

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF MARKET
REGULATION,

Complainant,

v.

Respondent 1

and

Respondent 2

Respondents.

Disciplinary Proceeding
No. CLG050021

Hearing Officer—Andrew H. Perkins

**ORDER DENYING COMPLAINANT'S MOTION FOR
APPOINTMENT OF MARKET REGULATION PANELIST**

On January 10, 2006, the Complainant filed a motion requesting that a member of the Market Regulation Committee be appointed to this Extended Hearing pursuant to Procedural Rules 9231(b)(2) and 9120(s). The Complainant contends that a Market Regulation panelist may be appointed because the Complaint alleges a cause of action related to the "execution of securities."

The Complainant's motion is denied for several reasons. First, the Complaint does not allege a cause of action involving a violation of a statute or rule related to the execution of securities. Rather, the Complaint charges the Respondents with supervisory violations under

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 06-10 (CLG050021).

NASD Conduct Rule 3010. Accordingly, a Market Regulation panelist may not be appointed to serve on this Extended Hearing Panel.

Second, one of the panelists appointed to serve on this Extended Hearing Panel has experience as a trader and a member of the Market Surveillance Committee, the predecessor to the Market Regulation Committee. Thus, he has the practical experience that a Market Regulation panelist would bring to this case.

Third, appointment of a Market Regulation panelist is not a matter of right under Procedural Rule 9232(b). Even in cases where Procedural Rule 9232(b) permits the appointment of a Market Regulation panelist, the decision to appoint such a panelist is left to the Chief Hearing Officer's discretion.

Accordingly, the Complainant's motion is denied.

IT IS SO ORDERED.

Andrew H. Perkins
Hearing Officer

January 17, 2006