

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant

v.

Respondent 1,

Respondent 2,

Respondent 3,

Respondent 4,

and

Respondent 5

Respondents.

Disciplinary Proceeding
No. E102003025201

Hearing Officer – RSH

**ORDER GRANTING MOTION TO ADJOURN PROCEEDING AND SETTING
PRE-HEARING CONFERENCE**

On August 25, 2006, Respondents 1, 2 and 3, through counsel, filed an unopposed Motion to Adjourn the Proceeding “up to and including June 2007,” citing additional time needed for document review and an upcoming criminal trial, scheduled for six weeks beginning March 26, 2007, involving Respondents 2 and 3.

On August 31, 2006, the Department of Enforcement (“Enforcement”) filed a Response to Respondent’s motion stating, “Movants should be granted only this single adjournment” and “In addition, the pre-hearing deadlines...should be extended no more than two months to insure that pre-hearing preparation in this matter continues and pre-hearing motions completed before the criminal trial of [Respondents 2 and 3] begins.”

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 06-37 (E102003025201).

NASD Procedural Rule 9222(b)(1) requires the Hearing Officer to consider five factors when determining whether to grant a motion for a hearing postponement in excess of 28 days: 1) the length of the proceeding to date; 2) the number of postponements, adjournments, or extensions already granted; 3) the stage of the proceeding at the time of the request; 4) potential harm to the investing public if an extension of time, adjournment, or postponement is granted; and 5) such other matters as justice may require.

As noted by Enforcement, 1) Respondents 2 and 3 cannot adequately defend their criminal case while participating in a 2-week hearing for this disciplinary proceeding; 2) this proceeding has been pending for less than 6 months; 3) this would be the first hearing adjournment in this matter; 4) the hearing panelists have not been appointed yet; 5) key deadlines, including the deadline for the parties to file pre-hearing submissions, have not occurred yet; and 6) NASD does not anticipate losing jurisdiction over witnesses due to a postponement of the hearing.

For the foregoing reasons, the Hearing Officer *grants* the motion. The hearing scheduled for January 16 - 26, 2007 in New York City is adjourned. The parties are hereby notified that there will be a pre-hearing conference to discuss new hearing dates, the pre-hearing schedule and any related issues at **11:00 a.m., Eastern Time, on September 28, 2006**. The Conference will be held by telephone. At the scheduled date and time, each of the parties shall call the MCI conference operator at []. To join the conference call, each party will be asked to provide a password, which is []. Any party who is unable to connect to the conference call using these instructions shall immediately contact the Office of Hearing Officers at (202) 728-8008.

The parties should confer before the Conference and attempt to agree on a revised pre-hearing schedule. Counsel for the Department of Enforcement is responsible for initiating this

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 06-37 (E102003025201).

discussion. The parties are directed to file the proposed schedule with the Office of Hearing Officers at least one day prior to the Conference.

Any request to reschedule the hearing must be submitted in writing by September 21, 2006, and should include several alternative dates and times when all parties are available for the Conference.

SO ORDERED.

Rochelle S. Hall
Hearing Officer

Date: September 13, 2006