UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v. **Case No.: 6:08-cv-829-Orl-35KRS**

NORTH AMERICAN CLEARING, INC., RICHARD L. GOBLE, BRUCE B. BLATMAN, and TIMOTHY J. WARD,

Defendants.

ORDER

THIS CAUSE comes before the Court for consideration in accordance with the mandate issued by the Eleventh Circuit Court of Appeals; Motion for Entry of Permanent Injunction Against Defendant Richard Goble filed by Plaintiff Securities and Exchange Commission (Dkt. 272); and Response in opposition to Plaintiff's Motion filed by Defendant Richard L. Goble (Dkt. 273). The Court hereby **GRANTS** Plaintiff's Motion as described herein.

I. BACKGROUND

This case arises out of an enforcement action filed by the Securities and Exchange Commission ("SEC") on May 27, 2008, against Defendant Richard L. Goble ("Goble") and others.[1] The Complaint alleges that Defendant Goble and others engaged in a fraudulent scheme by which North American Clearing, Inc. ("North

[1] Defendant Goble's three co-defendants settled with the SEC, and the Court entered judgments against Timothy Ward ("Mr. Ward") on July 16, 2008, and against North American and Bruce B. Blatman ("Mr. Blatman") on November 13, 2009. The case against Defendant Goble went to trial. The trial against Defendant Goble commenced on May 17, 2010.

American" or "the firm") and its principals improperly swept money into customer money market accounts and then liquidated those accounts to fund settlement and operating expenses.

Following the bench trial, this Court found Goble liable for violating Section 10(b) and Rule 10b-5 of the Exchange Act, as well as aiding and abetting North American's violations of the Customer Protection Rule at 15 U.S.C. § 78o(b)(3) ("Section 15(c)(3)") and 17 C.F.R. § 240.15c3-3 ("Rule 15c3-3"); and the Exchange Act's books and records provision at 15 U.S.C. § 78q(a) ("Section 17(a)") and 17 C.F.R. § 240.17a-3 ("Rule 17a-3"). (Dkt. 260 at P. 16-26) The Court entered a permanent injunction against Goble, barred him from holding any securities license in the future, and ordered him to pay a $7,500 civil fine. (Dkt. 260 at P. 29-31) Goble appealed this Court's final judgment.

The Eleventh Circuit issued an opinion, (1) reversing this Court's conclusion that Goble violated Section 10(b) and Rule 10b-5 of the Exchange Act; (2) affirming this Court's conclusion that Goble aided and abetted North American's violations of Exchange Act Sections 15(c)(3) and 17(a) and Rules 15c3-3 and 17a-3; (3) vacating portions of this Court's injunction that enjoined Goble from procuring a securities license, engaging in the securities business, or violating §10(b) and Rule 10b-5; and (4) remanding the case back to this Court for (a) entry of a new and more specific injunction and (b) consideration of whether the securities license bar is still appropriate. SEC v. Goble, 682 F.3d 934 (11th Cir. 2012).

Following the remand, the SEC filed this motion for entry of a new injunction asserting that the factual basis for Goble's liability and entry of an injunction is well-established on the record because the Eleventh Circuit neither overturned this Court's

findings of fact nor vacated this Court's legal conclusion that Goble aided and abetted violations of the Customer Protection Rule and the Exchange Act's books and records requirements. Id.

II. LEGAL STANDARD

Articulating the standard of specificity that every injunction must satisfy, Rule 65(d), Federal Rules of Civil Procedure, states that "Every order granting an injunction. . . . must: (A) state the reasons why it issued; (B) state its terms specifically; and (C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required." FED. R. CIV. P. 65(d)(1). The specificity requirement "prevent[s] uncertainty and confusion on the part of those faced with injunctive orders and ... avoid[s] the possible founding of a contempt citation on a decree too vague to be understood." Schmidt v. Lessard, 414 U.S. 473, 476 (1974) (finding that because "an injunctive order prohibits conduct under threat of judicial punishment, basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed."). Thus, every injunction must contain "an operative command capable of enforcement." Int'l Longshoremen's Ass'n v. Phila. Marine Trade Ass'n, 389 U.S. 64, 73–74 (1967). "A person enjoined by court order should only be required to look within the four corners of the injunction to determine what he must do or refrain from doing." Hughey v. JMS Dev. Corp., 78 F.3d 1523, 1532 n. 12 (11th Cir.1996); see Burton v. City of Belle Glade, 178 F.3d 1175, 1201 (11th Cir.1999). The degree of specificity required depends on the nature of the subject matter. McComb v. Jacksonville Paper Co., 336 U.S. 187 (1949).

In the context of civil enforcement actions brought by the SEC, injunctions of some breadth is permitted. SEC v. Goble, 682 F.3d 934, 952 (11th Cir. 2012). The Exchange Act gives the district court broad discretion to enjoin violations of the Act. Id. Moreover, "where the public interest in involved, the court's equitable power has a 'broader and more flexible character.'" Id. "Therefore, a broad, but properly drafted injunction, which largely uses the statutory or regulatory language may satisfy the specificity requirement of Rule 65(d) so long as it clearly lets the defendant know what he is ordered to do or not do." Id. For example, as the Eleventh Circuit has recognized, an injunction enjoining violations of §§15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-3 and 17a-3 may comply with Rule 65(d) because those statutory and regulatory provisions specifically describe the acts required of the person enjoined. Id.

III. DISCUSSION

Plaintiff moves for entry of a new injunction and proposes an injunction that enjoins Goble against future violations of aiding and abetting §§ 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-3 and 17a-3. Plaintiff argues that its proposed injunction not only describes the statues and rules Goble is not to violate, but goes further by listing the specific activity in which Goble is not to engage. Goble opposes the SEC's proposed injunction, arguing that although the SEC's proposed injunction is more specific than the Court's previously imposed injunction, it is another obey-the-law injunction that does not comply with the Eleventh Circuit's mandate. Goble further argues that a permanent injunction is unwarranted and is drastically disproportionate with the finding that Goble only aided and abetted violations of the Exchange Act. Despite Globe's contention that an injunction is unnecessary and disproportionate, the

Eleventh Circuit did not disturb this Court's basis for issuing an injunction that required Goble to comply with §§ 15(c)(3) and 17(a).

The Eleventh Circuit did however find this Court's injunction to be an obey-the-law injunction that failed to meet the specificity standard required by Rule 65(d) and directed this Court to specifically describe the proscribed conduct within the four corners of the injunction. In its mandate, the Eleventh Circuit, stated:

> Plainly, Goble would need to look beyond the four corners of the district court's injunction in order to comply with its strictures. The mere cross-reference to provisions of the *United States Code* and *Code of Federal Regulations* does not specifically describe the acts addressed by the injunction. And, without a compendious knowledge of the codes, Goble has no way of understanding his obligations under the injunction. Accordingly, we vacate these portions of the injunction and remand for the district court to specifically describe the proscribed conduct within the four corners of the injunction.
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> In sum, we emphasize that an injunction prohibiting violations of the securities regulations must comply with Rule 65(d). In this case, we recognize that an injunction enjoining violations of §§ 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3–3 and 17a–3 may comply with Rule 65(d). We do so because these statutory and regulatory provisions specifically describe the acts required of the person enjoined.

Goble, 682 F.3d at 952.

In light of the foregoing and in accordance with the Eleventh Circuit's mandate and consistent with the requirements of Federal Rule of Civil Procedure 65(d), it is hereby **ORDERED** as follows:

1. Plaintiff's Motion for Entry of Permanent Injunction Against Defendant Richard Goble (Dkt. 272) is **GRANTED**.
2. **Section 15(c)(3) of the Securities Exchange Act of 1934 and Rule 15c3-3.** Defendant Goble is **PERMANENTLY RESTRAINED AND ENJOINED** from aiding and abetting (by use of any means or instrumentality of interstate

commerce or of the mails) effecting transactions in, or inducing or attempting to induce the purchase or sale of, securities while in contravention of Rule 15c3-3, by:

a. Failing to maintain in a special reserve bank account for the exclusive benefit of customers required under Rule 15c3-3(e)(1)[2] the amounts computed in accordance with the formula set forth in Rule 15c3-3a[3];

b. Accepting or using amounts under items comprising Total Credits under the formula referred to in Rule 15c3-3(e)(2)[4] for purposes other than those specified under items comprising Total Debits as set forth in Rule 15c3-3(e)(2);

c. Failing to accurately make and record the computations required by Rule 15c3-3(e)(3)[5] necessary to determine the amount required to be deposited

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[2] Rule 15c3-3(e)(1) provides:

> Every broker or dealer shall maintain with a bank or banks at all times when deposits are required or hereinafter specified a "Special Reserve Bank Account for the Exclusive Benefit of Customers" (hereinafter referred to as the "Reserve Bank Account"), and it shall be separate from any other bank account of the broker or dealer. Such broker or dealer shall at all times maintain in such Reserve Bank Account, through deposits made therein, cash and/or qualified securities in an amount not less than the amount computed in accordance with the formula set forth in § 240.15c3–3a.

[3] The formula set forth in Rule 15c3-3a is attached as Exhibit A to this Order.

[4] Rule 15c3-3(e)(2) provides:

> It shall be unlawful for any broker or dealer to accept or use any of the amounts under items comprising Total Credits under the formula referred to in paragraph(e)(1) of this section except for the specified purposes indicated under items comprising Total Debits under the formula, and, to the extent Total Credits exceed Total Debits, at least the net amount thereof shall be maintained in the Reserve Bank Account pursuant to paragraph (e)(1) of this section.

[5] Rule 15c3-3(e)(3) provides in pertinent part:

> Computations necessary to determine the amount required to be deposited as specified in paragraph (e)(1) of this section shall be made weekly, as of the close of the last business day of the week, and the deposit so computed shall be made no later than 1 hour after the opening of banking business on the second following business day; provided, however, a broker or dealer which has aggregate indebtedness not exceeding 800 percent of net capital … and which carries aggregate customer funds[,] as computed at the last required computation pursuant to this section, not exceeding $1 million, may in the alternative make the computation monthly, as of the close of the last business day of the month, and, in such event, shall deposit not less than 105 percent of the amount so computed no later

in the special reserve bank account for the exclusive benefit of customers required by Rule 15c-3-3(e)(1); and

d. Failing to follow the formula set forth in Rule 15c3-3a for computing the amounts required to be deposited in the special reserve bank account for the exclusive benefit of customers required by Rule 15c3-3(e)(1);

all in violation of Section 15(c)(3) of the Exchange Act.

3. **Section 17(a) of the Exchange Act and Rule 17a-3**. Defendant Goble is **PERMANENTLY RESTRAINED AND ENJOINED** from aiding and abetting the failure of any broker or dealer with which he is associated to make and keep current accurate books and records in violation of Section 17(a) of the Exchange Act and Exchange Act Rule 17a-3 by:

   a. Failing to maintain in a special reserve bank account for the exclusive benefit of customers required under Rule 15c3-3(e)(1) the amounts computed in accordance with the formula set forth in Rule 15c3-3a;

   b. Accepting or using amounts under items comprising Total Credits under the formula referred to in Rule 15c3-3(e)(2) for purposes other than those specified under items comprising Total Debits as set forth in Rule 15c3-3(e)(2);

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than 1 hour after the opening of banking business on the second following business day. If a broker or dealer, computing on a monthly basis, has, at the time of any required computation, aggregate indebtedness in excess of 800 percent of net capital, such broker or dealer shall thereafter compute weekly as aforesaid until four successive weekly computations are made, none of which were made at a time when his aggregate indebtedness exceeded 800 percent of his net capital. Computations in addition to the computations required in this paragraph (3), may be made as of the close of any other business day, and the deposits so computed shall be made no later than 1 hour after the opening of banking business on the second following business day. The broker or dealer shall make and maintain a record of each such computation made pursuant to this paragraph (3) or otherwise and preserve each such record[.]

c. Failing to accurately make and record the computations required by Rule 15c3-3(e)(3) necessary to determine the amount required to be deposited in the special reserve bank account for the exclusive benefit of customers required by Rule 15c-3-3(e)(1); and

d. Failing to follow the formula set forth in Rule 15c3-3a for computing the amounts required to be deposited in the special reserve bank account for the exclusive benefit of customers required by Rule 15c3-3(e)(1);

DONE and **ORDERED** in Orlando, Florida, this 3rd day of April 2013.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Person

EXHIBIT A

17 C.F.R. § 240.15c3–3a

Exhibit A--formula for determination reserve requirement of brokers and dealers under § 240.15c3–3.

		Credits	Debits
1.	Free credit balances and other credit balances in customers' security accounts. (See Note A)	XXX	
2.	Monies borrowed collateralized by securities carried for the accounts of customers (See Note B.)	XXX	
3.	Monies payable against customers' securities loaned (See Note C.)	XXX	
4.	Customers' securities failed to receive (See Note D.)	XXX	
5.	Credit balances in firm accounts which are attributable to principal sales to customers	XXX	
6.	Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days	XXX	
7.	Market value of short security count differences over 30 calendar days old	XXX	
8.	Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days	XXX	
9.	Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days		XXX
10.	Debit balances in customers' cash and margin accounts excluding unsecured accounts and accounts doubtful of collection. (See Note E.)		XXX
11.	Securities borrowed to effectuate short sales by customers and securities borrowed to make delivery on customers' securities failed to deliver		XXX
12.	Failed to deliver of customers' securities not older than 30 calendar days		XXX
13.	Margin required and on deposit with the Options Clearing Corp. for all option contracts written or purchased in customer accounts. (See Note F.)		XXX
	Total credits		
	Total debits		
14.	Margin related to security futures products written, purchased or sold in customer accounts required and on deposit with a clearing agency registered with the Commission under section 17A of the Act (15 U.S.C. 17A) or a derivatives clearing organization registered with the Commodity Futures Trading Commission		XXX

	under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1). (See Note G)......		
Total credits..		....	....
Total debits..		....	....
15.	Excess of total credits (sum of items 1-9) over total debits (sum of items 10-14) required to be on deposit in the “Reserve Bank Account” (§ 240.15c3-3(e)). If the computation is made monthly as permitted by this section, the deposit shall be not less than 105 percent of the excess of total credits over total debits................................	....	XXX

Note A. Item 1 shall include all outstanding drafts payable to customers which have been applied against free credit balances or other credit balances and shall also include checks drawn in excess of bank balances per the records of the broker or dealer.

Note B. Item 2 shall include the amount of options-related or security futures product-related Letters of Credit obtained by a member of a registered clearing agency or a derivatives clearing organization which are collateralized by customers’ securities, to the extent of the member’s margin requirement at the registered clearing agency or derivatives clearing organization.

Note C. Item 3 shall include in addition to monies payable against customer’s securities loaned the amount by which the market value of securities loaned exceeds the collateral value received from the lending of such securities.

Note D. Item 4 shall include in addition to customers’ securities failed to receive the amount by which the market value of securities failed to receive and outstanding more than thirty (30) calendar days exceeds their contract value.

Note E. (1) Debit balances in margin accounts shall be reduced by the amount by which a specific security (other than an exempted security) which is collateral for margin accounts exceeds in aggregate value 15 percent of the aggregate value of all securities which collateralize all margin accounts receivable; provided, however, the required reduction shall not be in excess of the amount of the debit balance required to be excluded because of this concentration rule. A specified security is deemed to be collateral for a margin account only to the extent it represents in value not more than 140 percent of the customer debit balance in a margin account.

(2) Debit balances in special omnibus accounts, maintained in compliance with the requirements of section 4(b) of Regulation T under the Act (12 CFR 220.4(b) or similar accounts carried on behalf of another broker or dealer, shall be reduced by any deficits in such accounts (or if a credit, such credit shall be increased) less any calls for margin, marks to the market, or other required deposits which are outstanding 5 business days or less.

(3) Debit balances in customers’ cash and margin accounts included in the formula under item 10 shall be reduced by an amount equal to 1 percent of their aggregate value.

(4) Debit balances in cash and margin accounts of household members and other persons related to principals of a broker or dealer and debit balances in cash and margin accounts of affiliated persons of a broker or dealer shall be excluded from the Reserve Formula, unless the broker or dealer can demonstrate that such debit balances are directly related to credit items in the formula.

(5) Debit balances in margin accounts (other than omnibus accounts) shall be reduced by the amount by which any single customer’s debit balance exceeds 25% (to the extent such amount is greater than $50,000) of the broker-dealer’s tentative net capital (i.e., net capital prior to securities haircuts) unless the broker or dealer can demonstrate that the debit balance is directly related to credit items in the Reserve Formula. Related accounts (e.g., the separate accounts of an individual, accounts under common control or subject to cross guarantees) shall be deemed to be a single customer’s accounts for purposes of this provision.

If the registered national securities exchange or the registered national securities association having responsibility for examining the broker or dealer ("designated examining authority") is satisfied, after taking into account the circumstances of the concentrated account including the quality, diversity, and marketability of the collateral securing the debit balances or margin accounts subject to this provision, that the concentration of debit balances is appropriate, then such designated examining authority may grant a partial or plenary exception from this provision.
The debit balance may be included in the reserve formula computation for five business days from the day the request is made.
(6) Debit balances of joint accounts, custodian accounts, participations in hedge funds or limited partnerships or similar type accounts or arrangements of a person who would be excluded from the definition of customer ("non-customer") which persons includible in the definition of customer shall be included in the Reserve Formula in the following manner: if the percentage ownership of the non-customer is less than 5 percent then the entire debit balance shall be included in the formula; if such percentage ownership is between 5 percent and 50 percent then the portion of the debit balance attributable to the non-customer shall be excluded from the formula unless the broker or dealer can demonstrate that the debit balance is directly related to credit items in the formula; if such percentage ownership is greater than 50 percent, then the entire debit balance shall be excluded from the formula unless the broker or dealer can demonstrate that the debit balance is directly related to credit items in the formula.
Note F. Item 13 shall include the amount of margin required and on deposit with Options Clearing Corporation to the extent such margin is represented by cash, proprietary qualified securities, and letters of credit collateralized by customers' securities.
Note G. (a) Item 14 shall include the amount of margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Act (15 U.S.C. 78q–1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) for customer accounts to the extent that the margin is represented by cash, proprietary qualified securities, and letters of credit collateralized by customers' securities.
(b) Item 14 shall apply only if the broker or dealer has the margin related to security futures products on deposit with:
(1) A registered clearing agency or derivatives clearing organization that:
(i) Maintains the highest investment-grade rating from a nationally recognized statistical rating organization; or
(ii) Maintains security deposits from clearing members in connection with regulated options or futures transactions and assessment power over member firms that equal a combined total of at least $2 billion, at least $500 million of which must be in the form of security deposits. For purposes of this Note G, the term "security deposits" refers to a general fund, other than margin deposits or their equivalent, that consists of cash or securities held by a registered clearing agency or derivative clearing organization; or
(iii) Maintains at least $3 billion in margin deposits; or
(iv) Does not meet the requirements of paragraphs (b)(1)(i) through (b)(1)(iii) of this Note G, if the Commission has determined, upon a written request for exemption by or for the benefit of the broker or dealer, that the broker or dealer may utilize such a registered clearing agency or derivatives clearing organization. The Commission may, in its sole discretion, grant such an exemption subject to such conditions as are appropriate under the circumstances, if the Commission determines that such conditional or unconditional exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors; and
(2) A registered clearing agency or derivatives clearing organization that, if it holds funds or securities deposited as margin for security futures products in a bank, as defined in section 3(a)(6) of the Act (15 U.S.C. 78c(a)(6)), obtains and preserves written notification from the bank at which it holds such funds and securities or at which such funds and securities are held on its behalf. The written notification shall state that all funds and/or securities deposited with the bank as margin (including customer security futures products margin), or held by the bank and pledged to such registered clearing agency or derivatives

clearing agency as margin, are being held by the bank for the exclusive benefit of clearing members of the registered clearing agency or derivatives clearing organization (subject to the interest of such registered clearing agency or derivatives clearing organization therein), and are being kept separate from any other accounts maintained by the registered clearing agency or derivatives clearing organization with the bank. The written notification also shall provide that such funds and/or securities shall at no time be used directly or indirectly as security for a loan to the registered clearing agency or derivatives clearing organization by the bank, and shall be subject to no right, charge, security interest, lien, or claim of any kind in favor of the bank or any person claiming through the bank. This provision, however, shall not prohibit a registered clearing agency or derivatives clearing organization from pledging customer funds or securities as collateral to a bank for any purpose that the rules of the Commission or the registered clearing agency or derivatives clearing organization otherwise permit; and
(3) A registered clearing agency or derivatives clearing organization that establishes, documents, and maintains:
(i) Safeguards in the handling, transfer, and delivery of cash and securities;
(ii) Fidelity bond coverage for its employees and agents who handle customer funds or securities. In the case of agents of a registered clearing agency or derivatives clearing organization, the agent may provide the fidelity bond coverage; and
(iii) Provisions for periodic examination by independent public accountants; and
(4) A derivatives clearing organization that, if it is not otherwise registered with the Commission, has provided the Commission with a written undertaking, in a form acceptable to the Commission, executed by a duly authorized person at the derivatives clearing organization, to the effect that, with respect to the clearance and settlement of the customer security futures products of the broker-dealer, the derivatives clearing organization will permit the Commission to examine the books and records of the derivatives clearing organization for compliance with the requirements set forth in § 240.15c3–3a, Note G.(b)(1) through (3).
(c) Item 14 shall apply only if a broker or dealer determines, at least annually, that the registered clearing agency or derivatives clearing organization with which the broker or dealer has on deposit margin related to securities future products meets the conditions of this Note G.

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