

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 699 / March 28, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14726

In the Matter of	:	
	:	
JEFFREY A. WOLFSON,	:	ORDER DENYING MOTION FOR
ROBERT A. WOLFSON, and	:	MORE DEFINITE STATEMENT
GOLDEN ANCHOR TRADING II, LLC	:	
(n/k/a BARABINO TRADING, LLC)	:	

The Securities and Exchange Commission (Commission) instituted this proceeding with an Order Instituting Administrative and Cease-and-Desist Proceedings (OIP) on January 31, 2012, pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934. On March 6, 2012, Respondent Jeffrey A. Wolfson (J. Wolfson) filed his Answer and Affirmative Defenses, along with a Notice of Motion for More Definite Statement (Motion) and Memorandum of Law in Support (Memorandum of Law), pursuant to Rule 220(d) of the Commission's Rules of Practice. The Division of Enforcement (Division) filed its Response to the Motion on March 14, 2012. J. Wolfson did not file a reply brief.

J. Wolfson argues that the OIP omits certain factual information and legal bases, including the dates of telephone conversations and the identification of individuals, e-mails, and instances of transactions, as well as the identification of the relevant Self Regulatory Organization (SRO) requirements and other legal authorities. He also requests that the Division identify certain trading records and provide him with transcripts of recordings of telephone conversations.

The Division argues that the OIP provides sufficient notice of the factual and legal bases for the claims as to allow a specific response thereto. See 17 C.F.R. § 201.200(b). It maintains that much of what J. Wolfson seeks is evidentiary in nature and therefore not the proper subject of a motion for a more definite statement. However, in an effort to expedite the proceeding, the Division has responded to many of the requests by providing the dates of the telephone conversations, the identification of individuals and e-mails, and the citations for the SRO rules referenced in the OIP.

In addition to the relevant trading records and telephone conversation recordings that were made available to Respondents as a part of the investigative file, the Division states that it has provided Respondents with detailed 103-page and 37-page charts (Trading Charts) that

identify each trade upon which the Division intends to rely in establishing liability and seeking sanctions.

In light of the Division's responses and the information provided in the Trading Charts, the Motion has largely been rendered moot. The remaining issues are resolved as follows.

A respondent is entitled to be sufficiently informed of the nature of the charges so that he or she may adequately prepare a defense; however, a respondent is not entitled to a disclosure of evidence in advance of the hearing. Morris J. Reiter Co., 39 S.E.C. 484, 486 (1959); J. Logan & Co., 38 S.E.C. 827, 830 (1959); Charles M. Weber, 35 S.E.C. 79, 80-81 (1953).

Factual information request 4 seeks the identity of the other individuals whom J. Wolfson allegedly taught the violative trading activity referenced in paragraph II.A.14 of the OIP. Memorandum of Law, pp. 4-5. This request refers to a summary allegation of the OIP that is not in itself an element of proof. The requested information is evidentiary in nature and does not warrant a more definite statement.

In factual information request 6, J. Wolfson argues that the language in paragraph II.A.16 of the OIP is vague and ambiguous and asks the Division to "identify each instance in which it alleges that Mr. Wolfson 'called in both sides of his reset transaction and instructed the broker to put assists in either his brother's or Trader A's account[.]'" Memorandum of Law, p. 5. This request refers to a summary allegation of the OIP that is not in itself an element of proof. Moreover, the Trading Charts should enable Respondents to determine the specific instances to which the OIP refers.¹

Factual information request 12 seeks the identification of (i) the telephone conversations with the floor broker, (ii) the trading records, and (iii) the telephone conversation recordings, related to the allegations in paragraph II.D.52 of the OIP. Memorandum of Law, p. 7. The allegation that "J. Wolfson consistently executed the assist trades at a fixed and predetermined net price" is not in itself an element of proof. Moreover, the Trading Charts should enable Respondents to determine the specific instances to which the OIP refers.²

In factual information request 19, J. Wolfson misreads the OIP in claiming that the language in paragraph II.D.74 of the OIP is vague and ambiguous. Memorandum of Law, pp. 9-

¹ The Memorandum of Law also seeks the identification of other instances of reset and assist transactions. Similarly, the Trading Charts should enable Respondents to determine the specific instances to which the OIP refers.

² The Memorandum of Law also seeks the identification of other trading records, as well as the identification of certain telephone conversation recordings and transcripts thereof. The Trading Charts should enable Respondents to determine the specific instances to which the OIP refers. The Division is not required to provide transcripts of the recordings, even if certain transcripts have been produced previously. Respondents are just as capable of preparing transcripts as the Division.

10. The OIP alleges that Trader A, whom the Division has identified by name, thought that certain facts were apparent, presumably because he will so testify at the hearing. These allegations do not warrant a more definite statement.

Legal basis requests 3 and 5 seek the identification of the legal authority that supports the allegations in paragraphs II.D.48 and 68 of the OIP. Memorandum of Law, pp. 12-13. While these allegations may be disputed, they are purely legal issues that Respondents are capable of ascertaining independently. They do not warrant a more definite statement.

J. Wolfson has been sufficiently informed of the factual and legal bases of the allegations as to permit a specific response thereto and prepare an adequate defense. See 17 C.F.R. § 201.200(b). Accordingly, it is ORDERED that the Motion for a More Definite Statement is DENIED in its entirety.

Cameron Elliot
Administrative Law Judge