

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF MARKET REGULATION,

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. 20042000056-01

Hearing Officer – AWH

ORDER DEFERRING RULING ON MOTION FOR SUMMARY DISPOSITION

On September 1, 2006, Respondent filed its Motion for Summary Disposition, arguing that it cannot be sanctioned for any alleged violation of the OATS rules because those rules were not promulgated in accordance with the Paperwork Reduction Act.¹ On September 15, 2006, the Department of Market Regulation filed its Opposition to the motion, arguing that the Hearing Panel lacks authority to consider such a challenge to the OATS rules. On October 4, 2006, Respondent filed its reply to Market Regulation's Opposition, asserting that the Hearing Panel does have authority to consider its challenge to the OATS rules.

NASD Procedural Rule 9264(e) provides that a hearing officer may deny or defer decisions on any motion for summary disposition. The question whether the Paperwork Reduction Act applies to the OATS rules is one of first impression, and its resolution could have a sweeping effect on the securities industry and its self-regulatory organization. Under the circumstances, consideration of prudence and administrative efficiency impel the Hearing

¹ Pub. L. No. 194-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. §§ 3501-3520 (2006)).

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 06-45 (20042000056-01).

Officer to defer resolution of the Motion for Summary Disposition until after a hearing on the merits of the issues raised by both causes in the Complaint.

SO ORDERED.

Alan W. Heifetz
Hearing Officer

Dated: October 9, 2006