

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,  Complainant,  v.  Respondent.	Disciplinary Proceeding No. CAF030007  Hearing Officer—Andrew H. Perkins
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**ORDER GRANTING IN PART AND DENYING IN PART  
RESPONDENT'S MOTION FOR MORE DEFINITE STATEMENT**

The Complaint filed by the Department of Enforcement (the "Department") against \_\_\_\_\_ ("Respondent") on March 6, 2003, contains three Claims. In general, the first two Claims allege that Respondent, while associated with \_\_\_\_\_, engaged in a practice known as "Spinning," in violation of NASD Conduct Rules 2110 and 3060. The Complaint alleges that Respondent allocated shares in hot initial public offerings to senior decision makers at client companies who could influence those companies' choice of investment bankers. The Third Claim alleges that Respondent failed to establish and maintain an adequate supervisory structure for \_\_\_\_\_'s Tech Group and that he failed to supervise reasonably associated persons within the Tech Group, in violation of NASD Conduct Rules 2110 and 3010. According to the Complaint, Respondent's lack of proper supervision of the Tech Group allowed the improper practices alleged in the Complaint to flourish, including the practice of issuing favorably

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false or misleading research reports for prospective clients to induce them to give investment banking business to \_\_\_\_.

On April 17, 2003, Respondent filed his Answer, denying the charges and requesting a hearing. At the same time, Respondent filed a Motion for a More Definite Statement ("Motion") pursuant to NASD Procedural Rule 9215(c). The Department filed its opposition to the Motion on April 30, 2003.

Respondent's Motion contends that the Complaint fails to provide sufficient detail of the alleged Claims. Respondent specifically requests that the Hearing Officer order the Department to provide the following specific information: (1) the identity of the individuals the Department alleges received improper gifts or gratuities; (2) a statement of how the alleged gifts and gratuities related to the business of the recipients' employers; (3) the identity of the research analysts who are alleged to have published false or misleading research reports; (4) the identity of the research reports the Department alleges contained false or misleading information; and (5) a clarification of whether the supervision charge rests in whole or in part on Respondent's failure to establish and maintain an adequate supervisory system.

For the reasons set forth below, the Motion is granted in part and denied in part.

### **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 Bus.*

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*Conduct Comm. v. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45, at \*10 (NBCC July 28, 1997) (construing former Rule 9212(a)).<sup>1</sup> Conversely, a motion for a more definite statement is properly granted when the allegations in the Complaint fail to afford the respondent adequate notice of the charges against him.

Here, the First and Second Claims fail to appropriately apprise the Respondent of the charges. The Complaint alleges that more than 300 discretionary accounts were established at \_\_\_\_ for the strategic persons at the unidentified companies the Tech Group targeted for investment banking business. But the Complaint does not identify the accounts, the customers, the customers' companies, or the initial public offerings involved in the alleged "spinning." Respondent rightly complains that this lack of detail denies him a fair and adequate opportunity to defend the charges in the first two Claims of the Complaint. Accordingly, the Hearing Officer orders the Department to file a Bill of Particulars identifying the individuals who received gifts or gratuities in violation of NASD Conduct Rule 3060. On the other hand, the Hearing Officer denies the Respondent's request that the Department further specify how the gifts and gratuities related to the business of the recipients' employers. The Complaint adequately alleges the relationship between the inducements and the investment banking business the Tech Group sought to attract. The Department need not plead further detail of the theory of its case in the Complaint.

As to the supervision allegations, the Complaint clearly alleges that Respondent was responsible for establishing and maintaining the supervisory system for \_\_\_\_ Tech

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<sup>1</sup> *Accord, e.g., Daniel Joseph Avant*, 52 S.E.C. 442 (Oct. 26, 1995) (construing former Rule 9212(a)); *Joseph H. O'Brien II*, 51 S.E.C. 1112 (1994) (same); *District Bus. Conduct Comm. v. Hamilton Inv., Inc.*, 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).

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Group. Paragraph 6 of the Complaint alleges that Respondent "created and oversaw at \_\_\_\_\_ an anomalous reporting and supervisory structure in which traditional lines of demarcation among the various functions of a securities firm were obliterated, allowing the improper practices alleged in this complaint to flourish." This allegation, in conjunction with the remaining detailed allegations in the Complaint, provides sufficient notice of the nature of that element of the supervision charge.

However, the Third Claim further seems to allege that Respondent failed to adequately supervise the Tech Group personnel. As to this portion of the Third Claim, the Hearing Officer finds the Complaint lacking. To defend such a charge, the Respondent is entitled to know more than what is set forth in the Complaint. The Respondent is entitled to know the identity of the persons he allegedly failed to supervise and the identity of the false or misleading reports those individuals issued for attracting investment-banking business for \_\_\_\_\_. Thus, as to this prong of the supervision charge, the Department is ordered to provide the missing detail in a Bill of Particulars or to clarify that the Third Claim does not charge Respondent with failure to supervise directly the Tech Group personnel.

The Department shall file a Bill of Particulars in accordance with this Order no later than May 19, 2003, and the Respondent shall file its response thereto within two weeks of the date the Department files the Bill of Particulars.

**IT IS SO ORDERED.**

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Andrew H. Perkins  
Hearing Officer

May 21, 2003