UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17651

Administrative Law Judge
Cameron Elliot

In the Matter of **ADRIAN D. BEAMISH, CPA** **Respondent.**	**RESPONDENT ADRIAN D. BEAMISH'S MOTION FOR A MORE DEFINITE STATEMENT**

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Respondent Adrian D. Beamish through undersigned counsel, hereby moves, pursuant to 17 C.F.R. § 201.220(d), for a more definite statement.

I. INTRODUCTION

The Securities and Exchange Commission, Division of Enforcement ("Division"), issued an Order Instituting Proceedings ("OIP") against Adrian Beamish, a 45-year old accountant, effectively seeking to prevent him from ever again engaging in the only job and career he has ever known.[1] Given the stakes, it is imperative – and required by law – that the allegations in the OIP be clear, relevant, and specific. The OIP falls well short of this standard; specifically, the OIP:

(1) does not establish the nexus between Mr. Beamish's conduct and Division's jurisdiction;

(2) fails to include standards and omits facts used to evaluate Mr. Beamish's conduct;

(3) while positing certain disclosures were misleading or incomplete, lacks specific information as to the users of the audited financial statements and whether they were in fact misled;

(4) includes allegations relating to events that occurred outside of Mr. Beamish's audit work on Burrill Life Sciences Fund III, L.P. ("Fund III") which are improperly alleged and risk prejudicing the proceeding, or are otherwise time barred;

(5) omits necessary information relating to Burrill Life Sciences Capital Fund III Partners, L.P. ("General Partner"), Burrill Capital Management, LLC ("BCM"), Burrill Capital, LLC, and their operations, and relationship with, PricewaterhouseCoopers LLP ("PwC"); and

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[1] *See, e.g., Checkosky v. SEC*, 23 F.3d 452, 479 (D.C. Cir. 1994) (opinion of Randolph, J.) (acknowledging that a proceeding under the Rule threatens "to deprive a person of a way of life to which he has devoted years of preparation and on which he and his family have come to rely.") (citations omitted).

(6) fails to allege facts demonstrating that public investors and the SEC's processes require future protection from Mr. Beamish, where Fund III was not a public entity, and Mr. Beamish nearly exclusively worked on private audits or other private engagements.

The OIP charges Mr. Beamish with violations of 17 C.F.R. § 201.102(e) ("Rule 102(e)"), alleging professional negligence as to PwC's audit of Fund III's financial statements for the period 2009 to 2012. However, the OIP tells a materially deficient story. The OIP challenges the audit procedures regarding Fund III's disclosure of prepaid management fees, even though the audited financial statements accurately disclosed the fees and have never been restated. The OIP generally alleges that Mr. Beamish failed to follow appropriate audit procedures to assess the reasonableness of the prepaid management fees, even though unchallenged evidence available to the Division shows that PwC performed significant diligence on these fees.

The OIP further alleges Mr. Beamish failed to perform an appropriate inquiry into the uses and purposes of these prepaid management fees, irrespective of the fact that PwC was not retained, and lacked the authority, to inspect the General Partner, BCM, and Burrill Capital, LLC's books, and received multiple persuasive assurances from several of the Fund's employees and principals that the money could, and would, be repaid. To cite but one of many examples of the Division's odd omission of salient facts: the Division fails to note that Mr. Beamish sought and received a management representation letter for the 2012 audit that was signed not only by Burrill, but also Victor Hebert, Helena Sen, and Jean Yang[2] – the

[2] Victor Hebert was a former managing partner of Heller Ehrman LLP, and, per the Commission's own Order Instituting Proceedings against Hebert was a member of Fund III's General Partner. *See Burrill Capital Mgmt., LLC et al.*, Admin. Proceeding File No. 3-17186, Order (Mar. 30, 2016). Hebert was also Burrill & Company, LLC's ("Burrill & Co") Chief Administrative Officer, Managing Director, and Chief Legal Counsel, and "[f]om 2009 to 2013, he also served as the Chair of Fund III's Investment Committee." *Id.* According to the Commission, Helena Sen was Burrill & Co's Controller, the most senior person in its accounting department, reported to Hebert, and transferred money from Fund III to BCM. *Id.* Jean Yang (who was not named in the Commission's Order against Hebert and Sen) also worked for Burrill & Co, and was a senior accountant working on the Fund III financial statements and audits.

latter three individuals are nowhere mentioned in the OIP. The Division's allegations give the impression the PwC audit team sought only representations from Burrill, though the reality is representations were sought and obtained from *multiple* of the Fund's principals and employees. Mr. Beamish is left to guess at the Division's reasoning for obscuring such facts, and why the seeking of such representations from multiple individuals did not comply with applicable auditing standards. Further, while the OIP alleges that prepaid management fees were misstated, it nowhere alleges what the disclosures should in fact have been. (*See* OIP ¶¶ 28, 32)

Perhaps the Division views this proceeding as a mere formality, and adequate pleadings as vexatious and unnecessary. Yet where a party demonstrates, to the adjudicator's satisfaction, "the respects in which, and the reasons why, each such matter of fact or law should be . . . made more definite," 17 C.F.R. § 201.220(d), or where the Division's allegations are "vague, ambiguous and generalized," the "[r]espondents are entitled to know" particulars so as to "adequately prepare [their] defense." *Alfred M. Bauer*, Admin. Proceeding File No. 3-9034, Order at 1 (ALJ Aug. 27, 1996). Because the OIP is vague, ambiguous, and generalized, and because it lacks sufficient detail to enable Mr. Beamish effectively to prepare to defend himself, Mr. Beamish respectfully submits that this motion for a more definite statement be granted.

II. RELIEF REQUESTED

As discussed in further detail below, Mr. Beamish requests that the Administrative Law Judge order the Division to provide more specific information relating to: (1) its jurisdictional claim in bringing this case relating to audits of a private fund; (2) the standards it used and procedural shortcomings it identified to determine Mr. Beamish engaged in improper professional conduct; (3) the investors in Fund III and any contemporaneous evidence that they were misled by Fund III's financial statements in the relevant years; (4)

the relevance of the allegations outside of the scope of Mr. Beamish's engagement with the Fund; (5) the operations of the General Partner, BCM, and Burrill Capital, LLC, including their respective decision-making structures, and their rights over the Fund pursuant to the Limited Partnership Agreement ("LPA"), and relationship with PwC; and (6) the Division's claim that public investors and the SEC's processes need protection from Mr. Beamish even though Fund III was a private fund whose financial statements were not filed with the SEC, and Mr. Beamish's past work almost exclusively focused on private clients that do not make use of the SEC's processes and thus do not require SEC intervention in this context.

Respondent submits this motion for clarification regarding essential facts, so that he may adequately prepare in a complicated case involving numerous investors, an unscrupulous client, and four years of audits, dating back seven years ago.

III. DISCUSSION

A. SINCE THIS MATTER INVOLVES A CLOSELY-HELD PRIVATE FUND AND AN AUDITOR WITH FEW TO NO PUBLIC CLIENTS, THE DIVISION MUST PROVIDE THE JURISDICTIONAL BASIS FOR THIS ACTION

As a preliminary matter, the OIP fails to establish the jurisdictional bases under which the Division may bring charges against Mr. Beamish for his work on Fund III. Since no public entity is involved, and Mr. Beamish does practically no audit work for public corporate clients, there is no obvious basis for jurisdiction that can be inferred from the OIP. As a result, Mr. Beamish requests that the Administrative Law Judge require the Division to clearly state the jurisdictional basis for its claims against him.

The applicability of Rule 102(e) to accountants' audits of **public** companies is not at issue – Courts have "[r]ecogniz[ed] the particularly important role played by accountants in preparing and certifying the accuracy of financial statements of **public** companies that are so heavily relied upon by the **public** in making investment decisions." *Marrie v. SEC*, 374 F.3d 1196, 1200–01 (D.C. Cir. 2004) (emphasis added). In several other cases, courts have held

that Rule 102(e) represents a valid exercise of the Commission's rule making power on the grounds that the Rule is "is merely attempting to preserve the integrity of its own procedures, by assuring the fitness of those professionals who represent others before the Commission." *Touche Ross & Co. v. SEC*, 609 F.2d 570, 579 (2d Cir. 1979). Critically, the public nature of the accountants' work, and the fact that Rule 102(e) is inexorably connected to appearing before the Commission, is intrinsic to the Court's application of Rule 102(e). *See id.*

Here, there is no obvious nexus between Mr. Beamish's work on Fund III and the jurisdiction and authority of the Commission. The OIP does not state that Mr. Beamish appeared before the Commission as part of his work on the Fund III audits. The OIP does not state that Mr. Beamish has or will appear before the Commission. The OIP does not state that the public was, or is, at risk as a result of Mr. Beamish's conduct. Nor does the OIP state that Fund III was a publicly traded fund with audited financial statements filed with the SEC and made available to the investing public—it was not. Establishing this nexus is necessary: without a connection to the purpose and text of the rule, there would be no practical limit to the Division's authority as a free-floating governor over all aspects of the entire accounting profession. Perhaps this is why no Article III court has yet approved of the Division's attempt to apply Rule 102(e) in this context.

Rule 102(e) was never intended to be a catch-all device to permit the Division to intervene in private audits and to regulate the audit of any company, including privately-held venture capital funds whose sophisticated investors made private investments based on financial disclosures not required to be filed with the SEC or disseminated to the public. The Division's improper application of Rule 102(e) in this case, where there is no question that the prepaid management fees were, in fact, disclosed, demands even stricter attention to the jurisdictional basis for the OIP. As will be detailed further below, the Division's failure to establish jurisdiction impacts every facet of this case, and demonstrates the improper and

potentially dangerous quasi-legislative rule-stretching the Division is attempting to impose here. Put simply: an audit of a closely-held private fund with highly sophisticated investors by an audit partner with few to no public corporate audit clients in which the questioned monies were disclosed, accurately, on the face of each and every financial statement in question is no place for the application of Rule 102(e).

B. THE OIP MUST PROVIDE FURTHER INFORMATION ON THE STANDARDS AND ALLEGED PROCEDURAL CRITERIA THE DIVISION IS USING TO EVALUATE MR. BEAMISH'S CONDUCT

The gravamen of the OIP is that Mr. Beamish engaged in improper professional conduct; however, in the OIP the Division fails to define the standard used to evaluate Mr. Beamish's actions, refuses to provide clear guidance on any affirmative steps Mr. Beamish should have taken, and makes no mention of the disclosures Mr. Beamish was in fact required to demand from the Fund (especially in light of the actual disclosure that did occur). In doing so, the OIP denies Mr. Beamish details essential to his defense. These critical definitional and factual underpinnings are particularly warranted here where the Division is attempting, improperly, to stretch the coverage of Rule 102(e) to audit work on closely held private funds and an auditor who has focused nearly exclusively on private – and not public – company work.

First: the OIP does not allege a basic standard to which Mr. Beamish allegedly failed to conform. Generalized accounting terms do not provide sufficient information for Mr. Beamish to prepare his defense: the Division must define the terms, and describe how these terms apply to Mr. Beamish's conduct. Of particular concern, the OIP does not provide any explanation as to how accurate, tested disclosures regarding prepaid management fees amount to a material misstatement, and on what basis Mr. Beamish – or any accountant – should issue a qualified audit opinion (if, indeed, the Division's position is that Mr. Beamish should have issued a qualified opinion – even that much is not clear from the OIP).

With respect to whether there was a material misstatement, there is no dispute as to whether the Fund disclosed the prepaid management fees in each of the financial statements in question: it did. Yet, in two separate paragraphs, the OIP nevertheless alleges that there was a material misstatement. (OIP ¶¶ 28, 32). More information is required to determine how the disclosure of accurate information, in a manner consistent with accounting principles, constitutes a material misstatement. And, while there is a vague, catch-all allegation that the disclosures were "misleading" (therefore putting the audience for such financial statements at issue), there is no allegation that any investor, over four years of financial statements Mr. Beamish audited, was misled by the accurately disclosed amounts, much less asked for further information relating to these prepaid expenses. And there is no allegation that the financial statements containing these disclosures were ever restated.

The Division's failure to base its allegations on clear standards is also notably evident in the OIP's treatment of a qualified versus unqualified audit opinion. The Division does not describe, in practice, the appropriate standard by which an auditor should make the determination of whether an opinion should be qualified. Here, the audits were conducted in accordance with GAAS, the financial statements complied with all statutory requirements and regulations; and there is disclosure of all material matters, including the prepaid management fees. On what basis the Division believes an unqualified opinion was not warranted in this case is a mystery, which due process requires must be revealed for Mr. Beamish to defend against these charges.

Second: more detail must be given as to what audit procedures Mr. Beamish failed to implement, and how Mr. Beamish's failure, if any, to implement these procedures is inconsistent with applicable audit standards. Conducting an audit is a process; auditors follow clear procedural guidelines to identify material misstatements and errors. Presumably, whether these procedures were followed is relevant to whether the auditor followed the

relevant auditing standards. However, the OIP makes no mention of these well-established processes, relying instead on platitudes, such as "had Beamish exercised the appropriate professional skepticism required of him as an auditor," or "Nor did Beamish inquire." (*See, e.g.*, OIP ¶¶ 24, 25). If Mr. Beamish failed to perform a specific audit task, the OIP must say so. Mr. Beamish cannot be expected to defend against such vague allegations when concrete standards are available. If no standard applies, then the Division should revise its claims accordingly.

Accordingly, Mr. Beamish requests the Division provide the following information for each relevant audit year: (1) the reasons why the Division claims Mr. Beamish's actions were unreasonable; (2) the minimum audit evidence that would have been reasonable; (3) the additional evidence Mr. Beamish should have sought; (4) the minimum level of assurances Mr. Beamish should have sought to issue an unqualified opinion; (5) the additional assurances Mr. Beamish should have sought to issue an unqualified opinion; (6) the disclosure language that at a minimum should have been used in Fund III's audited financial statements; (8) the identities of the individuals and entities Mr. Beamish should have contacted for additional audit evidence and/or assurances; (9) the minimum level of "skepticism" that would have been reasonable; (10) the form of disclosure that should have been used; and (11) the specific auditing standards applicable to private fund audits that provide the specific guidance relating to the Division's responses to the answers to each of the foregoing categories.

Mr. Beamish should not be forced to guess *why* any of his actions as audit partner violate Rule 102(e), what audit conduct the Division challenges, and what elements of disclosure are inadequate. The Division's failure to provide this fundamental information underscores the Division's non-compliance with both the text and spirit of Rule 200. 17 C.F.R. § 201.200(b)(3) (requiring a "statement of the matters of fact and law to be considered

and determined"). If the Division's goal – as stated in the language of Rule 102(e) – is to dissuade improper audit conduct, then it must make clear what the challenged conduct is, how that conduct should have been addressed/avoided, and the specific standards underlying its position.

C. THE OIP DOES NOT PERMIT RESPONDENT TO KNOW WHO WAS MISLED, HOW THEY WERE MISLED, OR WHETHER THERE WAS CAUSE TO BELIEVE INVESTORS WERE BEING MISLED

In order to respond adequately to the OIP's allegations, Mr. Beamish must be able to ascertain how the Division claims the "interests of the investing public" were harmed by the allegedly improper disclosures, and whether Mr. Beamish had any contemporaneous reason to be aware that the investors were being misled. *See* Final Rule: Amendment to Rule 102(e) of the Commission's Rules of Practice, 17 C.F.R. Part 201 (effective date Nov. 25, 1998). Given the Division's broad application of Rule 102(e) here to include work on non-public funds, these details are exceptionally salient in this proceeding, and have been put at issue by the Division.

Mr. Beamish's audit of Fund III's financial statements had a discrete audience: the limited partners, a small group of highly sophisticated, professional investors, including Fortune 500 corporations and international and state government funds, all of whom had a personal relationship (including an annual meeting and direct lines of communication) with the Fund III General Partner. This is a key distinction between this matter and proceedings involving a publicly-traded company where the investors may include the general public, the financial statements are filed with the SEC where they may be read by the lay investor, and there is no expectation of direct communication with the entity. Critically there is no allegation in the OIP that the "interests of the investing public" – none of whom invested in the Fund – were impacted by Mr. Beamish's conduct, much less how the Division's action in this case in any way "protects the investing public."

Because this OIP represents an impermissible expansion of the Division's authority, so must the Division attempt to expand on the crucial details underlying the allegations against Mr. Beamish. Mr. Beamish must be privy to the alleged context of his actions. Specifically, he must be informed as to which members of the investing public are protected by the Division's actions in this case; how the private investors in Fund III qualify (if at all) as public investors when they invested in an entirely private Fund through an arms-length transaction which had no relationship to the SEC's processes; and be made aware of any contemporaneous evidence showing Mr. Beamish should have been aware that the disclosures did in fact impact public investors such that they now require protection.

For these reasons, motions like this one seeking specific information about allegedly misled investors are granted regularly in proceedings involving public entities. For instance, in *Bandimere*, a scheme liability case alleging violations of Section 10(b) of the Exchange Act and 17(a) of the Securities Act, among other things, the respondents sought an order requiring the Division to provide more detailed information about the identity of investors who were allegedly misled. *See David F. Bandimere*, Admin. Proceeding File No. 3-15124, Order (ALJ Feb. 11, 2013). The OIP alleged that Bandimere "made misrepresentations or omissions to 'investors' and 'potential investors,' and that he 'raised at least $9.3 million from over 60 investors.'" *Id.* at 2 (citation omitted). The Administrative Law Judge granted the motion: "In light of the number of investors involved, the variety of misrepresentations and omissions potentially at issue, and the fact that the alleged conduct occurred over a period of five years, the investors and potential investors must be identified." *Id.*

Similar relief was granted in *J.W. Barclay & Co.*, a case against six registered representatives who allegedly engaged "in a pattern of sales practice abuses that defrauded customers" over an 18-month period. *J.W. Barclay & Co., Inc.*, Admin. Proceeding File No. 3-10765, Order (ALJ June 13, 2002). The misconduct alleged in the OIP included "among

other things' purchases and sale of securities on margin in the accounts of 'at least' eleven customers, churning the accounts of 'at least' twelve customers, making materially misleading statements or omissions to 'at least' two customers, making unsuitable purchases and sales in the accounts of 'at least' thirteen customers, and failing to execute sell orders for 'at least' four customers." *Id.* While the Division gave the respondents a partial list of the allegedly defrauded customers by name in response to the motion for a more definite statement, the Judge held that only a full list would allow the respondents to prepare their defense and that "[t]his is really no more than the Division has routinely provided in other recent OIPs." *Id.* at 2; *see also Bauer* at 2 (requiring Division to identify the customers listed in certain paragraphs of the OIP); *W. Pac. Capital Mgmt.*, Admin. Proceeding File No. 3-14619, 102 SEC Docket 3633, Order at 3 (ALJ Feb. 7, 2012) ([T]he identities of such clients are necessary to sufficiently inform Respondents of the charges against them and to prepare for hearing, and are not evidence.").

Though the Division did not bring the aforementioned cases pursuant to Rule 102(e), the necessity of providing information as to whom was misled and how remains the same. Whether the investors in Fund III understood the disclosures of prepaid management fees or objected to the payment of those fees is a core issue as to the allegedly unreasonable conduct in this case. Similarly, it is critical for Mr. Beamish to be on notice of any public investor who may have had specific knowledge of the prepaid management fees and the purpose of those prepayments, and how they now require "protection". The reasonableness of the disclosure relating to prepaid management fees necessarily depends on the effect the disclosures did or did not have on the readers of those disclosures. Without further specificity, Mr. Beamish cannot be said to be on notice of the allegations against him.

D. EVENTS THAT OCCURRED OUTSIDE OF MR. BEAMISH'S ENGAGEMENT ARE IMPROPERLY ALLEGED AND PREJUDICE THE PROCEEDING

The OIP includes allegations which occurred after Mr. Beamish's final audit of Fund III, which are misleadingly incomplete and demonstrate the Division's improper focus on hindsight-based allegations. In paragraphs 41 through 46 of the OIP, the Division alleges that Mr. Burrill continued to take advance management fees in 2013, describes events involving Mr. Burrill and the General Partner that occurred after the conclusion of the 2012 audit, and notes the resignation of PwC as the auditor of Fund III. The Division fails, however, to link these allegations to Mr. Beamish's conduct during the time of the audits. Rule 102(e) is not a license for the Division to play "Monday morning quarterback" with professional audit judgments by "evaluat[ing] actions or judgments in the stark light of hindsight; the Rule "focuses instead on what an accountant knew, or should have known, at the time an action was taken or a decision was made." Amendment to Rule 102(e), 63 Fed. Reg. 57164, 57168 (Oct. 26, 1998) (codified at 17 C.F.R. pt. 201).

The alleged conduct at issue in this case spans a four-year period and began seven years ago. The investigative file spans hundreds of thousands, if not millions, of pages. There are dozens of potential witnesses to gather information from, though curiously the Division failed to take testimony from multiple members of Fund III's General Partner – who had their own fiduciary responsibilities to review and understand the Fund's financial statements. Allegations relating to PwC's resignation are a distraction, which must either be stricken from the OIP or connected to Mr. Beamish's conduct. Mr. Beamish therefore requests that all factual allegations occurring after the 2012 audit of Fund III be removed from the OIP. (*See* OIP ¶¶ 41–46).

That these allegations are irrelevant is exemplified in *Barry C. Scutillo*, Admin. Proceeding File No. 3-9863, Order (ALJ May 3, 2001). Like this matter, *Scutillo* involved a

proceeding against a CPA for improper professional conduct in connection with an audit (though *Scutillo* dealt with a public company audit – not a private fund as in the current matter). The Administrative Law Judge decided not to allow evidence on "several matters that only came to light after the [audit in question] had been completed." *Id.* The Judge noted that "the case law and the applicable professional standards make clear that a determination of an auditor's recklessness cannot be based on hindsight." *Id.* (citing AU § 316.08). The Judge thus decided not to 'poison the well,' excluding several events that occurred after the audit in question was complete. *Id.*

The result should be the same here: Mr. Beamish had no obligation to monitor the client's conduct once the audit was complete, and these allegations provide no basis to evaluate Mr. Beamish's contemporaneous actions. Accordingly, because these allegations are inflammatory and detract from the clarity of the OIP, improperly suggesting 20/20 hindsight is proper, Mr. Beamish requests that the Court strike paragraphs 41-46 of the OIP.

E. THE DIVISION SHOULD PROVIDE FURTHER INFORMATION ABOUT THE OPERATIONS AND DECISION MAKING OF THE GENERAL PARTNER, BCM, AND BURRILL CAPITAL, LLC

Finally, the OIP fails to include specific facts relating to the General Partner, BCM or Burrill Capital, LLC, without which Mr. Beamish cannot be reasonably expected to put forward an adequate defense. Specifically, the OIP fails to include any information relating to the powers of the General Partner, BCM, or Burrill Capital, LLC and their principals and employees under the LPA, and does not include any details about the relationship between PwC and these entities, including sufficiently detailed allegations as to the respective entities' involvement in the audit of Fund III. Respondent requests that this information, detailed in more particularity below, be included in the OIP. The Division's failures in this regard verge on misleading: a reader of the OIP might easily conclude that Mr. Burrill alone signed off on all prepaid management fees and on the Fund III management representation letters. But the

truth, as the Division well knows, is that another three individuals – none of whom is named in the OIP – signed off on various of the Fund III management representation letters – including Victor Hebert, Helena Sen, and Jean Yang. The omission of these, and multiple other, key facts and allegations leaves Mr. Beamish to fill in the Division's blanks – which is improper and should not be encouraged.

The core allegation in the OIP is that Mr. Beamish improperly signed audit reports which contained inadequate disclosures relating to prepaid management fees paid to the General Partner; however, the OIP includes practically no assertions relating to the conduct of the General Partner, BCM, or Burrill Capital, LLC with respect to these audits. Information missing from the OIP includes: the names of the individuals who controlled the General Partner; the identity of the employees at the General Partner, BCM, or Burrill Capital, LLC who were responsible for preparing the financial statements; who held the decision-making authority at the General Partner (*i.e.*, who would have had authority to permit Mr. Burrill's taking of prepaid management fees); who the auditor of the various entities was; or whether PwC had access to these entities' financial statements. As the General Partner and BCM were both variously the preparer of the financial statements and management representation letters *and* the recipient of the management fees, this information is even more critical.

Paragraphs 16 and 17 of the OIP, which detail Mr. Burrill's actions in initiating the payment of prepaid management fees, exemplify these shortcomings. These paragraphs emphasize that Mr. Burrill unilaterally caused the payment of prepaid management fees in 2008 to cover other expenses, despite the fact that Mr. Burrill did not solely control the Fund's General Partner. In evaluating these allegations, it is critical for Mr. Beamish to know Mr. Burrill's actual authority over the General Partner, whether Mr. Burrill acted without the knowledge of the other members of the General Partner or if they assented to his actions, and

what representations the General Partner and its members and employees made to PwC about the nature of these prepaid management fees. Similarly, on several occasions, the OIP alleges that Mr. Beamish failed to make appropriate inquiries, but fails to detail the persons to whom these inquiries should have been made and to what extent could PwC could inquire of these people. (*See* OIP ¶ 21). And, the OIP fails to name any General Partner/BCM/Burrill Capital, LLC employees who were responsible for the preparation of the financial documents, and what knowledge they may have had about the nature of the prepaid fees. Indeed, the OIP goes out of its way to avoid naming these employees, stating only that the BCM controller relayed Mr. Burrill's objections to certain language in the financial statements. (OIP ¶ 31). These omissions are striking and curious given the Division has already charged at least two members/employees of the Fund III General Partnership and BCM (Victor Hebert and Helena Sen, as well as Mr. Burrill himself) with improper actions relating to the disclosures made to PwC. It is also notable that the Division nowhere states that *multiple* individuals signed off on Fund III's management representation letters to PwC, and that Mr. Beamish and other members of the audit team sought, and received, persuasive representations from those multiple individuals. The Division's attempt to demonstrate otherwise by basing its allegations on a fundamentally incomplete OIP are improper and should be redressed immediately.

Further, the OIP fails to describe adequately the powers of the General Partner under the Partnership Agreement. The OIP alleges that the LPA "did not authorize" certain conduct by the General Partner, but fails to identify the provisions in question much less mention whether certain conduct – such as whether Mr. Burrill could alone authorize the prepayment of management fees – was specifically prohibited, or whether the LPA was merely silent as to that point. (OIP ¶ 12). If there are specific prohibitions (and it appears there are none) the Division should identify those provisions with particularity. If there are no such provisions

the Division should say so instead of engaging in allegation by insinuation rather than concrete fact. By omitting these details relating to the General Partner, BCM and Burrill Capital, LLC, the Division obscures the facts, and denies Mr. Beamish notice of what the Division believes he should have done in these circumstances.

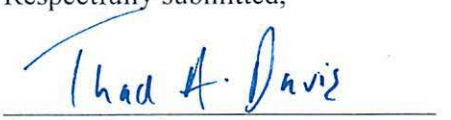
IV. CONCLUSION

Mr. Beamish's professional reputation and career is on the line, and has already been severely damaged by the filing of this OIP. Mr. Beamish is entitled to more than a trial by ambush – a more definite statement is required. *See Bauer* at 1 ("[W]hen dealing with challenges to the adequacy of allegations in an order for proceedings . . . a respondent is entitled to be sufficiently informed of the charges against him so that he may adequately prepare his defense . . . ."). Such a request is not overly burdensome. *See Dempsey-Tegeler & Co., Inc.*, Administrative Proceeding File No. 3-2393, 52 SEC Docket 85, Order (June 16, 1970) (granting the motion for a more definite statement when "something less than the strictest observance of the principles [limiting such relief] would serve to expedite the proceedings without undue prejudice to the Division"). Notably, the Division identified with specificity the GAAP and GAAS provisions, as well as other auditing standards it believes helpful to its case. (*See, e.g.*, ¶¶ 22, 23, 25, 26). Similarly, the Division selectively identified provisions of the LPA, where the explicit terms appeared helpful. (¶ 12). And, the OIP specifically refers to the General Partner's use of the prepaid fees for unrelated expenses. (¶ 41). The Division should not be permitted to provide detail only when it perceives an advantage in doing so.

Mr. Beamish is not asking for the Division's trial strategy. Rather, he seeks only sufficient information to answer adequately the charges in the OIP and to prepare to defend against them. Therefore, for the reasons set forth herein, the Court should order the Division to provide a more definite statement as detailed above.

Dated: November 23, 2016

Respectfully submitted,



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Certificate of Word Count

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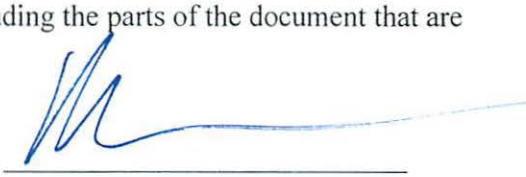
By: 

Certificate of Service

On November 23, 2016, the foregoing "Respondent Adrian M. Beamish's Motion for a More Definite Statement" was sent to the following parties and other persons entitled to notice as follows:

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