

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RESPONDENT,

Respondent.

Disciplinary Proceeding  
No. 2011025676501

Hearing Officer - DRS

**ORDER GRANTING, IN PART, MOTION FOR MORE DEFINITE STATEMENT**

**A. Introduction**

On September 18, 2014, the Department of Enforcement filed a disciplinary action against Respondent alleging that it violated FINRA Rules 3310(a) and (b) and 2010. Enforcement alleges that Respondent's procedures and internal controls for monitoring suspicious activity and conducting due diligence on its correspondent accounts for foreign financial institutions were inadequate. Additionally, Enforcement alleges that the procedures and internal controls were not reasonably designed to monitor and achieve compliance with the requirements of the Bank Secrecy Act of 1970 relating to foreign financial institutions.

More specifically, the Complaint alleges that between at least November 2010 and September 2012 ("relevant period"), Respondent failed to detect, investigate, and report, where appropriate, suspicious activity related to Venezuelan bond liquidation transactions for two correspondent accounts of foreign financial institutions located in Venezuela and Curacao (BBC and BOI), and subsequent wire activity. These transactions were allegedly conducted to facilitate

currency exchanges. Enforcement alleges that Respondent failed to identify the money laundering risk associated with the Venezuelan bond accounts; failed to detect red flags that should have required additional due diligence by Respondent; failed to have sufficient infrastructure to adequately monitor this business; and failed to reasonably implement its existing written anti-money laundering compliance program ("AMLCP").

On October 23, 2014, Respondent moved for a more definite statement. In the motion, Respondent asserts that the Complaint failed to: (1) state the objective standard to be used in determining the reasonableness of its conduct and the adequacy of its AMLCP; and (2) specify each of the red flags which Enforcement alleges Respondent failed to identify and review. As a result of these failures, Respondent argues, it did not receive sufficient notice of the charges and cannot defend itself against them. Consequently, the motion seeks an order requiring Enforcement to file an Amended Complaint that more definitely states the specific objective standards of reasonableness and adequacy to which Respondent will be held and against which its conduct will be judged, including: (i) what more Respondent should have done to identify and assess relevant risks; (ii) what more its AMLCP should have required; (iii) what additional due diligence it should have performed on its customers and on its customers' customers; and (iv) what additional transaction monitoring it should have conducted. Additionally, Respondent requests that in the Amended Complaint, Enforcement identify the specific red flags that Enforcement will attempt to prove at the hearing.

Enforcement filed an opposition on November 11, 2014, in which it argues that the Complaint far exceeds the notice pleading standard applicable in FINRA disciplinary proceedings and that the detail is sufficient to enable Respondent to understand the charges and prepare its defense. Enforcement also claims that the motion impermissibly seeks discovery

about Enforcement's legal theories, trial strategy, and the facts it intends to introduce at the hearing. Finally, Enforcement points out that Respondent has the opportunity to obtain additional information about the factual and legal bases of Enforcement's case through document production under Rule 9251 and pre-hearing submissions under Rule 9242.

After considering the motion and the opposition, the Hearing Officer finds that with one exception—the allegations regarding red flags—the Complaint meets 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, Enforcement need not include evidentiary details in the Complaint.<sup>1</sup> But the Complaint's allegations must provide “a respondent sufficient notice to understand the charges and an adequate opportunity to plan a defense.”<sup>2</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.”<sup>3</sup> 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 Enforcement to make an early

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<sup>1</sup> OHO Order 09-05 (2008012955301) at 3.

<sup>2</sup> *Dist. Bus. Conduct Comm. v. Euripides*, No. C9B950014, 1997 NASD Discip. LEXIS 45, at \*10 (NASD NBCC July 28, 1997); 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.”).

<sup>3</sup> OHO Order 05-23 (C05050015) at 2.

disclosure of its evidence.”<sup>4</sup> Nor can it “be used as a discovery tool to force Enforcement to reveal its legal theories, trial strategy, or the facts it intends to introduce at the hearing.”<sup>5</sup>

Moreover, “if the Complaint, taken as a whole, fairly appraised 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.”<sup>6</sup>

The Hearing Officer finds that taken as a whole, the Complaint meets the pleading standard in Rule 9212(a) (except with respect to the alleged red flags, as discussed below.). The Complaint provides adequate detail in its 95 paragraphs and 33 pages to place Respondent on notice of the charges against it and an adequate opportunity to plan a defense. The Complaint informs Respondent of: (1) the specific rules that Enforcement claims Respondent violated; (2) the time period in which the alleged violative activities occurred; and (3) Respondent’s allegedly violative acts and omissions, including the alleged inadequacies in its AMLCP, risk assessment, and due diligence, as well as the specific customers at issue and their relevant activities. This detail is sufficient. Respondent’s requests for more detail are in the nature of requests for evidentiary detail and legal theories that Enforcement is not required to include in the Complaint.

By contrast, the Complaint provides insufficient detail regarding the red flags that Enforcement claims Respondent ignored and that required additional due diligence. While the Complaint does identify certain specific red flags, it does not purport to identify all of them. Instead, when referring to the red flags, the Complaint utilizes hedging language such as “for example” or “including.” Enforcement contends that this is permissible and that it need not “detail, at the pleading stage, every red flag it will ultimately rely upon to make its case.”

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<sup>4</sup> OHO Order 10-04 (2008014621701) at 3.

<sup>5</sup> OHO Order 09-05 (2008012955301) at 2.

<sup>6</sup> OHO Order 05-23 (C05050015) at 2.

Enforcement further states that the missed red flags are not separate violations but simply provide evidence and notice of the unreasonableness of Respondent's AMLCP. In short, Enforcement views the red flags merely as proof of the violation and as "indicators" that Respondent needed to enhance its anti-money laundering supervision, and not as additional violations that it must include in the Complaint.

The Hearing Officer disagrees. The allegations regarding red flags are not peripheral to the Complaint. Rather, they provide a basis for the charge against Respondent. They are referenced in paragraph two of the Complaint's Summary section; are mentioned specifically in the section heading preceding paragraph 56; and are discussed elsewhere in the Complaint. Further, there is no basis to conclude that the omitted red flags relate "merely to the background of and circumstances surrounding the specified matters,"<sup>7</sup> or simply "'add to the context' of the alleged misconduct."<sup>8</sup> Nor does it appear, based on its opposition, that Enforcement included in the Complaint all the red flags it will assert at the hearing.<sup>9</sup>

In sum, Enforcement's failure to identify all red flags leaves Respondent to prepare its defense without knowing the full universe of red flags that Enforcement may claim, at hearing, that it failed to detect or adequately investigate. As a result, the Complaint does not provide sufficient notice to enable Respondent to prepare a defense to that portion of Enforcement's case.

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<sup>7</sup> OHO Order 02-12 (CAF020042) at 3 (quoting *Charles M. Weber*, 35 S.E.C. 79, 81 (1953), *aff'd* 222 F.2d 822 (2d Cir. 1955) (rejecting challenge to "among other things" allegations because the phrase was "not intended to embrace matters in addition to those specified . . . but relates merely to the background of and circumstances surrounding the specified matters.").

<sup>8</sup> OHO Order 97-10 (CAF970002) at 5 (denying portion of motion for more definite statement when Enforcement "indicated that its use of the phrase 'among other things' is not intended to allege additional matters, but is intended to 'add to the context' of alleged misconduct.").

<sup>9</sup> By contrast, *see* OHO Order 02-12 (CAF020042) at 2 (denying motion for more definite statement in a case charging misleading statements in research reports when Enforcement represented that the complaint fully identified and described the various research reports on which it intended to rely).

Although Respondent will receive documents in discovery as well as Enforcement's pre-hearing submissions, document discovery and pre-hearing submissions do not supplant the pleading requirements in Rule 9212(a). In any event, Enforcement's document production and pre-hearing submissions will not provide sufficient, timely notice to Respondent of the purported red flags. The documents produced in discovery may include evidence of red flags. But they will not, by themselves, inform Respondent of what Enforcement claims are the red flags. Further, Enforcement's pre-hearing submissions, even if they identified all the red flags, are filed at a late stage in the proceedings. Moreover, the parties will file their pre-hearing submissions simultaneously. Therefore, by that time, Respondent will have had to identify the documents and witnesses it will offer in its defense.

Accordingly, the motion for more definite statement is **GRANTED, IN PART**. Enforcement is ordered to file a statement by December 15, 2014, identifying all red flags that it asserts Respondent failed to detect and that should have required Respondent to conduct additional due diligence. Respondent shall file an answer to the statement by December 30, 2014. The answer shall conform to the requirements of Rule 9215(b).

**SO ORDERED.**

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David R. Sonnenberg  
Hearing Officer

Date: December 1, 2014