

This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 10-07 (20050007427).

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RESPONDENT FIRM

and

RESPONDENT 2,

Respondents.

Disciplinary Proceeding
No. 20050007427

Hearing Officer – MAD

**ORDER GRANTING ENFORCEMENT'S REQUEST FOR CORRECTIVE ACTION
REGARDING RESPONDENTS' RULE 9252 REQUEST FOR DOCUMENTS**

On November 30, 2010, the Department of Enforcement ("Enforcement") filed a motion seeking an order requiring Respondents to correct and mitigate a misleading pleading that Respondents served on non-party FINRA member firms. On December 3, 2010, Respondents filed their response.

In an attempt to obtain documents from member firms in defense of this proceeding, Respondents sent a pleading, titled "Request for Documents Pursuant to FINRA Rule 9252" ("Request"). The Request stated that "[i]f you fail to produce the requested documents to Respondents' attorneys on or before the deadline date (or by an extension date that [Respondents'] attorneys may grant in writing), the Respondents will move the FINRA Hearing Officer assigned to this case to issue an order pursuant to FINRA Rule 8210 against you compelling such production."

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Respondents' Request is problematic. First, Rule 9252 does not permit Respondents to serve Rule 9252 pleadings directly on FINRA member firms. Instead, the Rule provides a process for Respondents to request that FINRA seek information, by issuing Rule 8210 requests on behalf of Respondents. Here, Respondents sent a pleading akin to a subpoena directly to FINRA members.

Second, Rule 9252 does not authorize Respondents to seek a motion to compel if the non-party member does not comply with Respondents' Request. To the contrary, the Rule contains numerous safeguards to ensure that non-parties are protected from inappropriate requests for information. Namely, a respondent must submit its request to the Hearing Officer that FINRA invoke Rule 8210 to compel the production of information. Rule 9252(a). Then, the Hearing Officer "shall consider whether the request is unreasonable, oppressive, excessive in scope, or unduly burdensome, and whether the request should be denied, limited, or modified." Rule 9252(b). While Rule 9252 does contain a requirement that Respondents attempt to obtain documents themselves before seeking to invoke Rule 9252, the Respondents' Request improperly implies that the firm's compliance is mandatory under the FINRA Code of Procedure.

Enforcement's motion is granted. Respondents' Requests are quashed, and pursuant to Rule 9235(a), Respondents are hereby ordered to withdraw all Requests issued in connection with this disciplinary proceeding.

SO ORDERED.

Maureen A. Delaney
Hearing Officer

Dated: December 6, 2010