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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17950

In the Matter of,

David Pruitt, CPA

Respondent.

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
RESPONDENT DAVID PRUITT'S MOTION FOR A MORE DEFINITE STATEMENT**

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Pursuant to Rule 220(d) of the Securities and Exchange Commission's ("SEC" or the "Commission") Rules of Practice, Respondent David N. Pruitt ("Mr. Pruitt") submits this memorandum of points and authorities in support of his Motion for a More Definite Statement (the "Motion") as to certain allegations in the Order Instituting Administrative and Cease-and-Desist Proceedings ("OIP") pursuant to Sections 4C and 21C of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 102(e)(1)(iii) of the Commission's Rules of Practice dated April 28, 2017. Specifically, Mr. Pruitt asks for a limited order requiring the Division of Enforcement (the "Division") to provide a More Definite Statement in two discrete areas that identifies with particularity the following:

1. the specific internal control of L3 Technologies, Inc. (formerly known as L-3 Communications Holdings, Inc.) ("L3") that the Division alleges was violated, and
2. the specific books, records, and accounts that were made inaccurate or falsified as a result of Mr. Pruitt's alleged conduct and the factual and legal basis for concluding they were not maintained with "reasonable detail."

BACKGROUND

For 23 years Mr. Pruitt served his country honorably as an officer in the United States Army, serving in combat roles and, during various points in time, as Inspector General, Division Comptroller, and Director of Resource Management. A few years after his retirement from the Army in 2001 at the rank of Lieutenant Colonel, Mr. Pruitt was employed at L3 in various capacities. Mr. Pruitt has a completely unblemished military and civilian record.

On April 28, 2017, the Commission instituted proceedings against Mr. Pruitt, arising out of what the Division characterizes as improper recognition of what amounts to 14/100th of one percent (.0014) (\$17.9 million out of \$12.622 billion) of L3's reported net revenue for the year

ended December 31, 2013. This unquestionably immaterial amount of revenue related to previously performed and documented services under a fixed-price aircraft maintenance contract between ASD and the U.S. Army, referred to as the C-12 Contract.¹ The Division has characterized these previously performed services as unresolved claims and alleges that Mr. Pruitt instructed a subordinate to create 69 invoices related to the previously performed services under the C-12 Contract in L3's internal accounting system ("SAP"), and withhold delivery of those invoices from the U.S. Army.² According to the Division, by entering the invoices in SAP, ASD improperly recognized approximately .0014 (14/100th of one percent—\$17.9 million) in additional revenue at the end of 2013.³

The OIP alleges Mr. Pruitt: (1) caused L3's violations of Section 13(b)(2)(A) of the Exchange Act, which requires an issuer to make and keep books, records, and accounts, which in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; (2) willfully violated Section 13(b)(5) of the Exchange Act, which prohibits any person from knowingly circumventing or knowingly failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account of an issuer; and (3) willfully violated Rule 13b2-1 of the Exchange Act, which prohibits any person from, directly or indirectly, falsifying or causing to be falsified, any book, record, or account that the Exchange Act requires an issuer to maintain.

Though the Commission charges Mr. Pruitt with violations relating to books and records and internal controls, the OIP fails to identify the specific books, records, or accounts that were allegedly made inaccurate or falsified, or the specific internal control that was circumvented. The

¹See OIP ¶ 1.

²See *id.* ¶ 2.

³See *id.*

OIP contains only generalized references to L3's amended filings,⁴ and does not attempt to identify the specific items that were allegedly made inaccurate as the result of the specific conduct the Division attributes to Mr. Pruitt. For example, the OIP states that of the \$69 million in adjustments in L3's filings related to the C-12 Contract, "\$15.4 million in pre-tax income was related to the creation of invoices related to unresolved claims," but the OIP fails to clarify exactly which of L3's books or records were inaccurate.⁵ Similarly, the Division only makes a vague reference to the "violation of a specific internal control of L3 that required delivery of invoices"⁶ without setting forth the specific internal control. The Division alleges that Mr. Pruitt "violated" an L3 internal control,⁷ even though Section 13(b)(5) of the Exchange Act does not actually prohibit the "violation" of an internal control but instead prohibits its knowing circumvention. Although Mr. Pruitt denies "violating" or circumventing an internal control, the Division's lack of precision in the OIP lends further support to the need for a more definite statement.

After an almost three-year investigation, the Division should be able to identify with specificity the books and records that they allege were not maintained with the "reasonable detail" required by Section 13(b)(2)(A)⁸ and the purportedly circumvented internal control that is the basis for the alleged Section 13(b)(5) violation. While the burden on the Division to provide this additional information is minimal, Mr. Pruitt requires this detail in order to have a fair opportunity to adequately prepare his defense.

⁴See *id.* ¶¶ 3, 42.

⁵*Id.* ¶ 42; see also *id.* ¶ 41.

⁶*Id.* ¶ 39.

⁷*Id.*

⁸The plain language of Section 13(b)(2)(A) makes clear that Congress never intended that the books and records of an issuer be maintained with 100% accuracy and instead only requires that they be kept in "reasonable detail." The Division should be required to set forth in the OIP the books and records that fail to meet this standard and the legal basis supporting such an allegation.

ARGUMENT

I. THE OIP DOES NOT INCLUDE SUFFICIENT INFORMATION TO GIVE MR. PRUITT A FAIR OPPORTUNITY TO ADEQUATELY PREPARE A DEFENSE

It is a basic principle “that respondents in administrative proceedings are entitled to be sufficiently informed of the charges against them so that they may adequately prepare their defense.” *David F. Bandimere*, Admin. Proc. File No. 3-15124, 2013 SEC LEXIS 452, at *3, Order (ALJ Feb. 11, 2013) (“*Bandimere*”). Allegations that are “vague, ambiguous and generalized” do not satisfy this standard. *See Alfred M. Bauer*, Admin. Proc. File No. 3-9034, 1996 SEC LEXIS 2546, at *3, Order (ALJ Aug. 27, 1996). Federal courts have similarly found that respondents in administrative proceedings have a basic right to be adequately informed of the charges against them. *See, e.g., Jaffee & Co. v. SEC*, 446 F.2d 387, 394 (2d Cir. 1971) (noting that a respondent must be permitted “a reasonable opportunity to prepare a defense against the theory of liability invoked by those who institute the proceedings against it”); *see also Brock v. Dow Chem. U.S.A.*, 801 F.2d 926, 930 (7th Cir. 1986) (noting that the “requirement that administrative pleadings are drafted with sufficient particularity to afford the cited [individual] notice of the charges against it strikes a balance between the reluctance to transform administrative pleading into a game of skill, in which one misstep may be decisive to the outcome, and a recognition that procedural due process in administrative proceedings requires notice and the opportunity to be heard”). Rule 200(b) of the Commission’s Rules of Practice states that an OIP that directs an answer pursuant to Rule 220 “shall set forth the factual and legal basis alleged therefor in such detail as will permit a specific response thereto.” 17 C.F.R. § 201.200(b)(3). If the OIP fails to provide the required details, a “respondent may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined.” 17 C.F.R. § 201.220(d).

The Division has charged Mr. Pruitt with books and records and internal controls violations and should be required to set forth the legal and factual basis for these charges—the specific books and records that he allegedly caused to be inaccurate, including the legal basis for how these books and records were not kept with the “reasonable detail” required by statute, and the internal control that he allegedly circumvented. A brief supplement of clarity concerning information that should be readily accessible to the Division will provide Mr. Pruitt with sufficient notice necessary to respond to the charges and prepare his defense.⁹ The OIP’s reference to a “specific internal control of L3”¹⁰ without identifying the internal control is precisely the type of “vague, ambiguous and generalized” allegation that does not suffice, especially considering the Division’s lengthy and voluminous investigation in this matter. Similarly, the OIP’s casual reference to books and records that were inaccurate lacks the requisite specificity necessary for Mr. Pruitt to defend against the allegation.¹¹ The Division has little trouble identifying with specificity other allegations largely extraneous to the violations at issue.¹² The Division should not be permitted to provide detail only when it perceives a strategic advantage in doing so. The identity of the purportedly inaccurate books and records and the circumvented internal control are critical pieces of information necessary for Mr. Pruitt to prepare his defense.

Alternatively, even in cases where the granting of a motion for a more definite statement may not be appropriate, “discretion may be exercised to direct that information be given to respondents if doing so will have the effect of expediting the proceedings” and where there is no

⁹Although it is a basic principle that respondents are not entitled to a disclosure of evidence in advance of the hearing, the Division would not be required to disclose any such evidence in order to provide the necessary detail. See *Bandimere*, 2013 SEC LEXIS 452, at *3 (citing *Charles M. Weber*, Exchange Act Release No. 4830, 1953 SEC LEXIS 299 (Apr. 16, 1953); *Morris J. Reiter*, Exchange Act Release No. 6108, 1959 SEC LEXIS 588 (Nov. 2, 1959)).

¹⁰See OIP ¶ 39.

¹¹See *id.* ¶ 43.

¹²See *id.* ¶¶ 28-30.

claim doing so would prejudice the Division's case. *Robert M. Winston*, Admin. Proc. File No. 3-6986, 1988 SEC LEXIS 5252, at *2, Order (ALJ Apr. 28, 1988); *see also Fin. Programs, Inc.*, Admin. Proc. File No. 3-2564, 52 SEC Docket 94, Order (Sept. 25, 1970); *Dempsey-Tegeler & Co., Inc.*, Admin. Proc. File No. 3-2393, 52 SEC Docket 85, Order (June 16, 1970). Providing this information to Mr. Pruitt will not prejudice the Division's case as these factual details should be readily available to the Division, are necessary for the Division to meet its burden, and should have already been included in the OIP.

II. THE SIGNIFICANT SIZE OF THE INVESTIGATIVE FILE REQUIRES THE DIVISION TO PROVIDE A MORE DEFINITE STATEMENT

In deciding a motion for a more definite statement, the court may consider the magnitude of the investigative file and the multiplicity of respondents and allegations. *Donald T. Sheldon*, Admin. Proc. File No. 3-6626, 1986 SEC LEXIS 2293, at *6, Order (ALJ June 9, 1986) (“[G]iven the magnitude of the investigatory file and the multiplicity of respondents and allegations, the boundaries of the allegations need to be reasonably precise in order to give respondents a reasonable opportunity to prepare their defense.”). Although Mr. Pruitt is the only respondent, the Division produced 85,000 documents from its investigative file—documents which it compiled over the multiple years of its investigation. A review of a file of this magnitude will unquestionably be lengthy and tedious, and the burden should not be on Mr. Pruitt to look for the proverbial needle in the haystack particularly where the additional detail sought is critical to the charges herein and can easily be set forth by the Division. *See J.W. Barclay & Co.*, Admin. Proc. File No. 3-10765, 2002 SEC LEXIS 3456, at *2, Order (ALJ June 13, 2002) (considering the size of the Division's investigative file, among other factors, in granting in part motions for more definite statements).

III. THE SEVERITY OF THE POTENTIAL SANCTIONS SOUGHT REQUIRE A MORE DEFINITE STATEMENT

Like many who appear before the Commission, Mr. Pruitt has a lot at stake in this matter including his professional license and the ability to earn a living as an accountant. As one court has noted, the “effect of a Commission suspension order should not be underestimated” as a proceeding of this nature 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.” *Checkosky v. SEC*, 23 F.3d 452, 479 (D.C. Cir. 1994) (citation and internal quotation marks omitted), *superseded on other grounds, Marrie v. SEC*, 374 F.3d 1196 (D.C. Cir. 2004). With so much at stake, Mr. Pruitt should be afforded a fair opportunity to defend against the charges brought against him and the only way for him to do so is for the basis of those charges to be identified with specificity. He should not be forced to wade through tens of thousands of documents or learn for the first time at a hearing what factual and legal basis underlies the alleged violations set forth in the OIP. Such a request is not overly burdensome nor is it designed to seek the Division’s evidence, trial strategy, or anything to which Mr. Pruitt is not rightfully entitled at this time. The Division should be required to identify the internal control of L3 it alleges was circumvented and the books and records it alleges were not kept in reasonable detail and made inaccurate.

CONCLUSION

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

Dated: June 6, 2017
New York, New York

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Respondent.

CERTIFICATE OF SERVICE

I, Bari R. Nadworny, an associate of the law firm of Baker & Hostetler LLP located at 45 Rockefeller Plaza, New York, New York 10111, hereby certify that on the 6th day of June, 2017, I caused to be served a true copy of the Answer and Affirmative Defenses of Respondent David Pruitt, Respondent David Pruitt's Motion for a More Definite Statement, and Memorandum of Points and Authorities in Support of Respondent David Pruitt's Motion for a More Definite Statement via electronic mail upon the following parties and other persons entitled to notice:

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