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UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
December 6, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17651

In the Matter of	
ADRIAN D. BEAMISH, CPA	Administrative Law Judge Cameron Elliot
Respondent.	

The Division of Enforcement's Opposition to Respondent's Motion for a More Definite Statement

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INTRODUCTION

Respondent Adrian Beamish's first brief strikes themes that he will no doubt repeat throughout the course of this matter. His motion for a more definite statement, full of sound and fury, is little more than an attempt to distract from the serious allegations of respondent's professional failings. The Court has already disposed of much of respondent's motion on its own. The remainder is devoid of merit.

Respondent uses the opportunity to engage in several sleights of hand. Chief among them: respondent would have the Court believe that he signed off on financial statements that fully and completely disclosed the advanced management fees plundered from the investment fund he was charged with auditing. Not so. The advanced fees—never plainly described in the financial statements as "prepaid management fees," as respondent now characterizes them—appeared only through a haze of obfuscation in the fund's financials, and ultimately, as respondent knew, far exceeded the amount authorized by investors in the fund.

Respondent also intimates that investors in the fund, including public pension funds and publicly-traded companies, deserve less protection than other investors because, in his opinion, they are "professional" and "sophisticated." Neither the law nor the relevant auditing standards make such a distinction among financial victims.

And respondent pleads ignorance about the "powers" who controlled the fund, demanding to know their authority to take the fees. Respondent raises this question today—but it is the one that respondent should have asked when he was conducting the audits. Instead, time and again, respondent accepted management's representations without inquiring into its rationale for taking such large advances on the fees, the contractual basis for the advancements, or the proper authorization for the payments.

The Commission's Order Instituting Proceedings details respondent's repeated failures to fulfill his basic obligations as an auditor: to ask questions, demand evidence, maintain a professional skepticism, and insist on clarity in financial disclosures. As discussed below, because the allegations against respondent provide sufficient notice to prepare a defense, the motion should be denied in its entirety.

PROCEDURAL BACKGROUND

The Commission issued the Order Instituting Proceedings ("OIP") in this matter on October 31, 2016. The Division of Enforcement ("Division") provided a detailed list of the documents it would make available to respondent pursuant to Rule 230 of the Commission's Rules of Practice on November 7, 2016.

The transcripts of sworn testimony taken during the investigation that preceded this matter and the exhibits shown to witnesses in testimony were provided to respondent on November 10, 2016. The Division produced all of the documents identified on its Rule 230 disclosures on November 16, 2016. The Division is currently in the process of producing documents related to the investors in the fund. The Division deems these documents outside of its investigative file relating to the audit of the investment fund, but is producing them at respondent's request.

Respondent answered the OIP on November 23, 2016, simultaneously filing the instant motion for a more definite statement. At no point did respondent's counsel raise concerns to the Division about the alleged deficiencies of the OIP prior to the filing of the motion, nor were any such concerns raised to the Court during the prehearing conference on November 28, 2016.[1] The Court issued an Order on November 29, 2016, denying respondent's motion in part.

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[1] Respondent's employer, PricewaterhouseCoopers LLC, has been involved in a litigated matter arising out of the same misappropriation of funds from the same investment fund, and is

(continued on next page)

The hearing in this matter is set to commence on April 25, 2017.

SUMMARY OF ALLEGATIONS

The Order Instituting Proceedings provides a concise statement of the allegations against respondent. As alleged in the OIP, PricewaterhouseCoopers was retained by San Francisco-based Burrill Life Sciences Capital Fund III, L.P. (the "Fund") to conduct annual audits of the Fund's financial statements. *See* OIP ¶ 1. Respondent was the engagement partner on the audits beginning with the work on the Fund's year-end 2006 financial statements. *See id.* ¶ 14. As described in the OIP, respondent failed to comply with the relevant professional standards in connection with the audits of the Fund's year-end 2009, 2010, 2011, and 2012 financial statements. *See id.* ¶ 15.

The OIP alleges that G. Steven Burrill, the founder of the Fund's adviser and affiliated management company, began taking cash from the Fund in 2007 to pay expenses at his other companies, justifying the withdrawals as "advance on management fees." *See* OIP ¶ 16.[2] The amount of these advanced fees grew in 2008 and in every subsequent year. *See id.* ¶ 17. By the end of 2009, the balance of the advanced fees totaled more than $4.9 million, or nearly one year of management fees. *See id.* ¶ 18. By the end of 2010, the amount totaled more than $9.2 million, or nearly two years of advanced fees. *See id.* And by the end of 2011, the amount grew to more than $13.3 million, or nearly three years of advanced fees. *See id.* The advanced management

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represented by the same counsel. *See Burrill Life Sciences Capital Fund III, L.P. v. G. Steven Burrill, et al.*, No. CGC-15-546718 (San Francisco Super. Ct. filed July 6, 2015). Respondent appeared as a witness in the litigation, also represented by the same counsel. *See, e.g., id.*, Dkt. 352 (Beamish Decl. filed May 27, 2016).

[2] Burrill, his management company, its chief legal officer, and its controller previously resolved claims against them. *See Burrill Capital Mgmt., LLC*, Admin. Proc. File No. 3-17186, 2016 SEC LEXIS 1168, at *2 (Mar. 30, 2016) (accepting offer of settlement).

fees were recognized by respondent as unusual in the industry, and the amounts surpassed PricewaterhouseCooper's internally-established threshold for materiality. *See id.* ¶¶ 18-19.

With respect to the years 2009, 2010, and 2011, the OIP alleges that respondent failed to take necessary and appropriate steps to audit the Fund's financial statements and, relatedly, failed to ensure that the Fund accurately and fairly disclosed the advanced management fees in its financial statements. *See generally* OIP § II(F) (audit failure); *id.* § II(G) (disclosure failure). With respect to respondent's deficient audit, the OIP identifies 10 specific standards issued by the American Institute of Certified Public Accountants and explains how respondent failed to meet the standards. *See, e.g., id.* ¶¶ 19-20 (citing standards and alleging that respondent failed to inquire into the reason for the advanced fees or why the amount grew substantially over time). Among other things, respondent failed to take steps to obtain evidence that the advanced payments were "properly approved and authorized[.]" *Id.* ¶ 23. Similarly, although respondent knew that the Fund's financial statements referred to the advanced fees as a "receivable" owed by the Fund's general partner, respondent failed to inquire whether the payments were permitted or authorized. *See id.* ¶ 25 (citing requirement to ensure undocumented loans between related parties have been approved "by those charged with governance").

As for ensuring appropriate disclosure of the advanced fees, the OIP details the inadequate descriptions of the payments in the Fund's year-end 2009, 2010, and 2011 financial statements. The OIP alleges that the Fund's financial statements obliquely and inconsistently referred to the advanced fees as a "prepaid expense," as "prepaid expenses and other receivables," and as a "receivable from the General Partner." *See* OIP ¶ 27 (describing varying references in balance sheet and footnotes). Nowhere on the face of the financial statements did the Fund plainly disclose that it had pre-paid millions of dollars in management fees to Burrill or his affiliated companies—not even in the footnote dedicated to disclosure of the management

fees paid by the Fund. *See id.*[3] The OIP describes the deficiencies in the Fund's financial statement disclosures and identifies the specific professional standards implicated. *See id.* ¶¶ 26-28 (citing six audit and disclosure standards). Despite these inadequacies, respondent authorized his firm to issue unqualified opinions on the financial statements. *See id.* ¶ 28.

Respondent's audit of the Fund's year-end 2012 financial statements was deficient for similar reasons, and to an even greater degree. In connection with the audit, respondent became aware that management of the Fund had paid themselves more than they were entitled in fees *over the entire life of the Fund*—approximately $7 million more, by respondent's own conservative calculation. *See* OIP ¶ 29. This is where respondent's serious auditing failures are shown in stark relief: respondent allowed Fund management to reject plain disclosure of the excess fees in the financial statements, failing to exercise appropriate professional skepticism and making no inquiry into the rationale for taking the fees or even whether the excess fees had been properly authorized. *See id.* ¶¶ 30, 39, 40. And respondent readily acquiesced when his client declined to state clearly and plainly that the Fund had paid more than $17.9 million in advanced management fees. *See id.* ¶¶ 32, 33, 38 (describing disclosures on balance sheet, related party footnote, and management fee footnote). Instead, in the footnotes to the financial statements, the Fund merely described the total amount of the advanced payments as a "receivable" (that is, an undocumented loan) that it was owed from Burrill's management company. *See id.* ¶ 33. As alleged in the OIP, respondent failed to take sufficient steps to ensure that the terms of the so-called "receivable" were adequately disclosed in the financial statements or to obtain adequate audit evidence that it could be repaid. *See id.* ¶¶ 33-37. With respect to the

[3] Nor, as referenced in the Introduction, *supra*, did the Fund's financial statements refer to so-called "prepaid management fees." *See, e.g.*, Resp. Br. at 2. That phrase is respondent's after-the-fact invention for purposes of litigation.

audit of the Fund's year-end 2012 financial statements, the OIP cites 11 specific audit and disclosure standards against which respondent's work came up short. *See* OIP ¶¶ 29-40.

The final section of the OIP's factual allegations describes the events that occurred in 2013. *See* OIP § II(I). Significantly, the Fund continued to pay advanced management fees until July 2013, up through and after respondent's audit of the year-end 2012 financial statements. *See id.* ¶ 41. In August 2013, the Fund's investment committee learned that all of the Fund's committed capital had been spent. *See id.* ¶ 42. After investigation and discovery of the payment of the advanced management fees, Burrill was removed from his control over the Fund. *See id.* ¶ 43. PricewaterhouseCoopers resigned as auditors in November 2013. *See id.* ¶ 45.

ARGUMENT

A. The Legal Standard for a Motion for a More Definite Statement

The Commission's Rules of Practice set forth the requirements for the Order Instituting Proceeding. *See* 17 C.F.R. § 201.200 ("Initiation of proceedings"). The OIP need only "[c]ontain a *short and plain* statement of the matters of fact and law to be considered and determined[.]" 17 C.F.R. § 201.200(b)(3) (emphasis added). "[A]llegations in an OIP are sufficient if they 'inform' a respondent 'of the nature of the charges against him so that he may adequately prepare his defense.'" *Aegis Capital, LLC*, Admin. Proc. Rel. No. 2732, 2015 SEC LEXIS 2127, at *5 (May 27, 2015) (citing *Morris J. Reiter*, Exch. Act Rel. No. 6108, 1959 SEC LEXIS 588, at *5 (Nov. 2, 1959)); *see also Marc Sherman*, Admin. Proc. Rel. No. 2106, 2014 SEC LEXIS 4694, at *4 (Dec. 5, 2014) (denying motion for more definite statement where OIP "contain[ed] a number of specific allegations relating to" respondent, and thus provided respondent "with legally sufficient notice of the allegations against him").

A respondent is not entitled to the disclosure of the evidence on which the Division expects to rely in advance of the hearing. *See BioElectronics Corp.*, Admin. Proc. Rel. No. 3761,

2016 SEC LEXIS 1228, at *3 (Apr. 4, 2016). "It has long been established that 'when dealing with challenges to the adequacy of allegations in an [OIP], a respondent is entitled to be sufficiently informed of the charges against him so that he may adequately prepare his defense, but he is not entitled in advance of the hearing to a disclosure of the evidence on which the Division intends to rely.'" *Thomas R. Delaney II*, Admin. Proc. Rel. No. 1557, 2014 SEC LEXIS 2223, at *6 (June 25, 2014) (citations omitted). Respondent's authority is in accord. *See Alfred M. Bauer*, Admin. Proc. File No. 3-9034, 1996 SEC LEXIS 2546, at *2-3 (Aug. 27, 1996) (finding that respondent is "not entitled in advance of the hearing to a disclosure of the evidence on which the Division intends to rely.") (Resp. Br. at 3).

Where the respondent is seeking facts that go beyond the type that are necessary to give the respondent fair notice of the charges against him, a motion for more definite statement should be denied. *See, e.g., Harding Advisory LLC*, Admin. Proc. Rel. No. 1239, 2014 SEC LEXIS 539, at *6 (Feb. 12, 2014) (denying motion where many of respondents' requests "related to disputed facts and are not properly the subject of a more definite statement"). Similarly, motions that seek "an unreasonable amount of specificity from the Division as to facts the Division might introduce to prove the allegations in the OIP" are not proper. *Houston Am. Energy Corp.*, Admin. Proc. Rel. No. 1867, 2014 SEC LEXIS 3701, at *5 (Sept. 30, 2014). Nor are motions that "consist[] mainly of legal arguments" about the sufficiency of evidence. *OptionsXpress, Inc.*, Admin. Proc. Rel. No. 710, 2012 SEC LEXIS 2231, at *5-6 (July 11, 2012).

Further, when the Division provides additional information in response to a motion for definite statement, courts have found that such information effectively moots the respondent's motion. *See Aegis Capital*, 2015 SEC LEXIS 2127, at *3-4 (finding that additional information, taken with allegations in OIP, was "sufficient to inform [respondents] of the allegations against them"); *see also Donald J. Anthony, Jr.*, Admin. Proc. Rel. No. 1098, 2013 SEC LEXIS 3907, at

*7-8 (Dec. 12, 2013) (denying motion where Division made investigative file available to respondents for inspection and copying, provided respondents with additional factual information, and intended to provide respondents with names of witnesses, exhibit list, and expert reports ahead of hearing); *Houston Am. Energy Corp.*, 2014 SEC LEXIS 3701, at *4-5 (denying motion where Division provided additional information in response to motion and supplemental appendix along with production of investigative file); *OptionsXpress*, 2012 SEC LEXIS 2231, at *5-6 (denying motion where Division made available non-privileged portions of investigative file and met on numerous occasions with respondents to provide information).

B. Each of Respondent's Specific Demands Should Be Denied

Respondent asserts that the allegations against him in the Order Instituting Proceedings are "vague, ambiguous, and generalized" and plaintively wonders if the Division "views this proceeding as a mere formality, and adequate pleadings as vexatious and unnecessary." Resp. Br. at 3. His specific demands for additional information, however, go far beyond what is required at the pleading stage. Each is taken in turn, below.[4]

1. Respondent Seeks to Defy Commission's Authority to Regulate His Audits

The Court has already summarily denied respondent's primary rationale for filing the motion. *See* Order (Nov. 29, 2016). As the Court stated, the OIP provides the jurisdictional grounds for the action against respondent, who is employed at one of the Nation's most prominent firms with years of both private and public company audit experience. *See id.* (citing Section 4(C) of the Securities Exchange Act of 1934 and Rule 102(e)(1)(ii) thereunder); *see also*

[4] Respondent initially identifies six alleged deficiencies in the OIP. *See* Resp. Br. at 1-2 (numbers one to six); *see also id.* at 3-4 (listing six items in the "relief requested" section). Only the first five items are discussed in the body of the brief, however. *See id.* at 4-16 (containing headings "A" to "E"). The Court noted this omission in its Order denying the respondent's sixth request. *See* Order (Nov. 29, 2016).

OIP ¶ 4 (providing background about respondent). Other than noting that the investors in the Fund included public pension funds and public companies (OIP ¶ 11), the Division turns to the remaining items in respondent's motion.

2. Respondent Demands Unnecessary Hypothetical Detail About His Audit Deficiencies

Respondent next complains that the OIP "fails to define the standard" used to evaluate his professional conduct. *See* Resp. Br. at 6. Respondent requests that the Court order that the Division undertake an extensive exercise to plead not only the applicable auditing standards (ignoring those already identified in the OIP), but the specific audit steps he *should have* taken and the specific financial statement disclosures he *should have* insisted upon "for each relevant audit year[.]" *See id.* at 8 (enumerating respondent's pleading demands). Respondent's overreaching should be rejected.

First, as discussed above, such demands are inconsistent with the Rule's requirement that the OIP must contain a "short and plain" statement of the matters to be considered. *See* 17 C.F.R. § 201.200(b)(3). The OIP, in fact, already identifies more than two dozen specific audit and disclosure standards against which respondent's conduct should be measured—and explains, concisely, how respondent failed to meet those standards. *See, e.g.,* OIP ¶ 39 (identifying standard applicable to auditing related party transactions). The detail in the OIP is more than sufficient to put respondent on notice of what the Division believes to be the shortcomings of his audits of the Fund's year-end 2009, 2010, 2011, and 2012 financial statements. *See BioElectronics*, 2016 SEC LEXIS 1228, at *5 (denying motion where OIP "sufficiently informed" respondents of factual and legal basis for claims).

Second, the information sought by respondent amounts, in essence, to a demand that the Division disclose its expert opinion in its pleadings. Eight of respondent's specific items include the phrase "should have" or "would have." *See* Resp. Br. at 8 (listing 10 demands numbered (1)

to (11)). Similarly, respondent demands that the Division plead why his actions were "unreasonable," or alternatively what actions would have been "reasonable." *See id.* Such counterfactuals and hypotheticals may—or may not—be appropriate for expert opinion, but are certainly not appropriate at the pleading stage. *See OptionsXpress, Inc.*, 2012 SEC LEXIS 2231, at *5-6 (denying motion consisting "mainly of legal arguments" over Division's theory of case). The Court should pass on this dog's breakfast of "would haves" and "should haves."

Finally, respondent provides no authority for the proposition that the OIP fails to conform to the basic pleading requirements by failing to meet his proposed standard. For example, respondent baldly asserts that "[g]eneralized accounting terms do not provide sufficient information" to prepare a defense. *See* Resp. Br. at 6. Because the OIP provides respondent with fair notice of the charges against him, his request for heightened details should be denied. *See BioElectronics*, 2016 SEC LEXIS 1228, at *5.

3. Respondent Misleadingly Layers Fraud Pleading Requirements onto Allegations of Audit Deficiencies

Respondent asks to know how and why the "small group" of so-called "highly sophisticated, professional investors" were misled by the inadequate disclosures in the Fund's financial statements. *See* Resp. Br. at 9. Respondent's demands are improper and should be denied for the following reasons.

First, respondent's legal authority stands merely for the proposition that the Division should provide the identities of victims in matters alleging *fraud*, not in matters where the Division's allegations focus on respondent's *professional obligations as an auditor*. *See* Resp. Br. at 10-11 (citing decisions). For example, in *David F. Bandimere*, the Court ordered the Division to provide the identities of unnamed investors in a matter alleging violations of the antifraud provisions of the securities laws. *See* Admin. Proc. Rel. No. 739, 2013 SEC LEXIS 452, at *1-2 (Feb. 11, 2013). Similarly, the Court in *J.W. Barclay & Co., Inc.*, required the

Division to provide the identity of customers who were defrauded by alleged brokerage sales abuses. *See* Admin. Proc. File No. 3-10765, 2002 SEC LEXIS 3456, at *1-2 (June 13, 2002). The Division was ordered to provide the names of customers victimized by respondent's fraudulent practices in *Western Pacific Capital Management, LLC. See* Admin. Proc. Rel. 691, 2012 SEC LEXIS 434, at *1 (Feb. 7, 2012). And the Division was required to provide the identity of unspecified "customers, accounts, and securities" in *Alfred M. Bauer. See* Admin. Proc. File No. 3-9034, 1996 SEC LEXIS 2546, at *3 (Aug. 27, 1996); *see also id.*, Admin. Proc. Rel. 134, 1999 SEC LEXIS 19, at *1 (Jan. 7, 1999) (Initial Decision) (summarizing fraud allegations). None of these decisions requires the Division to plead the identities of investors in an issuer whose financial statement audits are the subject of the proceeding.[5]

Second, respondent demands that the Division allege "the effect" of financial disclosures on investors and "how" investors were misled. *See* Resp. Br. at 11. This is unnecessary, even in matters alleging fraud. *See Alfred M. Bauer*, 1999 SEC LEXIS 19, at *7-8 (distinguishing between heightened pleading requirements of fraud under Fed. R. Civ. P. 9(b) and notice pleading requirements of Commission's Rules of Practice). Such a requirement is certainly not necessary in Rule 102(e) proceedings, and respondent offers no authority for the proposition.

Finally, respondent again takes the opportunity to advance his theory that the Commission lacks the authority to discipline him as an auditor. *See, e.g., id.* at 9 (citing lack of allegations that "the interests of the investing public . . . were impacted" by respondent's audit) (citation omitted). As the Court already found, this argument "goes to the merits" of the

[5] Respondent is well aware of the identities of the "small group" of Fund investors through his audit work and the Division's Rule 230 disclosures—in fact, respondent's counsel listed the Fund investors in a recent letter sent to the Division. In any event, because the Division is producing documents related to the investors, respondent's demand is effectively moot. *See Houston Am. Energy Corp.*, 2014 SEC LEXIS 3701, at *4-5.

Division's allegations. *See* Order (Nov. 29, 2016). Legal arguments over the sufficiency of evidence are not the proper subject for a motion for more definite statement. *See OptionsXpress, Inc.*, 2012 SEC LEXIS 2231, at *5-6.

Because the OIP provides sufficient notice of the Division's allegations of professional misconduct, the Court should deny respondent's demand for enhanced pleading about the effect of the Fund's inadequate financial disclosures on investors.

4. Respondent Improperly Moves to Strike Highly Relevant Information from OIP

In its Order, the Court denied respondent's motion to strike the "highly inflammatory" allegations in from the OIP. *See* Order (Nov. 29, 2016) (finding that "such relief is not properly requested by way of motion for more definite statement"). *Contra* respondent's contentions, these allegations are relevant to show, among other things, the recklessness of respondent's willing adoption of management's representations. *See* OIP ¶¶ 41-46. The allegations also provide some indication that the investors had not previously been informed that the Fund had paid advanced management fees—and that, instead, the Fund's financial statement disclosures were woefully inadequate, even for "professional" and "sophisticated" investors. The Court having denied respondent's demand, however, these matters will be left for later adjudication.

5. Respondent's Demand for Particularized Pleading Related to Audit Affiliates Is Unprecedented

Respondent asserts that the OIP "fails to include any information relating to the powers of the General Partner, BCM [Burrill Capital Management, LLC], or Burrill Capital, LLC, and their principals and employees under the LPA [Limited Partnership Agreement]." Resp. Br. at 13. Specifically, among other items, respondent demands that the Division identify "who would have had the authority to permit Mr. Burrill's taking of prepaid management fees[.]" *Id.* at 14. This is precisely the sort of inquiry respondent should have made during his audits of the Fund's

financial statements. *See, e.g.*, OIP ¶¶ 23, 39. Unfortunately for respondent—and for the Fund's investors—he did not.

"The gravamen of the OIP is that Mr. Beamish engaged in improper professional conduct," respondent correctly notes earlier in his brief. *See* Resp. Br. at 6. Respondent is not charged with assisting the theft or misappropriation from the Fund—allegations that might require proof that the payments were not authorized. For purposes of these proceedings, it is enough to plead facts sufficient to state how and why the Division believes respondent failed his professional obligations. *See Thomas R. Delaney II*, 2014 SEC LEXIS 2223, at *6.

Among those failures, as alleged in the OIP, respondent took no steps—

- to obtain "audit evidence that the payments were properly approved and authorized" (OIP ¶ 23);
- to determine whether a loan between related parties was "permitted by the LPA" (OIP ¶ 25);
- to determine whether "Burrill had authority to bind" the General Partner (OIP ¶ 36);
- to inquire whether the "General Partner's governing documents permitted Burrill to commit the future distributions of the General Partner" (OIP ¶ 36);
- to determine "whether the LPA permitted payment of management fees in excess of what the General Partner would be entitled to earn" (OIP ¶ 39); or
- to determine whether the agreement permitted "loans to related parties without approval of an advisory committee" of Fund investors (OIP ¶ 39).

The OIP further alleges that respondent's failure to inquire about proper authorization for the advanced fees was inconsistent with auditing standards cited in the charging document. *See, e.g.*, OIP ¶ 25 (citing AU § 334.09); *id.* ¶ 39 (citing AU-C § 550.24).

Notably, respondent offers no precedent for the proposition that the Division must plead facts in a Rule 102(e) proceeding to detail the "powers" or "conduct" or "authority" of *affiliates of the subject of the audit*. *See* Resp. Br. at 13-16 (citing no decisions). Instead, respondent repeatedly cites to evidence that respondent obtained "management representation letters" from various individuals at the Fund. *See id.* at 14 (naming individuals); *id.* at 15 (citing "multiple" unnamed individuals); *see also id.* at 2-3 (discussing letters). As the Division alleges, however, the applicable auditing standards caution against overreliance on representations from management without seeking additional and appropriate audit evidence. *See* OIP ¶ 37 (citing AU-C § 580.04 and AU-C § 580.23). Because the OIP provides sufficient notice to respondent concerning the audit steps he allegedly failed to take and the specific standards against which his audit should be measured, the Court should deny respondent's unprecedented request for additional pleading. *See BioElectronics*, 2016 SEC LEXIS 1228, at *5.

CONCLUSION

For the foregoing reasons, the Division respectfully requests that the Court deny respondent's motion for a more definite statement.

Dated: December 6, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Eric Pease, hereby certify that an original and three copies of **The Division of Enforcement's Opposition to Respondent's Motion for a More Definite Statement** were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Mailstop 1090, Washington, D.C. 20549, and that a true and correct copy of the foregoing has been served by U.P.S. Delivery, marked for next day delivery on December 6, 2016, and electronic mail on the following persons entitled to notice:

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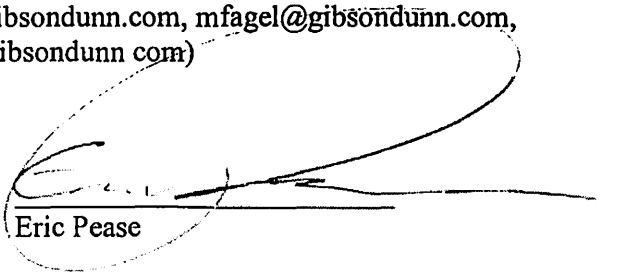

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