UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 97233 / March 31, 2023

Admin. Proc. File No. 3-21015

In the Matter of

MARK W. HECKELE, ESQ.

ORDER DENYING MOTION FOR A MORE DEFINITE STATEMENT

The Securities and Exchange Commission issued an order instituting administrative proceedings ("OIP") on August 29, 2022, pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Mark W. Heckele, Esq.[1] Heckele has filed a motion for a more definite statement, which we deny for the reasons below.

I. Background

The OIP is captioned "Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934."[2] The introductory paragraph states that "administrative proceedings . . . hereby are[] instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 . . . against Mark W. Heckele."[3] The OIP sets forth allegations regarding Heckele and the underlying civil injunctive action that was brought against him in federal district court. And it orders that proceedings be instituted to determine whether these allegations are true, as well as "[w]hat, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act."[4]

The OIP directed Heckele to file an answer to the allegations.[5] Heckele filed his answer, which contained within it a motion for a more definite statement.[6] The motion contends that the

1 *Mark W. Heckele, Esq.*, Exchange Act Release No. 95626, 2022 WL 3757555 (Aug. 29, 2022); *see* 15 U.S.C. § 78o(b).

2 *Heckele*, 2022 WL 3757555, at *1.

3 *Id*.

4 *Id.* at *1-2.

5 *Id.* at *2.

6 We observe that the better practice would have been for Heckele to file the motion for a more definitive statement as a standalone document complying with Rule of Practice 154, which

OIP is deficient because it does not "state the legal authority and jurisdiction under which the hearing is to be held" and because the prayer for relief "simply seeks 'appropriate remedial action'" without specifying what "remedy, exactly, the Commission seeks to impose." The Division did not respond to the motion.

II. Analysis

Rule of Practice 220(d) provides that a "motion for a more definite statement of specified matters of fact or law" must "state the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite."[7] "The requisite degree of 'definiteness' depends on the totality of the circumstances, and is assessed against the standards governing fair notice in administrative proceedings."[8] Heckele has not shown that the OIP fails to meet this standard.

As relevant here, Rule of Practice 200(b)(2) requires that an OIP set forth "the legal authority and jurisdiction under which the hearing is to be held."[9] The OIP satisfied those requirements by specifying in its caption and opening paragraph that the Commission instituted this administrative proceeding pursuant to Section 15(b) of the Exchange Act. That section authorizes the Commission to institute administrative proceedings against—and to impose a sanction listed in Section 15(b)(6)(A) on—a respondent if (1) the respondent has been permanently enjoined from any action, conduct, or practice specified in Section 15(b)(4)(C), which includes any conduct or practice in connection with acting as a broker-dealer or in connection with the purchase or sale of any security; (2) the respondent was associated with a broker or dealer, whether registered or unregistered, at the time of the misconduct; and (3) the Commission finds, on the record after notice and opportunity for a hearing, that the sanction is in the public interest.[10]

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governs motions generally. *See also* Rule of Practice 200(d), 17 C.F.R. § 201.220(d) (providing that a motion for a more definitive statement may be filed "with" the answer).

7 17 C.F.R. § 201.220(d).

8 *Am. CryptoFed DAO LLC*, Exchange Act Release No. 93971, 2022 WL 118206, at *2 (Jan. 12, 2022); *see also Rita J. McConville*, Exchange Act Release No. 51950, 2005 WL 1560276, at *14 (June 30, 2005) (concluding that OIP "satisfied the due process requirement that a respondent be given fair notice of the claims lodged and the grounds upon which those claims rest").

9 17 C.F.R. § 201.200(b)(2).

10 15 U.S.C. § 78o(b)(4)(C), (b)(6)(A); *see Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 WL 3864511, at *8 (July 26, 2013) (holding that it is "well established that [the Commission is] authorized to sanction an associated person of an unregistered broker-dealer or investment adviser in a follow-on administrative proceeding").

Rule 200(b)(4), in turn, requires that an OIP set forth "the nature of any relief or action sought or taken."[11] The OIP satisfied that requirement by stating that one of the issues for determination is what, if any, "remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act." Section 15(b)(6)(A) lists the sanctions that the Commission may impose in a proceeding like this one: The Commission may "censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock."[12]

Heckele does not explain why he needs more specificity at this early juncture to prepare an adequate defense. The Division of Enforcement, as the proponent of any order that ultimately imposes remedial sanctions, will have the burden of proof as to the appropriateness of a specific sanction,[13] and Heckele will have the opportunity to respond to whatever evidence and arguments the Division puts forward.

For these reasons, Heckele fails to satisfy Rule 220(d)'s requirement that his motion state why the OIP "should be required to be made more definite," nor has he otherwise shown that the OIP lacks enough detail for him to file an answer (which he has already done) or to prepare his

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11 17 C.F.R. § 201.200(b)(4).

12 15 U.S.C. § 78o(b)(6)(A).

13 5 U.S.C. § 556(d).

defense.[14] Accordingly, IT IS ORDERED that Heckele's motion for a more definite statement is denied.

For the Commission, by the Office of the General Counsel, pursuant to delegated authority.

Vanessa A. Countryman
Secretary

[14] *See* 17 C.F.R. § 201.220(d); *see also Am. CryptoFed DAO LLC*, 2022 WL 118206, at *2 (explaining that an OIP "must inform the respondent of the charges in enough detail to allow the respondent to respond to the allegations . . . and to prepare a defense . . . ."); *McConville*, 2005 WL 1560276, at *14 (stating that an "OIP must inform the respondent of the charges in enough detail to allow the respondent to prepare a defense").