

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT

Complainant,

v.

Respondent.

Disciplinary Proceeding  
No. C9B050020

Hearing Officer – AWH

**ORDER CONDITIONALLY DENYING MOTION FOR MORE DEFINITE  
STATEMENT**

On May 17, 2005, Respondent filed a Motion for a More Definite Statement, seeking specification of the material omissions the Complaint alleges he made to customers. The Complaint lists certain specific omissions, but then, in several paragraphs concludes that Respondent “failed to disclose other material information about this investment, *such as* the investment objectives, portfolio, historical income and capital appreciation, as well as the expense ratio and sales charges, of each of the funds.” (emphasis added). In a telephone pre-hearing conference on June 3, 2005, the Motion was discussed, as well as the Hearing Officer’s concern that because the Complaint charges, in various parts, that *at least* four, five, or six customers were involved, the evidence to be introduced might expand beyond the customers specified in Schedule A, attached to the Complaint. Enforcement filed its Response to the Motion on June 6, 2005, addressing only the “such as” language in the Complaint.

It is apparent from the Response, that if the “such as” language is used only to describe the words that follow merely as similarly related items, then no further elaboration is necessary because the Complaint provides a reasonable and adequate basis

**This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 05-25 (C9B050020).**

for Respondent to prepare his defense, and the evidence at the hearing will be limited to the items specified in the Complaint, i.e., "the investment objectives, portfolio, historical income and capital appreciation, as well as the expense ratio and sales charges, of each of the funds." Should Enforcement intend to introduce evidence in addition to those items, it shall file a Bill of Particulars, on or before June 16, 2005. Without such a Bill of Particulars, the Complaint would fail adequately to apprise Respondent of the charges against him.

Similarly, if the "at least" language in the Complaint describes only the customers listed in Schedule A of the Complaint, then no further elaboration is necessary, and the evidence at the hearing will be limited to those customers. However, should Enforcement intend to introduce evidence pertaining to misrepresentations and omissions allegedly made by Respondent to other customers, it shall name those other customers and the specific misrepresentations and omissions allegedly made by Respondent, in a Bill of Particulars to be filed on or before June 16, 2005.

**SO ORDERED.**

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Alan W. Heifetz  
Hearing Officer

Dated: June 10, 2005