

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

BRUCE MARTIN ZIPPER
(CRD No. 1019731),

and

DAKOTA SECURITIES INTERNATIONAL,
INC.
(CRD No. 132700),

Respondents.

Disciplinary Proceeding
No. 2016047565702

Hearing Officer-DRS

**ORDER REGARDING MOTION FOR ORDER DIRECTING ZIPPER TO FILE
A PROPER ANSWER**

The Department of Enforcement served Respondents with a Second Notice of Complaint directing them to file their answers by December 26, 2017. To date, Dakota Securities International has not filed its answer. But Zipper filed a three-page letter labelled "Response from Bruce Zipper on Allegations in Finra Complaint # 2016047565702." The Response addresses separately, in narrative fashion, each cause of action relating to Zipper.

On December 14, 2017, Enforcement filed a motion claiming that the Response does not comply with FINRA Rule 9215(b), which governs answers to complaints, because it does not explicitly admit or deny each allegation in the Complaint or state that Zipper lacks sufficient information to admit or deny a particular allegation. As a result, Enforcement seeks an order (1) directing Zipper to file within 14 days a rule-compliant answer; and (2) staying Enforcement's discovery obligations under FINRA Rule 9251 until 21 days of the filing of that answer or the last timely filed answer, whichever is later.

The motion does not reflect whether Enforcement conferred with Zipper about the adequacy of his Response before filing its motion or whether Zipper consents to or opposes the motion. A meet-and-confer provision is typically contained in case management and scheduling

orders issued in this forum. This provision requires that a motion include a certification that the moving party has made a reasonable, good faith effort to meet and confer with the opposing party to resolve each issue in the motion informally.

A meet-and-confer requirement serves several important purposes. According to the federal courts, it: (a) promotes the resolution of disputes without judicial intervention¹ or at least the narrowing of issues presented to the court to prevent unnecessary waste of time and effort;² (b) provides the opposing party sufficient notice of the contents of the proposed motion and an opportunity to discuss its merits before the motion is filed;³ and (c) encourages professionalism and civility between counsel.⁴

Because I have not yet issued a case management and scheduling order in this case,⁵ a meet-and-confer requirement was not in effect when Enforcement filed its motion. Even so, a meet and confer regarding the motion may prove beneficial here, given the purposes of that provision. Therefore, I **ORDER** that by **December 28, 2017**, the parties shall meet and confer regarding the motion, and Enforcement shall file a certification stating the results of the conference. Enforcement shall initiate the conference.

Further, I **ORDER** that any response by Zipper to the motion shall be filed by **January 5, 2018**. Regarding the format, filing, and service of papers, I refer Zipper to FINRA Rules 9133 through 9137.⁶

Finally, I **DENY** Enforcement's request to stay its discovery obligations. Regardless of whether Zipper's Response fails to comply with the requirements of an answer under FINRA

¹ See, e.g., *Bautista v. MVT Servs.*, No. 16-cv-01086-NYW, 2017 U.S. Dist. LEXIS 79752, at *13 (D. Colo. Mar. 20, 2017); *Eusse v. Vitela*, No. 3:13-cv-00916-BEN-NLS, 2015 U.S. Dist. LEXIS 167660, at *7 (S.D. Cal. Dec. 14, 2015); *Aviles v. Quik Pick Express, LLC*, No. CV-15-5214-MWF (AGR), 2015 U.S. Dist. LEXIS 127888, at *5 (C.D. Cal. Sept. 23, 2015).

² See, e.g., *United States v. Charlotte-Mecklenburg Hosp. Auth.*, No. 3:16-cv-00311-RJC-DCK, 2017 U.S. Dist. LEXIS 47951, at *11 n.1 (W.D.N.C. Mar. 30, 2017); *Maples v. Safeway, Inc.*, No. 5:14-CV-05082-JLV, 2016 U.S. Dist. LEXIS 112135, at *6 (D.S.D. Aug. 23, 2016); *Issaenko v. Univ. of Minn.*, No. 13-3605 (JRT/SER), 2016 U.S. Dist. LEXIS 44080, at *16 (D. Minn. Mar. 31, 2016).

³ See, e.g., *Aviles*, 2015 U.S. Dist. LEXIS 127888, at *5; *Blast Motion, Inc. v. Zepp Labs, Inc.*, No. 15-CV-700 JLS (NLS), 2016 U.S. Dist. LEXIS 174420, at *14 (S.D. Cal. Dec. 16, 2016).

⁴ See, e.g., *Bautista*, 2017 U.S. Dist. LEXIS 79752, at *13; *Bison Designs, LLC v. Lejon of Cal., Inc.*, No. 14-cv-02885-MSK-NYW, 2016 U.S. Dist. LEXIS 32326, at *12 (D. Col. Feb. 1, 2016).

⁵ Typically, a case management and scheduling order is issued after the initial pre-hearing conference, which is held after the respondents have filed their answers.

⁶ The rules governing this proceeding, including the specific rules referenced above, are available online at: http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=3895.

Rule 9215(b), I find that it is sufficient to constitute an answer for the purposes of triggering the
discovery timing provisions under FINRA Rule 9251(d).

SO ORDERED.


David R. Sonnenberg
Hearing Officer

Date: December 20, 2017

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