

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 03-18 (CLI030017).

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. CLI030017
v.	:	
	:	Hearing Officer - SW
Respondent 1	:	
	:	
Respondent 2	:	
	:	
and	:	
	:	
Respondent 3	:	
	:	
Respondents.	:	

ORDER GRANTING IN PART RESPONDENTS' MOTION FOR MORE DEFINITE STATEMENT

Respondent 1 ("Respondent 1" or "the Firm"), Respondent 2 ("Respondent 2"), and Respondent 3 ("Respondent 3"), (collectively, "the Respondents") filed a Motion for a More Definite Statement ("Motion") on September 8, 2003. Specifically, the Respondents sought a more definite statement as to paragraphs 14, 15, 17, 18, 22, 24 and 26 of the Complaint.

The Department of Enforcement ("Enforcement") orally opposed the motion at the September 25, 2003 pre-hearing conference, but indicated that it would not be filing a written opposition. Enforcement argued that based on information provided to the Respondents at prior on-the-record interviews, the Respondents were aware of the particular transactions charged in the Complaint.

Code of Procedure Rule 9212(a)(1) requires that a complaint "specify in reasonable detail the conduct alleged to constitute the violative activity and the rule,

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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)).¹

In this case, Count Two of the Complaint alleges failure to report statistical information regarding ten written customer complaints and failure to report timely statistical information regarding nine customer complaints, without identifying the customer complaints.

Count Three of the Complaint alleges failure to enforce the Firm's procedures related to review of corporate debt and municipal securities and failure to enforce the Firm's procedures related to review of equity securities, without identifying the particular transactions.

Counts Four, Five, and Six of the Complaint allege (i) failure to notate forty-five sell transactions as long or short, (ii) failure to properly report equity securities transactions in a timely manner and with all the correct modifiers, and (iii) failure to report correctly the price on four of thirty-four transactions reported to the Fixed Income Pricing reporting system, and failure to report ten of the thirty-four transactions to the Fixed Income Pricing reporting system, without identifying the transactions.

¹ 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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The Respondents rightly complain that this lack of detail denies them a fair and adequate opportunity to defend the charges in Counts Two through Six of the Complaint. Thus, Enforcement is directed to file a Bill of Particulars described below:

Paragraph 14: This paragraph alleges that Respondent 1 failed to report to NASD statistical and summary information regarding ten written customer complaints from August 2000 through March 2001. Enforcement is directed to identify the ten customers referenced in Paragraph 14 of the Complaint.

Paragraph 15: This paragraph alleges that Respondent 1 failed to report to NASD statistical and summary information on a timely basis regarding nine written customer complaints from August 2000 through March 2001. Enforcement is directed to identify the nine customers referenced in Paragraph 15 of the Complaint, and the date and time on which NASD received the statistical and summary information regarding the nine customer complaints.

Paragraph 17: This paragraph alleges that Respondent 1, acting through Respondent 3, failed to enforce the Firm's procedures related to its review of corporate debt and municipal securities transactions. Respondent 3 is alleged to be the Firm's Director of Fixed Income Trading and registered as its Municipal Securities Principal. Enforcement is directed to identify the particular corporate debt and municipal securities transactions referenced in Paragraph 17 of the Complaint.

Paragraph 18: This paragraph alleges that Respondent 1, acting through Respondent 2, failed to enforce the Firm's procedures related to its review of equity securities. Respondent 2 is alleged to be the Firm's Co-Chief Executive Officer.

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Enforcement is directed to identify the particular equity securities transactions referenced in Paragraph 18 of the Complaint.

Paragraph 22: This paragraph alleges that Respondent 1 failed to note forty-five sell transactions as long or short on July 12, 2003. Enforcement is directed to identify the forty-five particular transactions referenced in Paragraph 22 of the Complaint.

Paragraph 24: This paragraph alleges that Respondent 1, from January 2, 2001 to January 19, 2001, failed to report certain equity securities transactions in a timely manner and with all the correct modifiers. Enforcement is directed to identify each of the equity transactions referenced in Paragraph 24 of the Complaint. Enforcement must also identify which of the transactions are the three transactions noted in Paragraph 24(a) of the Complaint, the twelve transactions noted in Paragraph 24(b) of the Complaint, the five transactions noted in Paragraph 24(c) of the Complaint, and the three bunched transactions noted in Paragraph 24(d) of the Complaint.

Paragraph 26: This paragraph alleges that Respondent 1 failed to report correctly the price of four executed transactions, and failed to report ten transactions to the Fixed Income Pricing reporting system. Enforcement is directed to identify the four particular mis-priced securities transactions and the ten unreported transactions referenced in Paragraph 26 of the Complaint.

Enforcement shall file the Bill of Particulars in accordance with this order no later than October 6, 2003. The remainder of the Respondent's motion is denied. The

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Respondents shall file their response to the Bill of Particulars no later than October 20, 2003.

SO ORDERED.

Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
September 26, 2003