

This Order has been published by the NASDR Office of Hearing Officers and should be cited as OHO Order 00-18 (C3A000007).

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

DEPARTMENT OF ENFORCEMENT,	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C3A000007
v.	:	
	:	Hearing Officer - GAC
Respondents.	:	

**ORDER DENYING RESPONDENTS' MOTIONS TO COMPEL
TESTIMONY**

On May 19, 2000, Respondent _____ filed a Motion to Take Testimony From _____, _____ and _____ “_____.” On May 23, 2000, the Department of Enforcement (“Enforcement”) filed an Opposition to Motion to Take Testimony From _____, _____ and _____ “_____.” On May 30, 2000, Respondent _____ filed a Motion to Compel the Testimony of _____. On May 30, 2000, Respondent _____ filed a Reply to Opposition to Motion to Take Testimony From _____, _____ and _____ “_____.” On June 2, 2000, Enforcement filed an Opposition to Motion to Take Testimony From _____. On June 2, 2000, Enforcement also filed a Motion for Leave to File a Response to Reply to Opposition to Motion to Take Testimony From _____, _____ and _____ “_____” along with the underlying response motion.

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Enforcement's June 2, 2000 Motion for Leave to File a Response to Reply to Opposition to Motion to Take Testimony From _____, _____ and _____ "_____"

There being no opposition to Enforcement's June 2, 2000 Motion for Leave to File a Response to Reply to Opposition to Motion to Take Testimony From _____, _____ and _____ "_____", that motion is granted.

Motions to Compel _____ and _____ ("_____") to Appear as Witnesses

Enforcement stated in its Opposition to Motion to Take Testimony From _____, _____ and _____ "_____", filed by Respondent _____, that it intends to call _____ and _____ as witnesses in its case in chief. Enforcement stated that the requested relief as to these individuals was therefore "unnecessary." Based on those representations, the Respondents will have an opportunity to examine those two witnesses during cross-examination. Given their reliance on Enforcement's representations, if Enforcement decides not to call _____ and/or _____ during its direct case, Enforcement is directed to have those individuals available, either in person or by telephone, to serve as witnesses for the Respondents. The Parties are reminded that only *relevant* evidence is appropriate to be elicited from witnesses.

Motions to Compel _____ to Appear as a Witness

The Respondents cited Rule 9252 in support of their motion to compel the testimony of _____. However, even assuming that Rule 9252 applied to NASD employees in addition to registered persons and entities, the Respondents failed to make the appropriate showing required by Rule 9252(b), that the testimony that they would elicit from _____ is relevant, material and non-cumulative to the proceeding. According to Respondent _____, "the scope of the inquiry relates only to _____'s questioning

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of _____ in the deposition at issue.”¹ The questions asked by _____ during the on-the-record interviews and the responses given by each witness appears in transcript form.

The central issues in this case, as framed by the Complaint, relate to the truthfulness of the answers provided by the Respondents during the on-the-record interviews, and whether the Respondents acted with the requisite scienter. The motive or strategy employed by the person asking the questions is neither relevant nor material to resolving those issues. Questions as to the clarity of the questions asked and the nature of any follow-up questions may be argued from the record or addressed by other witnesses. The motions to compel _____ to testify at the Hearing are therefore denied.

SO ORDERED.

Gary A. Carleton
Hearing Officer

Dated: Washington, DC
July 20, 2000

¹ Reply to Opposition to Motion to Take Testimony From _____, _____, and _____ “_____,” p. 1.