

**NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS**

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| DEPARTMENT OF ENFORCEMENT, | : | |
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| | : | |
| Complainant, | : | Disciplinary Proceeding |
| | : | No. CAF970002 |
| v. | : | |
| | : | |
| | : | Hearing Officer - EBC |
| | : | |
| | : | |
| Respondents. | : | |

**ORDER REGARDING MOTION OF RESPONDENTS
REQUESTING AN EXTENSION OF TIME TO ANSWER,
A MORE DEFINITE STATEMENT, AND AN UPDATED SERVICE LIST**

According to the record in this disciplinary proceeding, a Notice of Complaint and a copy of the Complaint were served on all Respondents on October 15, 1997, via certified first class mail.¹

Accordingly, pursuant to Code of Procedure Rules 9215(a) and 9138(c), the Respondents' Answers were required to be filed by November 12, 1997.

On November 12, 1997, the Hearing Officer received, by facsimile transmission, a motion, filed on behalf of Respondents _____ requesting: (1) an extension of time, from November 12 until December 19, 1997, to file their Answers to the Complaint and/or to file motions;² (2) a more definite statement of certain facts alleged in the Complaint; and (3) an updated and

¹ To put to rest any confusion, pursuant to Code of Procedure Rule 9134(b)(3), when service is effected by mail, service is deemed to be complete upon mailing.

² Respondents do not specify the nature of their potential motions and the Code of Procedure has no provision analogous to Rule 12(b) of the Federal Rules of Civil Procedure. Accordingly, the Hearing Officer's ruling is limited to Respondents' request for an extension of time to file their Answers.

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corrected Service List. According to Respondents' motion, the Department of Enforcement does not oppose the requested extension of time; it also appears that the Parties have had some discussions regarding the issue of a revised Service List.³

Rulings

1. Motion for Extension of Time to Answer

Rule 9222(a) generally authorizes extensions of the time limits imposed by the Code of Procedure "for good cause shown." Similarly, Rule 9215(a) authorizes the Hearing Officer to extend the time for filing an Answer "for good cause." Expeditious resolution of disciplinary proceedings serves the interests of the industry and the investing public. In most cases, the time limits in the Code of Procedure will afford the parties adequate time to complete the action required. Accordingly, the Hearing Officer will strictly enforce the "good cause" requirement. In particular, ordinarily the Hearing Officer will not grant last minute requests for extensions absent a strong showing of exigent, unforeseen circumstances.

It is doubtful that Respondents' last minute request for a prolonged extension of time satisfies this standard. The First Notice of Complaint was served on October 15, with a copy sent directly to counsel. Four weeks elapsed before counsel filed his motion requesting an extension. In support of the requested extension, although counsel concedes that he was contacted promptly by Respondents _____ regarding this proceeding, he asserts that more than five additional weeks are required to allow him to become sufficiently familiar with the facts and issues in this proceeding; to resolve conflicts of interest; to gather relevant documents that are in the possession of the

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_____ SIPC trustee for _____; and to locate and obtain information from various other Respondents in this proceeding. Respondents' counsel suggests that past professional commitments prevented him from attending promptly to this matter and other future professional commitments also necessitate the requested extension of time. There is nothing to indicate that any of the circumstances cited by Respondents' counsel were unforeseen.

In any event, the Hearing Officer is not persuaded that these facts warrant an extension as lengthy as that requested. Pursuant to Rule 9222(b)(2), extensions of time may not exceed 28 days, unless the Hearing Officer provides reasons why a longer period is necessary. In the Hearing Officer's judgment, Respondents have not established the need for an extension longer than 28 days from the date their Answer was first due – November 12. Counsel has already had four weeks to familiarize himself with the facts and issues in this case and to obtain information necessary to prepare Respondents' Answers. Further, after Respondents' Answers are filed, counsel will be afforded ample opportunity to obtain relevant documents and information from potential witnesses, and otherwise engage in pre-hearing preparation. The Hearing Officer also observes that the motion filed by counsel indicates there is, in addition to him, another attorney at his firm who is participating in the representation of Respondents _____.

Based on the foregoing, the Hearing Officer grants Respondents _____ an extension of time to December 10, 1997 to file their Answers to the Complaint. The Hearing Officer believes that this extension will provide these Respondents sufficient time to respond meaningfully to the

³ Due to the unavailability of one of the three individuals who represent the Department of Enforcement in this proceeding, Respondents' counsel did not confer with the Department of Enforcement to ascertain its position on the motion for a more definite statement.

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allegations against them and allow counsel to fulfill his professional responsibilities to his clients and under Code of Procedure Rule 9137(b).

2. *Motion for a More Definite Statement*

Respondents seek, by November 18, a more definite statement identifying the first and last names of customers;⁴ the time during which each customer was a client of one of these Respondents; and the “stock(s) involved.” The request that the Hearing Officer direct the Department of Enforcement to furnish this information by November 18 is impracticable. The Hearing Officer is not inclined to rule on this motion without affording the Department of Enforcement an opportunity to respond.

In addition, to more fully understand the scope of Respondents’ motion, clarification is required with respect to the request for a more definite statement as to the “stock(s) involved.” In this regard, Respondents shall furnish an additional submission identifying each paragraph in the Complaint that they believe is inadequate in failing to identify the securities involved. Respondents shall serve and file this submission by November 17, 1997. Pursuant to Code of Procedure Rule 9146(d), the Hearing Officer has determined to shorten the time for the Department of Enforcement to file any opposition papers to November 21, 1997.

3. *Motion for an Updated and Accurate Service List*

Respondents move for an updated and accurate Service List, asserting that “it appears that the Service List attached to the Complaint is not accurate.” However, as set forth in Respondents’ motion, the Parties have already discussed this matter and there is no indication that counsel for the Department of Enforcement have refused to update the Service List as they become aware of new information, or

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that they have refused to maintain an accurate Service List throughout the pendency of this proceeding.

Accordingly, there appears to be no dispute on this issue that necessitates a ruling.

Therefore, it is ORDERED that:

1. Respondents _____ shall file their Answers to the Complaint by December 10, 1997.
2. Respondents _____ shall serve and file an additional submission with respect to their motion for a more definite statement, as set forth above, by November 17, 1997.
3. The Department of Enforcement shall serve and file any papers in opposition to Respondents' motion for a more definite statement by November 21, 1997.

Ellen B. Cohn
Hearing Officer

Dated: Washington, DC
November 13, 1997

⁴ Presumably this request relates to the customers referred to by initials in the allegations pertaining to Respondents _____.