

**NASD OFFICE OF HEARING OFFICERS**

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DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent 1

and

Respondent 2,

Respondents.

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Disciplinary Proceeding  
No. C07050029

Hearing Officer—Andrew H. Perkins

**ORDER DENYING RESPONDENT 1'S MOTION TO POSTPONE THE  
HEARING AND TO COMPEL DISCOVERY**

On December 9, 2005, Respondent 1 ("Respondent") filed a motion requesting that the hearing be postponed. In addition, Respondent requested that the Hearing Officer enter an order to compel discovery through the issuance of requests for information under NASD Procedural Rule 8210. Respondent seeks production of all documents relating to any investment account the four complaining customer witnesses maintained between 1998 and the present. The motion further states that the production of the requested documents is essential to Respondent's defense.

On December 12, 2005, the Department of Enforcement ("Enforcement") filed its opposition to Respondent's motion. Enforcement argues that the request for issuance of requests for information pursuant to Procedural Rule 9252 is untimely, overbroad, and

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vague. In addition, Enforcement argues that the information Respondent seeks is irrelevant and immaterial.

For the reasons discussed below, the Hearing Officer denies Respondent's motion.

## **Discussion**

### **I. Failure to Comply with Scheduling Order**

The Scheduling Order dated July 5, 2005, provides that motions for production of documents at the hearing pursuant to Procedural Rule 9252 shall be filed no later than December 7, 2005. Respondent did not request an extension of the deadline. Accordingly, the Hearing Officer rejects Respondent's motion.

### **II. The Motion is Vague and Overbroad**

Apart from the timeliness issue, the Hearing Officer finds that Respondent's motion is vague and overbroad. The motion fails to identify the firms where the customer witnesses had accounts. Indeed, the motion and accompanying document request do not state specifically that any such accounts exist. Lacking this basic information, NASD cannot issue a request for information under Procedural Rule 8210.

### **III. Failure to Comply with Procedural Rule 8210**

In addition, Respondent failed to comply with Procedural Rule 9252, which requires respondents to make a good faith effort to obtain the information through other means. Respondent argues that it met this requirement by requesting Enforcement to produce the documents. Such a request does not meet the requirements of Rule 9252. Under Rule 9252, respondents must first attempt to obtain the documents from their

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custodian. In this case, Respondent was required to contact the member firms and request that they provide the documents. Respondent has not demonstrated that he did so.

For the foregoing reasons, the Hearing Officer denies Respondent's motion for issuance of requests for information under Procedural Rule 9252.

The Hearing Officer also denies Respondent's motion to postpone the hearing. Respondent requests the postponement to give him time to review the discovery material he seeks under Rule 9252. Because his Rule 9252 request is denied, there is no basis for a postponement of the hearing. Moreover, this case has been pending for nearly eight months. Thus, Respondent has had ample time to prepare his defense. The hearing will be held as scheduled on January 4 and 5, 2006.

**IT IS SO ORDERED.**

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Andrew H. Perkins  
Hearing Officer

December 14, 2005