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NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. Respondent 1, Respondent 2, Respondent 3, Respondent 4, Respondents.	Disciplinary Proceeding No. EAF0400300001 Hearing Officer-SNB
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ORDER PROHIBITING USE OF SUBPEONAS

On January 17, 2005, a pre-hearing conference was held in this matter. During this conference, Enforcement raised the issue of whether Respondents should be permitted to issue subpoenas under New York State Court Rules. Enforcement noted, and a Respondent's counsel acknowledged, that at least one Respondent is currently considering whether to issue such subpoenas. The Hearing Officer did not rule on the matter during the conference, and Respondents represented that they would provide Enforcement with advance notice should they determine to issue such subpoenas, so that Enforcement would have an opportunity to object.

Upon further consideration of the matter, the Hearing Officer has determined to issue this Order prohibiting the use of such subpoenas. In support of this determination,

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the Hearing Officer finds that New York's Civil Practice Law and Rules (CPLR) Section 2302(a) does not apply to NASD Disciplinary Hearings. See, OHO Order No. 05-39 [CAF40058]. Moreover, permitting the use of such subpoenas would result in uneven treatment of respondents located outside New York. Id.

In NASD disciplinary proceedings, Respondents may avail themselves of Rule 9252, to request that NASD invoke Rule 8210 to "compel the production of documents or testimony at the hearing" under circumstances set forth in that rule. The Hearing Officer is unwilling to allow Respondents to circumvent NASD's procedures through the use of subpoenas. Rule 9235 authorizes the Hearing Officer to regulate the course of this proceeding and resolve procedural, evidentiary, and discovery issues. Pursuant to the Hearing Officer's authority under Rule 9235, the parties are prohibited from issuing subpoenas.

SO ORDERED.

Sara Nelson Bloom
Hearing Officer

Dated: January 19, 2006