

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF MARKET REGULATION,

Complainant,

v.

RESPONDENT 1

RESPONDENT 2

RESPONDENT 3

and

RESPONDENT 4

Respondents.

Disciplinary Proceeding
No. 20080148227-02

Hearing Officer—DRS

**ORDER GRANTING, IN PART, AND DENYING IN PART, RESPONDENTS
RESPONDENT 1, RESPONDENT 4, AND RESPONDENT 2'S MOTIONS FOR MORE
DEFINITE STATEMENT AND DENYING RESPONDENT 3'S MOTION FOR MORE
DEFINITE STATEMENT**

A. Introduction

The Department of Market Regulation filed a Complaint alleging that Respondent 1, acting through two of its traders, Respondent 2 and Respondent 3, engaged in fraudulently manipulative trading. The Complaint alleges that these traders executed a series of small, progressively higher-priced orders for multiple securities. According to the Complaint, these orders were intended to inflate, and did inflate, the price of each such security so that Respondent 1, Respondent 2 and Respondent 3 could obtain advantageous pricing on certain sell orders. By intentionally or recklessly raising the reported price of each security, Market Regulation avers, Respondent 1, Respondent 2 and Respondent 3, artificially influenced and distorted the market

price level of each security, and conveyed false information to the market as to the demand for each security. For this alleged misconduct, the Complaint charges Respondent 1, Respondent 2 and Respondent 3 with violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, as well as NASD Rules 2110 and 2120, and FINRA Rules 2010 and 2020 (“the fraud charges”).¹ The Complaint also charges Respondent 1 and its President, Respondent 4, with various supervision violations² and with failing to retain electronic communications.³

Each Respondent moved for a more definite statement regarding certain fraud allegations in the Complaint. On November 21, 2014, Respondent 1 and Respondent 4 filed their joint motion, and Respondent 2 filed his motion. On November 24, 2014, Respondent 3 filed his motion. The motions seek a variety of additional and clarifying information.

Specifically, Respondent 1 and Respondent 4 seek a more definite statement concerning the specific evidence or bases asserted to support that any Respondent: (1) actually intended to inflate the price of the securities, and what specific conduct acted to inflate the price of the securities; (2) acted intentionally or recklessly in raising the price of the securities or how they influenced and distorted the market price of the securities; (3) acted fraudulently, made any untrue statements (including what statements are allegedly untrue), conveyed false information, or otherwise acted with intent to defraud; and (4) acted intentionally or recklessly by engaging in the alleged conduct that violated NASD Rules 2110 and 2120, and FINRA Rules 2010 and 2020, what specific or fraudulent device or contrivance is alleged to have been used to violate these rules (and what specific part of NASD Rules 2110 and/or 2120 was allegedly violated).

¹ See Complaint, First Cause of Action.

² See Complaint, Second, Third, Fifth, and (as to Respondent 1 only) Sixth Causes of Action, alleging violations of NASD Rules 2110 and 3010, and FINRA Rule 2010.

³ See Complaint, Fourth Cause of Action, alleging violations of Rule 17a-4(b)(4) of the Securities Exchange Act of 1934 by Respondent 1, and NASD Rules 2110 and 3110 and FINRA Rules 2010 and 4511 by Respondent 1 and Respondent 4.

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Additionally, Respondent 1 and Respondent 4 seek the bases upon which Market Regulation relied in asserting scienter and the factual bases for the conclusions asserted in several paragraphs in the Complaint.

Respondent 3 requests: (1) the factual basis and economic theory regarding how he allegedly caused the price of certain identified securities to move higher, including more specifics concerning the trades at issue; (2) the specifics concerning the prices that would have existed in the absence of his trades; (3) the specifics concerning how his purchases or orders “conveyed false information” about the demand for the securities at issue; and (4) the factual basis and legal theory for the allegation that he acted “intentionally or recklessly” to increase the prices of the securities at issue.

Finally, Respondent 2 seeks a more definite statement of: (1) the “statement(s)” upon which Market Regulation relies for its allegation that he violated Section 10(b) of the Exchange Act and Rule 10b-5(b) thereunder; (2) the “false information” which he allegedly conveyed to the market regarding the demand for the specified securities; (3) the “artificial” conduct upon which Market Regulation relies for its allegation that he “artificially” influenced the “market price level” of each security; (4) the facts upon which Market Regulation relies for its allegation that he “intended” to inflate the price of the securities; (5) any additional facts upon which Market Regulation relies for any claim that he “intended to manipulate” the price of the securities; (6) the facts upon which Market Regulation relies for its allegation that he engaged in deception regarding the nature of the market for each of the securities; and (7) whether Market Regulation alleges that he violated FINRA Rule 2020 and NASD Rule 2120 by inducing the purchase or sale of a security and, if so, who was induced to purchase or sell with respect to each

security, and, he requests that Market Regulation identify the devices and/or contrivances which it alleges as the basis for the violation.

On December 12, 2014, Market Regulation opposed all the motions on the grounds that the Complaint is pled sufficiently to enable Respondents to understand the charges and prepare a defense and meets the FINRA Code of Procedure pleading requirements for complaints. After reviewing the Complaint and the parties' filings in support of and in opposition to the motions, the Hearing Officer finds that, except in one respect—the allegations regarding untrue statements or omissions—the Complaint meets the applicable pleading standards.

B. Discussion

FINRA 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.” To meet this standard, Market Regulation need not include evidentiary details in the Complaint.⁴ But the Complaint's allegations must provide “a respondent sufficient notice to understand the charges and an adequate opportunity to plan a defense.”⁵

“If a Complaint is so vague, ambiguous, incomplete, or confusing that it fails to satisfy this standard, a respondent may be entitled to a more definite statement of the charges.”⁶ FINRA Rule 9215(c) governs motions for more definite statement and permits a respondent to move for a “more definite statement of specified matters of fact or law to be considered or determined” in the matter. This rule cannot be used as a device to force Market Regulation to make an early

⁴ OHO Order 09-05 (2008012955301) at 3.

⁵ OHO Order 09-05 (2008012955301) at 2 (quoting *Dist. Bus. Conduct Comm. v. Euripides*, 1997 NASD Discip. LEXIS 45, at *10); OHO Order 10-04 (2008014621701) at 3 (“[t]he standard is whether the Complaint discloses enough information to enable a respondent to plan his or her defense.”).

⁶ OHO Order 05-23 (C05050015) at 2.

disclosure of its evidence.⁷ Nor can it “be used as a discovery tool to force [Market Regulation] to reveal its legal theories, trial strategy, or the facts it intends to introduce at the hearing.”⁸ Moreover, “if the Complaint, taken as a whole, fairly apprises the respondent of the charges and affords the respondent an adequate opportunity to plan a defense, a motion for more definite statement will not lie.”⁹

The Hearing Officer finds that taken as a whole, the Complaint meets the pleading standard in Rule 9212(a) (except with respect to alleged untrue statements or omissions, as discussed below). The Complaint provides adequate detail in its 147 paragraphs and 28 pages to place Respondents on notice of the charges against them and an adequate opportunity to plan a defense. Regarding the fraud allegations that are the subject of the motions, the Complaint informs Respondents of: (1) the specific statute and rules that Market Regulation claims they violated; (2) the securities that are the subject of the alleged manipulative activities; (3) the dates on which the alleged wrongful conduct occurred; and (4) the allegedly violative acts and who committed them. This detail is sufficient. Respondents' requests for more detail are in the nature of requests for evidentiary detail and legal theories that Market Regulation is not required to include in the Complaint.

By contrast, the Complaint provides insufficient detail regarding any untrue statements or omissions of material facts that Market Regulation alleges were made by Respondents. Paragraph 119 alleges that by virtue of the preceding allegations, Respondent 1, Respondent 2, and Respondent 3: (a) employed a device, scheme, or artifice to defraud; (b) made untrue statements or omissions of material fact; or (c) engaged in an act, practice or course of business

⁷ OHO Order 10-04 (2008014621701) at 3.

⁸ OHO Order 09-05 (2008012955301) at 2.

⁹ OHO Order 05-23 (C05050015) at 2.

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which operated as a fraud or deceit. The Complaint does not make clear whether it charges Respondent 1, Respondent 2, and Respondent 3 with making untrue statements or omissions. Nor does the Complaint clearly identify any such untrue statements or omissions. This failure leaves Respondents to prepare their defense without knowing what, if any, untrue statements or omissions Respondent 1, Respondent 2 and Respondent 3 are alleged to have made. As a result, the Complaint does not provide sufficient notice to enable Respondents to prepare a defense to that portion of Market Regulation's case.

Accordingly, Respondents Respondent 1, Respondent 4, and Respondent 2's motions for more definite statement are **GRANTED IN PART, AND DENIED IN PART**, and Respondent 3's motion for more definite statement is **DENIED**. Market Regulation is ordered to file a statement ("Department's statement") by January 13, 2015, identifying all untrue statements or omissions that Market Regulation charges were made by Respondents. Any Respondent who is charged with having made false statements or omissions shall file an answer to the Department's statement by January 27, 2015. The answer shall conform to the requirements of Rule 9215(b).

SO ORDERED.

David R. Sonnenberg
Hearing Officer

Dated: December 30, 2014