

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,  Complainant,  v.  Respondent.	Disciplinary Proceeding No. CLI050004  Hearing Officer—Andrew H. Perkins
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**ORDER DENYING RESPONDENT'S MOTION TO ADJOURN HEARING**

The Department of Enforcement's Complaint in this disciplinary proceeding alleges that the Respondent, a General Securities Representative with Milestone Group Management LLC, is charged with: (1) executing unauthorized transactions; (2) purchasing securities on margin without the customer's authorization, and (3) failing to amend his Form U-4 timely to disclose certain customer complaints. The respondent is charged with violating NASD Conduct Rule 2110.

On December 27, 2005, Respondent's current counsel filed a motion to adjourn the hearing for three months. The Respondent's current counsel entered her appearance on December 12, 2005. The hearing is scheduled to begin on February 28, 2006. The hearing schedule was set by Order entered on April 29, 2005, with the consent of the Respondent's former counsel.

Counsel for the Respondent requests the adjournment because she estimates that she will not have adequate time to prepare for the hearing. In particular, she notes that she has an arbitration scheduled for early February 2006, which she claims will make it

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difficult for her to meet the scheduling deadlines in this case.<sup>1</sup> In addition, counsel states that there are a substantial number of pages of documents (2500) pertaining to the underlying investigation, which she must review before the hearing.

On January 5, 2006, the Department of Enforcement ("Enforcement") filed its opposition to the Respondent's motion. Enforcement argues that (1) the Respondent has failed to show good cause for the requested adjournment, (2) Enforcement will be prejudiced by an adjournment because its non-industry witnesses may not be available to appear at the hearing if the date is moved, and (3) the requested adjournment poses a threat of potential harm to the investing public due to the nature of the alleged misconduct and the fact that the Respondent is currently associated with an NASD member firm.

For the reasons discussed below, the Respondent's motion is denied.

### **Discussion**

Under Code of Procedure Rule 9222, the Hearing Officer may, for good cause shown, extend any time limits prescribed by the Code, and postpone the commencement of a hearing for a "reasonable period of time." Further, pursuant to Rule 9222(b)(2), a Hearing Officer may not postpone a hearing or grant extensions of time in excess of 28 days, without providing reasons why a longer period is necessary.

In determining whether to grant a motion for the continuance of a hearing, Rule 9222(b)(1) specifies that the Hearing Officer shall consider the following five factors: (1) the length of the proceeding to date; (2) the number of postponements, adjournments, or extensions already granted; (3) the stage of the proceedings at the time of the request; (4)

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<sup>1</sup> Respondent's counsel previously has not requested a modification of the pre-hearing schedule.

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potential harm to the investing public if an extension of time, adjournment, or postponement is granted; and (5) such other matters as justice may require.

While the Rule undoubtedly is intended to give Hearing Officers the ability to manage their dockets, the Rule primarily is intended to ensure prompt resolution of the NASD's disciplinary proceedings, which is necessary to enable NASD to carry out its regulatory mandate and fulfill its responsibilities in protecting the public interest. Upon careful consideration of the Respondent's arguments, and balancing the foregoing factors, the Hearing Officer has concluded that there is no basis to grant the relief requested.

The Hearing Officer gives primary consideration to the nature and extent of the misconduct alleged in the Complaint, which raise a legitimate concern of the potential for future harm to investors. As the Department of Enforcement points out in its opposition, the Complaint alleges that five individuals accuse the Respondent of unauthorized activity with respect to their accounts. This factor weighs heavily in favor of a quick resolution of this case. Accordingly, the Hearing Officer finds that it would be counter to the public interest to delay the hearing.

The Hearing Officer further notes that this case has been pending for a considerable time—nine months—although there have not been previous requests for a postponement. And Respondent's counsel was aware of both the pre-hearing schedule and the hearing dates when she entered her appearance. Respondent's counsel should have taken the established schedule and her other commitments into consideration before she agree to represent the Respondent.<sup>2</sup>

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<sup>2</sup> Cf. *Falcon Trading Group, LTD v. SEC*, 102 F.3d 579, 581 (D.C. Cir. 1996) (holding that new counsel should not have undertaken representation of the respondent where his schedule would not permit him to present an adequate defense or attending the scheduled hearing).

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In addition, the Hearing Officer finds that there is more than adequate time remaining to prepare for the hearing. This is not a complex matter. There are a small number of complaining witnesses and the legal issues are straightforward.

Finally, the Respondent cannot justify an adjournment on the need to conduct further discovery because the deadline for such activity has passed. All motions relating to the Department of Enforcement's production of information pursuant to Rule 9251 were due to be filed no later than June 10, 2005. The Respondent's prior counsel filed no such motion. At this point, the remaining pre-hearing deadlines relate to the filing of pre-hearing submissions and motions in limine.

In conclusion, the Respondent has not demonstrated a real need for additional time justifying a continuance of the hearing. Accordingly, the Respondent's motion is denied.

**IT IS SO ORDERED.**

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Andrew H. Perkins  
Hearing Officer

January 6, 2006