

SECURITIES & EXCHANGE COMMISSION  
MAILED FOR SERVICE

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-10765

JUN 14 2002

CTFD. NO. \_\_\_\_\_ UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
June 13, 2002

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In the Matter of :  
: :  
J.W. BARCLAY & CO., INC. : ORDER  
JOHN A. BRUNO :  
MICHAEL J. WILLS :  
EDGAR B. ALACAN :  
EMMANUEL P. CUBE :  
MAYER DALLAL :  
DANOO NOOR, SR. :  
EMANUELE A. SCARSO :  
MICHAEL B. SCOTT :

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On April 24, 2002, the Securities and Exchange Commission (Commission) issued its Order Instituting Proceedings (OIP) in this matter. All Respondents have now filed answers.

The OIP alleges that six registered representatives of a brokerage firm engaged in a pattern of sales practice abuses that defrauded customers from June 1997 through December 1998. The alleged misconduct includes "among other things" purchases and sales 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. The brokerage firm, its president, and its vice president are charged with failure to supervise. The misconduct is alleged to have occurred "primarily" in securities that the brokerage firm brought public or for which it was a market maker.

The Division of Enforcement (Division) has filed a motion to strike the second through fourteenth defenses in the answers of Respondents Cube and Scarso. That motion is denied.

Three Respondents have filed motions for more definite statements, which the Division has opposed. This case has the prospect of becoming unmanageable because of the number of actively-defending Respondents (nine), the size of the Division's investigative file (more than thirty boxes of non-privileged materials), and the Division's stated intent to present evidence of fraudulent activity that took place more than five years before the OIP was issued. Under these circumstances, and because of the wording of the OIP, the motions for more definite statements will be granted in part. See Rule 220(d) of the Commission's Rules of Practice, 17 C.F.R. § 201.220(d).

Respondents Noor and Dallal seek the identity of the customers who were allegedly defrauded and a specification of which frauds were allegedly committed against which customers. In its opposition, the Division has provided the names of certain customers who dealt with each of the six registered representatives who are Respondents. What the Division does not say is that its customer list is complete. See Division's Response to Motions of Noor and Dallal for More Definite Statement, dated May 23, 2002, at 5 (“[T]he unlawful activities described in . . . the OIP occurred in the accounts of at least those customers of each registered representative listed on Exhibit A hereto.”) (emphasis added). There is too much wiggle room in the Division's phraseology: I have no idea what the phrase “at least” means. Within one week from today, the Division shall file and serve a more definite statement that clarifies whether its Exhibit A does or does not provide a complete list of the customers who were allegedly defrauded. If Exhibit A is not a complete list, the Division's more definite statement must identify all the missing customers by name and by the registered representative who dealt with those customers. This is really no more than the Division has routinely provided in other recent OIPs. See, e.g., Harvest Financial Corporation, A.P. No. 3-10739, OIP dated March 25, 2002. In its more definite statement, the Division must also clarify what the phrase “among other things” means in OIP ¶ II.B.2. If other sales practice violations, beyond the five specific sales practice violations identified in OIP ¶¶ II.B.2.a-e are at issue, the Division must identify them with particularity. If no other sales practice violations are at issue, and the phrase “among other things” is surplusage, the Division shall so state. In all other respects, however, Noor's and Dallal's motions for more definite statement are denied.

Respondent Alacan has also filed a motion for a more definite statement. In addition to requesting the names of the allegedly defrauded customers, he seeks the names of the securities involved in the allegedly improper sales practices. The OIP states only that the alleged misconduct occurred “primarily” in stocks that the brokerage firm had brought public or for which it was a market maker. Once again, I find that there is too much ambiguity in this language to permit the preparation of a defense. I have no idea if Respondents are charged with misconduct as to securities that the brokerage firm did not bring public, or for which it was not a market maker. Within one week from today, the Division shall file and serve a more definite statement that identifies each of the securities that are at issue in the OIP. It shall do so as to each Respondent, not just Alacan. In all other respects, however, Alacan's motion for a more definite statement is denied.

A prehearing conference will be held by telephone on Tuesday, June 18, 2002, at 11 a.m. Eastern time. The Division will be responsible for initiating the call and for obtaining a court reporter. The parties should be prepared to discuss the prehearing matters detailed in Rules 221 through 235 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.221-.235.

SO ORDERED.



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James T. Kelly  
Administrative Law Judge