

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RESPONDENT FIRM,

and

RESPONDENT 2,

Respondents.

Disciplinary Proceeding
No. 2008014621701

Hearing Officer—Andrew H. Perkins

**ORDER GRANTING RESPONDENT 2'S MOTION TO FILE A REPLY AND DENYING
RESPONDENT 2'S MOTION FOR MORE DEFINITE STATEMENT**

On June 1, 2010, Respondent 2 filed a Motion for More Definite Statement, together with his Answer and Additional Defenses, pursuant to FINRA Rule 9215(c). Respondent 2 requests that the Hearing Officer issue an order requiring the Department of Enforcement ("Enforcement") to supplement Paragraph 25 of the Complaint with specific information concerning the facts surrounding Enforcement's allegation that shortly after Respondent 2 sent an e-mail on January 23, 2008, he decided to sell all auction rate securities ("ARS") held in corporate cash accounts managed by the fixed income desk at the Respondent Firm (the "Firm"). Specifically, Respondent 2 requests:

1. The date, time, and place Enforcement alleges that Respondent 2 made the decision to sell all ARS held in corporate cash accounts managed by the Firm's fixed income desk.

2. To whom at the Firm, when, and how Respondent 2 communicated his decision to sell all ARS held in corporate cash accounts managed by the Firm's fixed income desk.

On June 14, 2010, Enforcement filed an opposition to Respondent 2's motion. Enforcement contends that the Complaint, including Paragraph 25, is sufficiently detailed to apprise Respondent 2 of the nature of the charge and to provide him with adequate opportunity to plan his defense. Thus, Enforcement concludes that the Complaint satisfies the pleading requirements of Rule 9212(a).

Respondent 2 filed a Reply in Support of his Motion for More Definite Statement on June 15, 2010. The Hearing Officer grants Respondent 2 leave to file the reply.¹

FINRA Rule 9212(a) sets forth the governing standard against which a motion for more definite statement must be measured. 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." In this case, Respondent 2 does not contend that the Complaint lacks enough detail for him to understand the charge against him; he claims that he needs additional information to plan his defense.

The Hearing Officer finds that Respondent 2 has not shown that he needs the additional information he seeks in order to plan his defense. First, the Hearing Officer notes that in his Answer Respondent 2 denied the allegations in Paragraph 25 of the Complaint, albeit subject to his Motion for a More Definite Statement. As such, his defense is that he did not make and communicate a decision to "sell all ARS held in corporate cash accounts managed by the Fixed Income Desk." Second, the allegations in Paragraph 25 involve information within

¹ Respondent 2 had not requested leave to file a reply in accordance with Rule 9146(h). On June 16, 2010, the day after Respondent 2 filed his Reply, he filed a motion seeking leave to file the Reply.

This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 10-04 (2008014621701).

Respondent 2's knowledge. If he made the decision to sell all ARS held in corporate cash accounts managed by the Fixed Income Desk, he has that knowledge. In addition, he would know to whom, when, and how he communicated that decision to others. While it might be advantageous to Respondent 2 to learn further details about the nature of the evidence Enforcement intends to present to prove the allegations in Paragraph 25 of the Complaint, a respondent cannot use Rule 9215(c) as a device to force Enforcement to make an early disclosure of its evidence. The standard is whether the Complaint discloses enough information to enable a respondent to plan his or her defense. The Hearing Officer finds that the Complaint in this proceeding meets that standard. Accordingly, the Hearing Officer denies Respondent 2's Motion for a More Definite Statement.

IT IS SO ORDERED.

Andrew H. Perkins
Hearing Officer

Dated: July 12, 2010