

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 05-33 (CAF040058).

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondents.

Disciplinary Proceeding  
No. CAF040058

Hearing Officer – DRP

**ORDER GRANTING JOINT MOTION FOR A PROTECTIVE ORDER**

On September 27, 2005, the parties filed a joint motion requesting an order to protect the confidentiality of all documents and information produced by five non-party member firms.<sup>1</sup> For the reasons stated below, the motion is granted.

On July 7, 2005, Respondents filed a motion for an order directing Enforcement to invoke Procedural Rule 8210 in order to obtain documents and information from the five non-party member firms regarding transactions in five convertible bonds at issue in this proceeding on the dates identified in the amended exhibit to the Complaint. Enforcement did not oppose the motion, which the Hearing Officer granted on August 29, 2005. On September 6, 2005, Enforcement complied with the order and served requests for production of documents and information on the five firms.

Since then, counsel to several of the firms have contacted Enforcement to request confidential treatment of any documents or information they produce in response to the requests for information and have represented that disclosure may unreasonably breach the personal

<sup>1</sup> The firms are \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; \_\_\_\_\_; and \_\_\_\_\_.

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privacy of the firms' customers. Moreover, the firms have represented that disclosure of documents and information related to proprietary trading may have an adverse business effect.

Rule 9146(k) allows a party to file a motion requesting a protective order "to limit disclosure or prohibit from disclosure to other [p]arties, witnesses or other persons . . . [d]ocuments or testimony that contain confidential information. The motion shall include a general summary or extract of the [d]ocuments or testimony without revealing confidential details . . . and shall be granted only upon a finding that disclosure of the [d]ocument or testimony would have a demonstrated adverse business effect . . . or would involve an unreasonable breach of . . . personal privacy."

While the parties have not provided a general summary of the documents, which renders it difficult to make the requisite finding that disclosure would adversely effect the five non-party member firms or their customers, the Hearing Officer will grant the motion due to the joint nature of the request and the fact that a protective order will not impair the Respondents' ability to use the documents and information in their defense but will simply limit disclosure to those individuals involved in this proceeding.

Accordingly, it is hereby ordered that all documents and information produced by the five member firms in response to the September 6, 2005 requests shall be treated as confidential during the pendency of this action. Respondents and their counsel shall use the documents and information solely for purposes of this disciplinary proceeding, including any appellate proceedings, and are prohibited from publishing or disclosing the information or documents to anyone other than the following: attorneys who represent Respondents in this proceeding; any person(s) retained by counsel for Respondents to assist in the preparation and trial of this

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proceeding, including experts and paralegals or other employees; any witness in this proceeding; Hearing Panelists in this proceeding; and any court reporter in this proceeding.

It is further ordered that within 90 days of the conclusion of this proceeding (and the exhaustion of all appeals), the documents and information provided in response to the September 6, 2005 requests shall be returned to Enforcement.

The terms of this order may be modified by order of the Hearing Officer, pursuant to a motion by either party or sua sponte.

**SO ORDERED.**

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Dana R. Pisanelli  
Hearing Officer

Dated:           October 11, 2005  
                    Washington, DC