

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 02-12 (CAF020042).

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. CAF020042
v.	:	
	:	Hearing Officer – DMF
	:	
	:	
and	:	
	:	
	:	
	:	
	:	
Respondents.	:	

ORDER DENYING MOTION FOR MORE DEFINITE STATEMENT

With her Answer, respondent _____ filed a motion for a more definite statement, pursuant to Rule 9215(c). The Department of Enforcement opposes the motion.

A motion for a more definite statement enables a respondent to obtain clarification of allegations that fail to provide adequate notice of the charges. NASD Rule 9212(a) requires that the 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 sufficient notice to understand the charges and adequate opportunity to plan a defense.” DBCC v. Euripides, No. C9B950014, 1997 NASD Discip. LEXIS 45 (NBCC July 28, 1997) (construing former Rule 9212(a)).

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

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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 Complaint alleges, generally, that the respondents “wrote and published research reports during 2001 that contained misleading statements regarding Winstar Communications, Inc. (Winstar), a broadband telecommunications service provider.” The Complaint then sets out four specific alleged “causes of action” against the respondents in 50 numbered paragraphs.

Respondent _____ urges that these allegations are not sufficiently definite. First, she complains that Enforcement “should identify for _____ precisely which Winstar reports, and which language from those reports, are the subject of the alleged violations.” She also says that, “to prepare her defense, _____ must understand precisely those e-mails and internal documents, and the language from those e-mails and internal documents, on which [Enforcement] intends to rely.” And finally, she says that Enforcement’s use of the phrase “among other things” in paragraph 27 of the Complaint leaves her uncertain as to which “other things” Enforcement may rely on to sustain the Complaint.

Enforcement responds that the allegations of the Complaint are quite detailed and fully identify and describe the various Winstar reports on which it intends to rely. Enforcement further states that it “does not allege that the respondents’ e-mails or other non-public documents are themselves actionable; rather, such communications are referred to in the complaint only to illustrate the disparity between what the respondents knew and believed and what they were saying in their actionable public communications.” Finally, Enforcement cites SEC cases that have rejected challenges to “among other things” allegations with the explanation:

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[W]e do not consider the phrase "among other things" requires amplification. It is not intended to embrace matters in addition to those specified, concerning which there is alleged to have been concealment or misrepresentation, but relates merely to the background of and circumstances surrounding the specified matters.

Charles M. Weber, 35 S.E.C. 79, 81, 1953 SEC LEXIS 299 at *4 (1953), aff'd, 222 F.2d 822 (2d Cir. 1955.)

The Hearing Officer finds that the Complaint, read as a whole, specifies _____ alleged conduct in reasonable detail, and that it gives her sufficient notice of the charges and an adequate opportunity to plan her defense. The motion for a more definite statement is, therefore, denied.

SO ORDERED

David M. FitzGerald
Hearing Officer

Dated: December 26, 2002