituting Proceedings ("OIP") "sufficiently informed Respondents of the charges against them so they can prepare a defense." *Matter of optionsXpress, Inc., et al.*, Rel. No. 710, S.E.C. Docket 419, 2012 WL 8704501, at *2 (July 11, 2012); *see also* Respondents' Memorandum in Support of [Their] Motion for More Definite Statement ("MDS Mem.") at 3. Here, the OIP does exactly that,

detailing the many misrepresentations Respondents made to investors in the course of marketing their flagship funds.

Respondents acknowledge that the OIP makes clear the nature of the charges against them—*i.e.*, primary violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder, and Mr. Dersovitz’s aiding and abetting and causing RDLC’s primary violations (MDS Mem. at 2)—but argue that the Division should be compelled to identify every investor to whom various misrepresentations were made along with the date of each of those misstatements and omissions and the manner in which such misrepresentations were communicated.

Neither the Commission’s Rules of Practice nor the cases Respondents cite in their Memorandum impose the exacting pleading requirements Respondents advocate. Nevertheless, in an effort to resolve as much of this dispute as may be possible without burdening the Court, the Division sent Respondents a letter on August 11, 2016, attached hereto as Exhibit A, providing the lion’s share of the information Respondents seek in their Motion. In particular:

1. for every instance where the OIP references a specific investor, the Division provided Respondents with the name of the investor;
2. for every reference to “some” or “certain” investors noted in Respondents’ Motion, the Division identified individuals described by such references, while reserving the right to call additional investors who further support the Division’s allegations; and
3. the Division clarified the timing of Respondents’ misrepresentations and omissions and how they were communicated to investors.

Additionally, the Division took the unusual step of voluntarily providing Respondents with written notes of interviews of RDLC investors taken in the course of the staff’s investigation. In

short, the Division staff has provided Respondents with more than enough information to allow them to prepare their defense in this matter. All that remains of Respondents' Motion, should they choose to continue to pursue it, are questions about whether certain oral misrepresentations were communicated by telephone or in person, and inquiries as to the precise date of certain communications. As Respondents cannot credibly argue that they need such information to prepare their defense to the allegations set forth in the OIP, Respondents' Motion should be denied.

Argument

I. Respondents' Motion Is Mooted By Information Already Provided to Respondents

The Division has made available to Respondents the non-privileged portions of the investigative file that support the allegations in the OIP. *See optionsXpress*, 2012 WL 8704501, at *2 (noting the Division's production of "non-privileged portions of the investigative file that are the basis for the allegations" in denying motion for more definite statement).¹ That file—much of which comprises Respondents' own records—includes detailed information setting forth which individuals and entities invested in RDLC's flagship funds, when they made such investments, and when certain meetings and calls were scheduled between Respondents and those investors.

Since receiving Respondents' Motion, the Division provided Respondents with notes from the Division staff's interviews with investors that provide support for many of the allegations about which Respondents inquire in their Motion. Thus, to the extent Respondents previously were

¹ Respondents complain that they did not receive the investigative file until August 2, 2016, but fail to note that the Division wrote Respondents on July 22, 2016 to explain that the investigative file was available for their review. (Exhibit B, attached hereto.) To facilitate an efficient review of the file, the Division offered to copy the investigative file to a hard drive so that Respondents could review the file at their own offices. Upon receipt of a blank hard drive from Respondents, the Division promptly copied and produced the investigative file to Respondents.

uncertain about which investors recall which misrepresentations, they now have more than enough information to answer their questions and to prepare their defense.²

Still, on August 11, 2016, the Division shared additional information with Respondents that effectively moots their Motion. The Division's August 11 Letter—the contents of which the Division would have readily shared with Respondents had they requested such information upon receipt of the OIP—more than apprises Respondents “of the issues in controversy.” (MDS Mem. at 3.) As in *Matter of Morris J. Reiter Co.*, 39 S.E.C. 484, 1959 WL 59479 (1959), (MDS Mem. at 4), the Division has disclosed to Respondents the “approximate periods of the alleged violations ... [and] the nature of the alleged false and misleading statements and omissions... .” *Reiter*, 1959 WL 59479, at *2. In *Reiter*, the Commission deemed such disclosures sufficient to permit Respondent to prepare its defense, and held that more detailed information “such as the names of the persons to whom the alleged false and misleading statements were made ... and the particulars of transactions involving the use of the mails and the nature of such use... are matters of evidence which need not be presented in advance of the hearing.” *Id.* Here, the Division provided Respondents with more information than the Commission required in *Reiter* by identifying the individual investors about whom Respondents have inquired. As Respondents acknowledge, the

² Even before the Division produced notes from investor interviews, Respondents' claimed ignorance was unfounded. For example, Respondents ask for details about the investor named in OIP Paragraph 39 who was told that the flagship funds “are dealing with, primarily, 100%, are settled cases, so there is no litigation risk in that strategy.” Similarly, Respondents state in their Answer that they are unable to admit or deny Paragraph 39 because the OIP does not name the “prospective investor” or the date of the communication described in that paragraph. But Respondents know all they need to know about the communication described in Paragraph 39. The Division long ago provided Respondents with a recording of the communication, and Respondents submitted a Wells Submission in which they specifically addressed the language quoted in Paragraph 39 and identified the participants in the marketing call. (*See Exhibit C, Relevant portions of Respondents' June 1, 2016 Wells Submission, attached hereto.*)

Division is not obligated to further supplement its disclosures to highlight the evidence the Division intends to offer to support its case. (MDS Mem. at 4 (citations omitted).)³

II. Respondents Have Sufficient Information About the Timing and Manner of All Alleged Misrepresentations and the Assets Described in OIP Paragraphs 67 and 68 to Prepare Their Defense.

To the extent Respondents seek the precise date on which various misrepresentations were communicated to investors, they offer no authority that supports any entitlement to such information. Instead, they cite *Matter of David F. Bandimere and John O. Young*, Rel. No. 749, 2013 WL 10619168 (ALJ Feb. 11, 2013), where the Court denied respondent’s request for the specific “dates on which [respondent] made misrepresentations.” *Id.* at *1, 3 (denying, in part, motion for statement setting forth specific dates of misrepresentations and instead requiring a statement disclosing the “time frame” of such misrepresentations).

Here, there is no mystery as to the time period of Respondents’ misrepresentations. As set forth in the Division’s August 11 Letter—and supported by the Division’s investigative file—investors recall the material misrepresentations made (or omitted) to them to have occurred within a reasonable proximity of their investment decisions. Some of these misrepresentations were made over an extended period of time because they formed a common part of Mr. Dersovitz’s pitch—*e.g.*, OIP ¶ 35 (“Dersovitz emphasized to numerous investors the settled nature of the cases underlying the Funds’ investments”). In those instances, Respondents need only to look at their investor list to determine who heard Mr. Dersovitz’s misrepresentations and to look at the time of their investments to approximate the time of Mr. Dersovitz’s communications. *See Charles M.*

³ Respondents’ Answer is replete with assertions that they are unable to admit or deny various allegations because they are unsure of the identity of certain investors described in the OIP. Now that the Division has identified those investors, the Division respectfully requests that Respondents’ amend their complaint to admit or deny those allegations not addressed in their August 5, 2016 Answer.

Weber, 35 S.E.C. 79, 1953 WL 44090, at *2 (Apr. 16, 1953) (MDS Mem. at 4) (denying bill of particulars seeking identity of investors told particular lies where such misrepresentations were a consistent part of a respondent's communications to all investors).

Other of Respondents' misrepresentations were communicated in written documents bearing specific dates that Respondents have discussed previously with the Division staff. For example, Paragraph 44 quotes an email sent by the "IR Director" that was shown to the IR Director when she testified during the investigation of this matter. And still other misrepresentations took place at times made clear by the OIP itself. For example, the statements in Paragraph 47 about which Respondents inquire were made, as explicitly stated in Paragraph 47, in 2015.⁴

Having addressed the identity of the investors described in the OIP and the timing of the misrepresentations to those investors, all that remains of Respondents' Motion are requests regarding (i) the "manner" of communications set forth in the OIP, and (ii) certain assets described in OIP Paragraphs 67 and 68. (Motion at 1-2.) Respondents do not offer any argument as to why their ability to prepare a defense is compromised by any lack of information as to *how* specific misrepresentations were communicated. Rather, Respondents' request seems to be for the Division's evidence of Respondents' misrepresentations, but as Respondents acknowledge, the Commission has long "distinguished between allegations and evidence" and has declined to grant motions for more definite statements seeking the latter. (MDS Mem. at 4.)

⁴ If Respondents are concerned that certain misconduct might fall outside the applicable statute of limitations, they already have sufficient information to determine when investors invested and/or communicated with Respondents. But even if that were not the case, as the Court explained in *Matter of Marc Sherman*, Rel. No. AP-2106, 2014 WL 12187434, at *2 (Dec. 5, 2014), in denying a motion for more definite statement seeking more specificity as to the dates of certain misconduct to inform a statute of limitations defense, the availability of remedies in a cease-and-desist proceeding means that even for misconduct outside the applicable statute of limitations, the precise timing of particular misconduct need not be specified in order to allow Respondents to prepare their defense.

The same is true for Respondents' requests' regarding OIP Paragraphs 67 and 68. As set forth in the Division's August 11 Letter, many of the "receivables associated with unsettled litigation" (OIP ¶ 67) about which Respondents inquire are described earlier in the OIP in Paragraphs 49-52. Respondents' own records reflect for which of those receivables Respondents chose to extend payment dates. And for clarification of what cases are referenced in Paragraph 68, one must simply read on to Paragraph 69. The Division's proof as to these allegations is not within the proper scope of a motion for a more definite statement. Indeed, in this case—where the Division agreed to join Respondents in their request for application of the Amended Rules of Practice, including the more expansive discovery the Amendments contemplate—Respondents' request for the Division's evidence is particularly premature.

Conclusion

Because the Division has provided Respondents with more than ample information to allow them to prepare a defense in this case, Respondents' Motion for a More Definite Statement should be denied.

Dated: August 12, 2016
New York, NY 10281

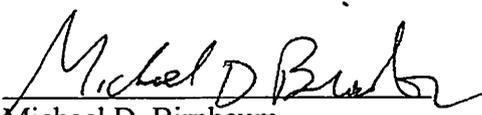
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EXHIBIT A



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August 11, 2016

By UPS and Email

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Re: In the Matter of RD Legal Capital, LLC, Admin. Proc. File No. 3-17342

Dear Mr. Healy:

We write to address questions Respondents raised in their Motion for More Definite Statement. We were surprised that your clients were uncertain of the identity of certain investors mentioned in the Order Instituting Proceedings ("OIP") whose conversations with your clients you have commented on before. Nevertheless, to further assist Respondents in preparing their defense in this matter, please see the attached Appendix identifying investors described in the OIP and addressing other questions raised in Respondents' Motion. The Division provides Respondents with the attached Appendix subject to a reservation of all rights¹ and without waiving or conceding any point the Division will make in response to Respondents' Motion.

Moreover, we expect the additional time you have had to review the investigative file, and the Division's production of its interview notes with RD Legal investors, will clear up any of the confusion suggested in Respondents' Motion.

Finally, as Respondents asserted an inability to admit or deny various allegations in the OIP based on a claimed lack of knowledge of certain facts clarified in the attached Appendix, please file an amended Answer to the OIP within 20 days of receipt of this letter.

Sincerely,

Victor Suthammanont

¹ Including the right to call additional investors who further support the Division's allegations.

APPENDIX

<u>OIP Paragraph</u>	<u>Additional Disclosures</u>
¶ 22	The “certain investors” in this paragraph are those investors that Respondents maintained could have learned about the <i>Peterson</i> Receivables from the audited financial statements. The “some investors” in this paragraph include, but are not limited to, those investors that Respondents maintained were provided such audits and William R. Beckers. The approximate dates are those dates on which Respondents maintain that they provided such documents to investors.
¶ 31	The “[m]any potential investors” referred to in this paragraph include, but are not limited to, attendees at the September 2013 Tiger 21 meeting, at or about the time of that September 2013 meeting.
¶ 32	The “some investors” in this paragraph include, but are not limited to, Steven Gumins and Pace Kessenich, who expressed their distaste for the <i>Peterson</i> -related investments in 2012 or early 2013.
¶ 34	The “prospective investors” in this paragraph are essentially all of the prospective investors to whom Respondents marketed the RD Legal funds. The “one investment manager” in this paragraph is Jeffrey Burrows. The statements to Mr. Burrows were made orally between June and December 2011.
¶ 35	The “numerous investors” and “investors” in this paragraph include, but are not limited to, Tiger 21 investors. The oral misrepresentations to those investors were made in or about 2013.
¶ 36	The “some investors” in this paragraph include, but are not limited to, Tiger 21 investors. The statement was made orally throughout the 2011 to 2013 time period.
¶ 37	The “one investor” in this paragraph is the TCG Group. The statements to TCG Group were made orally in 2012.
¶ 38	The “investment adviser” in this paragraph is Certis Capital Management. The misrepresentation in the first sentence of ¶ 38 was made in September 2011. Mr. Dersovitz’s later acknowledgement and assurance was in January 2013. All statements were made orally, except the statement that the receivables represent the “contingent share of legal settlements reached with defendants[,]” which was written.

¶¶ 39 - 40	The “prospective investor” mentioned in ¶¶ 39 and 40 is Cobblestone Capital. The statements occurred in approximately 2012 and, as noted in your June 1, 2016 Supplemental Wells Submission, were oral.
¶¶ 41 - 42	The “another investor” in these paragraphs was the Magna Carta Companies. The statements by the IR Director (Ms. Markovic) were made in or about September 2013. The statements made by Mr. Dersovitz were made in late 2013 or early 2014. The statements were made orally.
¶ 44	The “investor” in this paragraph was Sal Geraci, and the communication was shown to the IR Director (Ms. Markovic) when she provided investigative testimony in this matter.
¶ 45	The “other investors” in this paragraph include, but are not limited to, Allen Demby (in or about March 2014) and HHM Wealth Advisors, LLC (in 2015). The statements were made orally.
¶ 46	The “certain investors” in this paragraph include, but is not limited to, Certis Capital Management (in or about 2013) and Allen Demby (in or about March 2014). The statements were made orally.
¶ 47	The “one investor” in this paragraph was HHM Wealth Advisors. The statements were made orally.
¶¶ 67 -68	The “receivables associated with unsettled litigation” generally include, but are not limited to, the cases identified in paragraphs 49-52. We refer Respondents to your records to identify for which of those receivables the payment dates were extended.

EXHIBIT B



UNITED STATES
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MICHAEL D. BIRNBAUM
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July 22, 2016

VIA ELECTRONIC DELIVERY

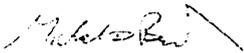
Terence Healy, Esq.
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Re: In the Matter of RD Legal Capital, LLC and Roni Dersovitz;
Admin. Pro. No. 3-17342

Dear Mr. Healy:

Pursuant to Commission Rule of Practice 230, we advise you that the investigative file in this matter is available for your review.¹ Please note, however, that pursuant to SEC Rule of Practice 230(f), a respondent in an SEC proceeding is responsible for bearing the cost of copying. Please contact me should you wish to review the investigative file so that we can make arrangements for its delivery to you.

Sincerely yours,


Michael D. Birnbaum

¹ The documents available for inspection and copying do not include any documents withheld on privilege grounds.

EXHIBIT C

CONFIDENTIAL TREATMENT REQUESTED
UNDER FOIA UNDER 17 CFR § 200.83

**BEFORE THE SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.**

)
)
In the Matter of)
)
RD LEGAL CAPITAL, LLC)
)
_____)

NY-09278

**SECOND SUPPLEMENTAL WELLS SUBMISSION OF
RD LEGAL CAPITAL, LLC AND RONI DERSOVITZ**

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RD Legal Capital, LLC and Roni Dersovitz (jointly, “RD Legal”) provide this Second Supplemental Wells Submission to address certain issues raised in our meeting with the Staff on May 20, 2016. Based on that meeting, we respectfully believe the Staff is cherry-picking isolated statements from the investigation record and distorting them in a way that misstates important facts in this matter. We address several narrow areas below.

1. **Marketing Presentations**

The Staff has incorrectly maintained that there were misstatements in marketing presentations provided to investors concerning whether the RD Legal funds acquired receivables arising from legal judgments, as well as from settlements. In the May 20th meeting, Andrew Ceresney stated that the Staff had a phone transcript of a “standard marketing pitch” Mr. Dersovitz provided to potential investors¹ in which he told those investors the funds were invested “100% in settlements.”

The phone call in question is believed to have occurred in 2012 (the transcript is undated) and included Mr. Dersovitz, Katarina Markovic, and representatives of Cobblestone Capital Advisors, LLC. In the specific line Mr. Ceresney referenced, Mr. Dersovitz stated: “What we’re dealing with *primarily*, 100 percent, are settled cases. So there is no litigation risk in this strategy.” Ex. 117 at 7 (emphasis added). When viewed in context, it is clear that—as several witnesses have testified—Mr. Dersovitz used the phrase “settled cases” to encompass both settlements and non-appealable judgments. The “100 percent” comment accurately describes how the funds were “primarily” invested and that there was “no litigation risk in this strategy.”

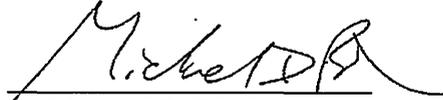
This fact was confirmed when moments later Mr. Dersovitz explained: “Now we accelerate legal fees on settlements **and judgments** that are collectable.” *Id.* at 9 (emphasis

¹ Michael Birnbaum similarly expressed the view that the transcript was representative of all of Mr. Dersovitz’ marketing pitches.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Memorandum of Law in Response to Respondents' Motion for More Definite Statement by mailing a copy of same via UPS Overnight Mail on this 12th day of August, 2016 to Respondents' counsel:

Terence Healy, Esq.
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Washington, DC 20006-2401



Michael D. Birnbaum