

This order has been published by the NASDR Office of the Hearing Officers and should be cited as OHO Order 98-8 (C10970158).

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

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DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	
	:	
v.	:	
	:	
	:	Disciplinary Proceeding
	:	No. C10970158
	:	
	:	Hearing Officer - DMF
	:	
	:	
	:	
Respondents.	:	

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**ORDER DENYING MOTION FOR MORE DEFINITE STATEMENT**

On October 8, 1997, Respondents \_\_\_\_\_ and \_\_\_\_\_ (“Respondents”) filed, with their Answer, a Motion for More Definite Statement pursuant to Code of Procedure Rule 9215(c). The Motion listed, in Paragraphs A-E, five requests for more definite statements regarding the charges in the Complaint.

The Department of Enforcement did not file a response to the Motion within the time afforded by Rule 9146(d). During the Initial Pre-Hearing Conference in this matter, held on November 5, 1997, counsel for Enforcement explained that this failure was due in part to her mistaken interpretation of the Code’s requirements regarding a response to a motion for more definite statement. In addition, however, she stated that Enforcement would provide the information requested in Paragraphs A-D of the Motion voluntarily. In light of Enforcement’s undertaking to provide the information voluntarily, Respondents’

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Motion will be denied as moot with respect to Paragraphs A-D, without prejudice to Respondents renewing the Motion, if Enforcement fails to provide the information.

Counsel for Enforcement did, however, oppose the request for more definite statement set forth in Paragraph E of the Motion. During the Conference the Parties offered argument on this request.

Paragraph E of the Motion asks for the following more definite statement:

State what supervisory systems and procedures Respondent \_\_\_\_\_ should have established, which he allegedly failed to establish, and why he is responsible for the violation of Rule 3070 and Rule 1120 when he delegated such responsibilities to another employee of the firm and did not know or have reason to know that such employee had failed to carry out such responsibilities.

This request evidently, though not explicitly, seeks a more definite statement regarding the Fourth Cause of Complaint, which charges:

During the period from July 1996 through March 1997, Respondent \_\_\_\_\_, acting through Respondent \_\_\_\_\_, failed to establish, maintain and enforce adequate supervisory systems, as well as written supervisory procedures reasonably designed to ensure the firm's compliance with NASD Conduct Rule 3070 and with NASD Membership and Registration Rule 1120.

By reason of the foregoing, Respondents \_\_\_\_\_ and \_\_\_\_\_ have violated NASD Rule 3010.

A motion for a more definite statement is not a discovery device. It is designed to enable a respondent to obtain clarification of complaint allegations that fail to provide adequate notice of the charges. 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 requirement is satisfied if the allegations provide "a respondent

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sufficient notice to understand the charges and adequate opportunity to plan a defense.”

DBCC No. 9 v. Michael R. Euripides, No. C9B950014, 1997 NASD Discip. LEXIS 45 (NBCC July 28, 1997) (construing former Rule 9212(a)).<sup>1</sup>

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. On the other hand, if the allegations in the complaint, taken as a whole, fairly apprise the respondent of the charges and afford the respondent an adequate opportunity to plan a defense, a motion for more definite statement will not lie.

The Fourth Cause of Complaint charges the firm, acting through \_\_\_\_\_, with failing to establish, maintain and enforce adequate supervisory systems and written supervisory procedures reasonably designed to ensure the firm’s compliance with Rules 3070 and 1120. It is apparent from the Complaint as a whole that the references to Rules 3070 and 1120 relate to the specific violations of those Rules charged in the First through Third Causes of Complaint.

Respondents’ Answer denies the allegations in the Fourth Cause of Complaint. It also interposes as Affirmative Defenses, inter alia, the contentions that “Respondent \_\_\_\_\_ was not responsible for any alleged violations by \_\_\_\_\_ as he reasonably delegated the relevant functions to another within the firm and neither knew or had reason to know that such person’s performance was deficient” (Affirmative Defense No. 3); and that “[t]he NASDR ratified the compliance and supervisory procedures of Respondent

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<sup>1</sup> Accord, e.g., Daniel Joseph Avant, 60 S.E.C. Docket 1465, Exchange Act Rel. No. 36423 (Oct. 26, 1995) (construing former Rule 9212(a)); Joseph H. O’Brien II, 51 S.E.C. 1112 (1994) (same); DBCC No. 8 v. Hamilton Investments, 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), and consequently, it is appropriate to rely on these cases for guidance.

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\_\_\_\_\_ in its pre-membership interview procedures and approval” (Affirmative Defense No. 4). Thus, the Complaint affords reasonable notice of the charges, and it is apparent from their Answer and Affirmative Defenses that Respondents understand the charges and are preparing their defense.

Of course, Respondents would like a detailed account of all of Enforcement’s legal theories and evidence, but they cannot obtain that through a motion for more definite statement. The Order Following Initial Pre-Hearing Conference issued November 7, 1997, will require the Parties to set forth their theories and evidence in detail in their pre-hearing filings, well in advance of the hearing date. The Complaint, however, fairly discloses the charges and adequately affords Respondents an opportunity to prepare their defense. For now, no more is required.

Therefore, it is ORDERED that:

1. Paragraphs A-D of Respondents’ Motion for More Definite Statement are denied as moot, without prejudice to Respondents renewing their Motion if the Department of Enforcement fails voluntarily to provide the information requested in those paragraphs, as agreed.
2. Paragraph E of the Motion is denied.

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David M. FitzGerald  
Hearing Officer

Dated: Washington, DC  
January 21, 1998