

**NASD OFFICE OF HEARING OFFICERS**

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DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C3A030050
v.	:	
	:	Hearing Officer – SNB
	:	
	:	
Respondent.	:	

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**ORDER GRANTING IN PART, AND DENYING IN PART, RESPONDENT'S MOTION FOR ISSUANCE OF RULE 8210 REQUESTS PURSUANT TO RULE 9252**

On August 4, 2004, Respondent moved for the issuance of Rule 8210 requests pursuant to Rule 9252. In particular, Respondent requests two categories of documents: 1) tax returns for Respondent's customer ST (the "tax return request") and; 2) account statements for Respondent's customers RJ and RS (the "account statement requests"). Enforcement did not file a response to the motion. On August 12, 2004 a Pre-Hearing Conference was held. In particular, the parties were asked to address whether the Code of Procedure Rule 9252 standards were met, whether the requested documents were relevant to Respondent's defense; and whether the parties will stipulate to the facts sought to be proved by the requested documents.

For reasons stated below, Respondent's request with respect to the tax returns is denied, and Respondent's request with respect to the account statements is granted.

**Standards for Invoking Rule 8210 to Compel the Production of Documents Pursuant to Rule 9252**

Rule 9252(a) permits a respondent to request that the Association invoke Rule 8210 to compel the production of documents or testimony at a hearing, provided such request is made in

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writing at least 21 days before the scheduled hearing and an appropriate showing is made.<sup>1</sup> In this instance, Respondent's request is timely. Rule 9252(b) specifically establishes the standards pursuant to which the Association shall grant requests for the production of documents. Three specific conditions must be satisfied. Such requests shall be granted only upon a showing that: (1) the information sought is relevant, material, and non-cumulative; (2) the requesting Party has previously attempted in good faith to obtain the desired Documents and testimony through other means but has been unsuccessful in such efforts; and (3) each of the persons from whom the Documents and testimony are sought is subject to the Association's jurisdiction. (Rule 9252(b)). In addition, 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. Id.

### **1. The Tax Return Request**

Respondent represented that an outside counsel held the tax returns, which were originally produced in an arbitration proceeding, but they are covered by a confidentiality agreement so a Rule 8210 request is necessary. In this case, Respondents have not satisfied their burden with respect to the tax return request. The issues relating to this request are numerous. First, the broker dealer to which the 8210 request would be directed is no longer registered. (Pre-Hearing Conference Transcript ("Transcript") at p. 7) Second, the tax returns are not in the possession of a broker dealer, but rather, a law firm. (Id.) Third, the tax returns were never reviewed or relied upon by the Respondent in connection with recommendations alleged to be unsuitable. (Transcript at p. 12-13) Fourth, Respondent did not meet his burden of showing that

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<sup>1</sup> The Rule 9252(a) request shall: ... "describe with specificity the Documents, the category or type of Documents, or the testimony sought; state why the Documents, the category or type of Documents, or the testimony are material; describe the requesting Party's previous efforts to obtain the Documents, the category or type of Documents, or the testimony through other means; and state whether the custodian of each Document, or the custodian of the category or type of Documents, or each proposed witness is subject to the Association's jurisdiction." Rule 9252(a).

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the NASD would have the authority to set aside the confidentiality agreement (the exact provisions of which were not offered or known). (Transcript at p. 12-15)<sup>2</sup> Inasmuch as Respondent did not meet his burden on the tax return request, the request is denied.

## **2. The Account Statement Requests**

Respondent also requested that a Rule 8210 request be issued to Correspondent Services Corporation for the account statements for Respondent's customers CJ and RS. Respondent represented that the account statements are not available from Respondent's former employer, Schneider Securities, Inc., and Correspondent Services Corporation would require some form of formal request. (Respondent's Request for Information Pursuant to NASD Rule 9252 at p. 3; Transcript at p. 7) Respondent indicated that Correspondent Services Corporation is subject to the Association's jurisdiction and asserted that the requested documents are material to this proceeding. (Id.)

Respondent asserted that Respondent was the registered representative on all the accounts requested. Respondent argued that activity reflected in these accounts was relevant as it would show patterns of transactions similar to the transactions at issue in the case, or transactions demonstrating the investor's investment experience and knowledge. (Transcript at p. 28-31, 33-35) Enforcement did not oppose Respondent's request. (Transcript at p. 31) Respondent's request for account statements seeks information that may be relevant to the case and meets the

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<sup>2</sup> Given that the Respondent did not meet his burden on the issues enumerated, the Hearing Officer did not reach the issue of whether the tax returns would be relevant and non-duplicative of account opening documents that apparently will be introduced as evidence during the hearing to indicate the investor's net worth and risk tolerance, among other things. In any event, the parties indicated that they would explore stipulations with respect to these areas, and they are strongly encouraged to do so.

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standards for issuance set forth in Rule 9252(b). Accordingly, Respondent's request with respect to the account statements is granted.

**SO ORDERED.**

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Sara Nelson Bloom  
Hearing Officer

Dated: August 17, 2004