

**NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C10000140
v.	:	
	:	Hearing Officer - EBC
	:	
	:	
Respondent.	:	

ORDER DENYING MOTION FOR MORE DEFINITE STATEMENT

On August 3, 2000 the Department of Enforcement (Enforcement) filed a one-cause Complaint against _____ (“_____” or the “Respondent”) and, on August 25, 2000, _____ filed an Answer and Motion for a More Definite Statement, pursuant to Rule 9215(c).¹ Enforcement filed papers in opposition to the motion on September 22, 2000.

Respondent is charged with violating NASD Procedural Rule 8210 and NASD Conduct Rule 2110. More specifically, the Complaint alleges that: (1) by letter, dated April 5, 2000, NASD Regulation, Inc. (NASDR) “requested, pursuant to NASD Procedural Rule 8210 and in connection with _____’s employment [at] William Scott & Co., L. L. C.,” that _____ appear at its District 10 Office, on May 8, 2000, for an on-the-record interview (Complaint, ¶ 4); and (2) on May 8, 2000

¹ Code of Procedure Rule 9215(c) provides:

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. Such motion shall state why each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion shall set the periods for filing such a statement and any answer thereto.

This Order has been published by the NASDR Office of Hearing Officers and should be cited as OHO Order 00-27 (C10000140).

_____ appeared with counsel for the scheduled interview, but refused to answer any of NASDR's questions. (Complaint, ¶ 5.) As _____'s counsel explained, at the Initial Pre-Hearing Conference in this proceeding, _____ refused to answer any of NASDR's questions based on the invocation of the Fifth Amendment privilege against self-incrimination.²

In his motion for a more definite statement, _____ seeks an order requiring Enforcement to "definitively state the questions [that he allegedly refused to answer] as well as the basis and relevance" therefor. _____ also requests that Enforcement be ordered to "state the basis for its conclusion" that the answers he gave violated NASD Rules.³ For the reasons set forth below, _____'s motion is denied.

Discussion

Code of Procedure Rule 9212(a) requires that a complaint "specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated." This pleading requirement is satisfied if the allegations provide "a respondent sufficient notice to understand the charges and adequate opportunity to plan a defense." District Business Conduct Committee No. 9 v. Michael R. Euripides, Complaint No. C9B950014, 1997 NASD Discip. LEXIS 45, at *10 (NBCC July 28, 1997) (construing former Rule 9212(a)).⁴

² Transcript of Initial Pre-Hearing Conference, pp. 4-5.

³ Respondent _____'s Motion for a More Definite Statement ("Motion"), p. 2.

⁴ Accord, e.g., In re Daniel Joseph Avant, 52 S.E.C. 442 (1995) (construing former Rule 9212(a)); In re Joseph H. O'Brien II, 51 S.E.C. 1112 (1994) (same); District Business Conduct Committee No. 8 v. Hamilton Investments, Inc., Complaint No. C8A940023, 1997 NASD Discip. LEXIS 19 (NBCC Feb. 26, 1997) (same). Former Rule 9212(a) is substantially the same as current Rule 9212(a), and consequently, it is appropriate to rely on these cases for guidance.

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A virtually identical pleading standard is applied in SEC administrative proceedings: “[t]he essence of the Commission’s decisions dealing with challenges to the adequacy of allegations is that a respondent is entitled to be sufficiently informed of the charges against him so that he may adequately prepare his defense” In re Donald T. Sheldon, 52 S.E.C. 427 (1986).⁵ Further, the case law developed in the SEC administrative proceeding forum makes clear that evidentiary details need not be included in the charging document. E.g., In the Matter of James L. Copley, 55 S.E.C. 2770 (1994); In the Matter of Morris S. Ruggles, 52 S.E.C. 413 (1984).

It is clear from the Complaint and _____’s responsive pleading that the allegations in the Complaint satisfies these pleading standards. The conduct giving rise to the alleged rule violations could not be plainer or more clearly stated, and the Complaint provides sufficient detail to provide _____ the notice to which he is entitled. Indeed, there can be no confusion as to the particular questions he refused to answer: according to the Complaint, _____ did not answer any of the questions posed at the May 8 on-the-record interview. The Hearing Officer also notes that, on September 11, 2000, Enforcement provided _____ with a copy of the transcript of the May 8 interview thus eliminating any possible need for Enforcement to further explicate the scope of the allegations against him in the charging document.

In addition, certain statements in _____’s Answer and in his motion for a more definite statement belie any claim that the Complaint is too vague to afford him an adequate opportunity to prepare a defense. For example, in his motion, _____ asserts that the Complaint is “inaccurate,”⁶

⁵ Accord, e.g., In re Gail G. Griseuk, 57 S.E.C. 1006 (1994) (“[t]he standard for assessing whether the Order [Instituting Proceedings] is legally sufficient is whether it informs the Respondent of the nature of the charges so that he/she can prepare a defense.”).

⁶ Motion, p. 1

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and claims that “[n]either NASD Procedural Rule 8210 nor NASD Conduct Rule 2110 specifically prohibit . . . [the] answers” he gave at the May 8 interview.⁷ Similarly, in his Answer, as his Twentieth Affirmative Defense, _____ asserts that Enforcement’s “claims are barred because of its failure to provide an alternative method to satisfy its request for information.”

Although _____ may like an explanation of, or seek to challenge, the relevance of the questions he was asked at the interview or an account of Enforcement’s legal theories, he cannot achieve this through a motion for a more definite statement. A motion for a more definite statement is not a discovery device; nor is it a substitute for a motion for summary disposition.

Based on the foregoing, Respondent’s Motion for a More Definite Statement is denied.

SO ORDERED.

Ellen B. Cohn
Hearing Officer

Dated: New York, New York
September 28, 2000

⁷ Motion, p. 2.