

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF MARKET REGULATION,

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. 2005000029202

Hearing Officer—Andrew H. Perkins

INITIAL CASE-MANAGEMENT ORDER

The Hearing Officer **ORDERS** that the following procedures shall govern this proceeding:

1. Filing and Service of Documents.

(a) Filing of Documents.

Except as otherwise ordered by the Hearing Officer, the parties shall file an original and one copy all pleadings, motions, and other documents with the Office of Hearing Officers. All originals shall be filed by mail, courier, or hand delivery in accordance with Procedural Rule 9134. All copies shall be sent electronically in Tag Image File Format (TIFF) to the Office of Hearing Officers' email address for case filings, OHOCASEFILINGS@NASD.COM. If a party is unable to scan documents in TIFF, they may use Adobe® Portable Document Format (PDF). All filings shall be sent to the attention of T.J. McPhail, the Case Administrator assigned to this proceeding.

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A filing will be deemed timely if the Office of Hearing Officers receives the original or the electronic copy within the time limits set by the Hearing Officer, or, where no specific limits have been set, when the Office of Hearing Officers receives the original or electronic copy within the time limits imposed by NASD's Code of Procedure.

(b) Service of Documents.

The parties shall designate counsel to receive copies of all orders, notices, pleadings, motions, and other documents in this proceeding, which designation shall include an email address for each individual. Each party shall serve opposing counsel by electronic mail as well as one of the methods specified in Procedural Rule 9134.

2. Motions for Summary Disposition.

Motions, briefs, oppositions, and evidentiary materials in support of and in opposition to potentially dispositive motions shall conform to the following requirements. **Except for good cause shown, briefs and evidentiary materials that do not conform to the following requirements may be stricken.**

(a) Submission Dates.

The parties will be given a deadline for filing dispositive motions. Any motion for summary disposition and supporting brief and evidentiary materials will be due on or before that deadline. The responsive submission of the party opposing a motion for summary disposition shall be filed not later than 21 days after the motion for summary disposition is

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filed. The movant's reply submission shall be filed no later than 11 days after the date on which the opponent's responsive submission was due.

The parties *must* deliver copies of briefs and evidentiary materials to opposing parties without undue delay and, in general, on the same date such materials are submitted to the Office of Hearing Officers.

(b) Submissions.

Submissions in support of and opposition to summary disposition must consist of: (1) a brief containing a discussion of relevant legal authorities; (2) a separate statement of allegedly undisputed relevant material facts or a stipulation of facts, or both; and (3) copies of evidentiary materials upon which the party relies.

(c) Requirements for Briefs.

(1) Format.

Initial and response briefs are limited to 30 pages. Reply briefs are limited to 10 pages. Briefs that exceed 20 pages must include a table of contents that accurately reflects the organization of the document. The table of contents is not included in the page limit. The text of the brief must be double-spaced (except for quotations of 50 words or more, which may be block indented from the left and right margins and single-spaced) using 12 point typeface, preferably Times New Roman.

(2) Number Submitted.

The parties must file the original brief and *three* copies with the Office of Hearing Officers. In addition to the electronic copies filed in TIFF or PDF, the parties must simultaneously submit to the Office of Hearing Officers an exact electronic copy of the original brief in Microsoft Word format, clearly identified as a "courtesy copy."

(3) Binding.

Materials that cannot be stapled conveniently must be submitted in three-ring binders for ease of use. Except for "courtesy copies" intended for the Hearing Officer, the Office of Hearing Officers will not accept materials otherwise bound. In addition, all pages submitted in the Hearing Officer's "courtesy copy" shall be three-hole punched.

(4) Moving Party's Statement of Facts.

All briefs submitted in support of or opposition to a motion for summary disposition must be accompanied by a statement of allegedly undisputed material facts set forth in *separately numbered paragraphs*. Counsel must state facts in clear, unambiguous, simple, declarative sentences. Each such statement must be followed by a specific reference to those portions of the evidentiary record that the moving party claims supports it.¹

¹ Each statement of fact should be supported by its own evidentiary citation, regardless of the fact that more than one statement of fact allegedly is supported by the same specific reference to the evidentiary record or more than one statement of facts is contained in the same numbered paragraph. A specific reference must include the exhibit number, page, and when appropriate, the line number.

(5) Opposing Statement of Facts.

A statement of facts divided in the following three sections must accompany each opposition.

(i) **Section 1, Disputed Facts.** The first section must consist only of the non-moving party's disputes, if any, with the moving party's claimed undisputed facts. The non-moving party's statement of facts shall be in *separately numbered paragraphs* that coincide with those of the moving party's claimed undisputed facts. Any statements of fact that are disputed by the non-moving party must be followed by a specific reference to those portions of the evidentiary record upon which the dispute is based. *All material facts set forth in the statement required of the moving party will be deemed admitted for summary disposition purposes unless controverted by the response of the party opposing the motion for summary disposition.*

(ii) **Section 2, Non-Moving Party's Statement of Additional Undisputed Facts that Require Denial of Summary Disposition.** The second section may contain additional facts the non-moving party contends are undisputed and require the denial of the motion for summary disposition. Such additional allegedly undisputed facts shall be set out in *separately numbered paragraphs* and must be clearly designated as such. The opposing party should include only facts that the opposing party contends are true and not in genuine dispute.

(iii) **Section 3, Additional Disputed Facts.** The third section must consist of only additional *disputed* facts that the opposing party contends require the denial of the motion for summary disposition. The allegedly disputed facts shall be set out in *separately numbered paragraphs*. The third section, if any, must be clearly designated as such. Each statement of disputed facts must be followed by specific reference to those portions of the evidentiary record that *both* support and contradict the alleged fact.²

(6) Moving Party's Reply.

The reply submission, if any, shall consist of only the moving party's disputes, if any, with the non-moving party's additional claimed *undisputed* facts. The moving party's reply shall be set out in *separately numbered paragraphs* that coincide with those of the non-moving party's additional claimed undisputed facts (section 2 of the opposing statement of facts) and must be followed by a specific reference to those portions of the evidentiary record upon which the disagreement is based. *All additional material facts set forth in the statement required of the opposing party will be deemed to be admitted for summary disposition purposes unless controverted by the statement of the moving party.*

The Hearing Officer reserves the right to strike any statements of fact that fail to comply with these requirements. In addition, the Hearing Panel will not consider facts contained only in a party's brief.

² The third section shall be limited to facts that are supported by some evidence in the record but, nevertheless, are in dispute.

(7) Evidentiary Materials.

The party's must file with the Office of Hearing Officers, simultaneously with their briefs, all evidentiary materials (*e.g.*, affidavits, exhibits, transcripts, or other documents) relied upon in support of or in opposition to summary disposition, except those materials included in the moving party's initial evidentiary submission may be referenced by the opposing party, without resubmitting additional copies of the same documents.

While the Hearing Officer or Hearing Panel may consider evidentiary materials that are not specifically referenced in the parties' submissions, no party has a right to assume that the Hearing Officer or Hearing Panel will consider such materials.

Each volume of evidentiary materials must include a table of contents that includes a brief narrative description of each included document: *e.g.*, "Complainant's Exhibit 1, the On-the-Record Interview of Witness AB." For ease of citation, each affidavit, exhibit, transcript, or other document must be separately identified by a capital letter or numeral (*i.e.*, "Exhibit A" or "Exhibit 1"); and, if the exhibit contains more than one page, each page must be separately numbered. **Counsel are directed to submit entire transcripts of on-the-record interviews or depositions, even if relying only on excerpts.** Counsel may submit transcripts with up to four pages of text per 8½" by 11" exhibit page.

The parties shall file an original and *three* identical copies of evidentiary materials with the Office of Hearing Officers.

3. Motions.

(a) Filing Prerequisite.

No motion shall be filed unless it includes a certificate that the moving party has conferred with opposing counsel in a good faith effort to resolve the matter without Hearing Officer or Hearing Panel action.

(b) Format Requirements.

Except for motions for summary disposition under Procedural Rule 9264, or as otherwise ordered by the Hearing Officer, all motions and oppositions to motions shall not exceed ten double-spaced pages in 12-point typeface, exclusive of pages containing any table of contents, table of authorities, or addenda. *See* Procedural Rule 9146(i). Footnotes may be single-spaced in no smaller than 10-point typeface.

(c) Replies.

Unless otherwise ordered by the Hearing Officer, a moving party shall not file a reply to any opposition filed in response to a motion.

(d) Oral Argument on Motions.

Unless otherwise ordered by the Hearing Officer, all motions shall be decided on the written submissions.

Andrew H. Perkins
Hearing Officer

Dated: May 3, 2007