

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 86420 / July 19, 2019

Admin. Proc. File No. 3-18867

In the Matter of
DANIEL JOSEPH TOUIZER

ORDER DENYING MOTION FOR MORE DEFINITE STATEMENT

On October 12, 2018, the Commission instituted proceedings against Daniel Joseph Touizer pursuant to Section 15(b) of the Securities Exchange Act of 1934.¹ Touizer has filed a motion for a more definite statement of the matters of fact or law to be considered or determined as part of the proceeding. For the reasons discussed below, Touizer's motion is denied.

Background

The order instituting proceedings ("OIP") alleges that, on May 11, 2018, Touizer pleaded guilty to one count of conspiracy to commit wire fraud. According to the OIP, the counts of the criminal information to which Touizer pleaded guilty stated that Touizer "defrauded investors and obtained money and property by means of materially false and misleading statements in connection with stock sales." The OIP further states that, from approximately 2010 to 2017, "Touizer engaged in the business of effecting transactions in securities for the account of others by working as an unregistered broker and hiring unregistered brokers to participate in offerings of stock in a number [of] private companies he controlled." According to the OIP, these companies were penny stocks. The OIP also sets forth eight specific admissions Touizer made in connection with his plea, including that he solicited and hired others to solicit investments in his companies; that he made, and hired others to make, false claims about the profitability of the companies and the safety of the investments; and that Touizer and his co-conspirators "used investor funds to pay themselves undisclosed commissions and fees," despite telling investors no such commissions or fees would be charged. The Commission issued the OIP to determine "what, if any remedial action is appropriate" under Exchange Act Section 15(b).

¹ *Daniel Joseph Touizer*, Exchange Act Release No. 84416, 2018 WL 4951797 (Oct. 12, 2018).

Touizer filed his answer to the OIP on June 6, 2019, along with a motion for a more definite statement.² In his motion, Touizer contends that the OIP “does not plead any fraud with the requisite particularity which is required to place respondent on notice of the allegations which underlie the [OIP].” According to Touizer, the OIP is deficient in that it “fails to address the who, what, when, where, and why of who was defrauded, what the fraud scheme was, when the alleged fraud took place, and why Respondent’s actions constitute a fraud.”³

In its opposition to Touizer’s motion, the Division of Enforcement argues that a more definite statement is not necessary because the OIP “specifies the conviction at issue and summarizes the facts underlying the Division’s contentions that Touizer was associated with a broker at the time of the misconduct and that associational and penny stock bars are appropriate.” The Division contends that Touizer’s claims about the OIP’s absence of facts regarding the underlying fraudulent scheme are without merit because “the Division is not pursuing a claim under the securities laws’ anti-fraud provisions.” Rather, it brought the proceeding to determine whether “sanctions are appropriate because of Touizer’s already admitted criminal fraud.”

Analysis

The Commission’s rules require that the OIP set forth the factual and legal basis alleged for the order “in such detail as will permit a specific response thereto.”⁴ The OIP must inform the respondent of the charges in enough detail to allow the respondent to prepare a defense, but it need not disclose to the respondent the evidence upon which the Division intends to rely.⁵

Exchange Act Section 15(b), under which this proceeding was brought, authorizes the Commission to bar a person from associating in certain capacities in the securities industry and from participating in an offering of penny stock if it finds: (1) that the person was convicted within ten years of the commencement of the proceeding of any felony or misdemeanor involving the purchase or sale of any security, the conduct of the business of a broker, or the

² See Rule of Practice 220(d), 17 C.F.R. § 201.220(d) (providing that a respondent may file a motion for a more definite statement of specified matters of fact or law to be considered or determined and shall state in such motion the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite).

³ Touizer also states that “there is nothing in the [OIP] which makes clear why the action is appropriate or why any purported transactions are not exempt transactions under 10(b)(5) of the Securities Act.” The OIP specifies why the Commission instituted the proceeding. As for his reference to Section 10(b)(5) of the Securities Act, no such subsection exists.

⁴ 17 C.F.R. § 201.200(b)(3).

⁵ *Rita J. McConville*, Exchange Act Release No. 51950, 2005 WL 1560276, at *14 (June 30, 2005).

violation of the wire fraud statute; (2) that the person was associated with a broker at the time of the misconduct; and (3) that imposition of sanctions is in the public interest.⁶

The OIP alleged that Touizer pleaded guilty in 2018 to conspiracy to commit wire fraud in connection with the sale of penny stock securities. Touizer’s conviction is specified in enough detail to permit Touizer to respond to that element of the charges in the OIP.

Next, we turn to the question of whether Touizer was associated with a broker at the time of the misconduct. The Exchange Act defines a broker as one “engaged in the business of effecting transactions in securities for the account of others.”⁷ We have said that “[a]ctivities that are indicative of being a broker include holding oneself out as a broker, recruiting or soliciting potential investors, handling client funds and securities, negotiating with issuers, and receiving transaction-based compensation.”⁸ “In particular, [t]ransaction-based compensation, or commissions, [is] one of the hallmarks of being a broker-dealer.”⁹ The OIP here alleged several specific admissions related to the question of whether Touizer was associated with a broker at the time of the misconduct: his solicitation of investors for the penny stock companies he controlled; the specific types of misstatements he admitted to making to investors in order to convince them to invest; and his receipt of commissions, paid from investor funds, related to the investments at issue. These cited admissions provide enough information about the Division’s charge that he acted as a broker to allow Touizer to prepare a defense to that element of the OIP.

Finally, the proceeding will consider whether sanctions against Touizer are in the public interest. In this regard, we have held repeatedly that “[t]he doctrine of collateral estoppel prevents relitigating the factual findings or the legal conclusions of an underlying criminal proceeding” in a subsequent administrative proceeding predicated on the criminal conviction.¹⁰ As a result, the Division was not required to plead facts to establish that Touizer committed fraud in the OIP. The OIP alleges that Touizer pleaded guilty to conspiracy to commit wire fire and

⁶ 15 U.S.C. § 78o(b)(6).

⁷ 15 U.S.C. § 78c(a)(4)(A).

⁸ *Anthony Fields*, Advisers Act Release No. 4028, 2015 WL 728005, at *18 (Feb. 20, 2015) (collecting authorities); *see also Persons Deemed Not To Be Brokers*, Exchange Act Release No. 22172, 1985 WL 634795, at *4 (June 27, 1985) (“In determining whether an associated person is a ‘broker,’ the receipt of transaction-based compensation often indicates that such a person is engaged in the business of effecting transactions in securities.”).

⁹ *James S. Tagliaferri*, Exchange Act Release No. 80047, 2017 WL 632134, at *4 (Feb. 15, 2017).

¹⁰ *Id.* at *3 & n.21 (citing Gary M. Kornman, Exchange Act Release No. 59403, 2009 WL 367635, at *8 (Feb. 13, 2009), *petition denied*, 592 F.3d 173 (D.C. Cir. 2010)); *accord Phillip J. Milligan*, Exchange Act Release No. 61790, 2010 WL 1143088, at *4 (Mar. 26, 2010); *Martin A. Armstrong*, Advisers Act Release No. 2926, 2009 WL 2972498, at *4 (Sept. 17, 2009).

that he acted as a broker at the time of the misconduct. The OIP provides a sufficient factual and legal basis for Touizer to defend against the imposition of remedial sanctions.

Conclusion

We find that Touizer has been provided with sufficient information regarding the basis for this proceeding, and the specific grounds on which the Division bases its allegations, to enable him to file an answer, which he already has, and to prepare his defense. Accordingly, IT IS ORDERED that Daniel Joseph Touizer's motion for a more definite statement is denied.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary