

**NASD OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Disciplinary Proceeding  
No. 2005001819101

Hearing Officer—Andrew H. Perkins

**ORDER GRANTING COMPLAINANT'S MOTION  
TO STRIKE IN PART THE INTRODUCTION TO RESPONDENT'S ANSWER**

On November 13, 2006, the Department of Enforcement moved to strike portions of the Introduction to the Respondent's Answer. The Department argued that the Introduction should be treated as a plainly insufficient affirmative defense and that it contains reference to settlement discussions that should not be disclosed to the Hearing Panel.

On November 28, 2006, the Respondent filed its opposition to the motion. The Respondent stated that the Introduction contains background facts regarding the nature and scope of the Department's investigation and the "shifting theories" the Department has advanced to support this action. The Respondent argued that the NASD Code of Procedure Rule 9136(e) does not permit the Hearing Officer to strike material from a pleading unless it is either impertinent or scandalous. The Respondent further argued that references to settlement discussions should not be banned because an NASD disciplinary

**This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 06-57 (2005001819101).**

proceeding is a quasi-criminal proceeding; thus, the corresponding Federal Rules of Civil Procedure do not provide helpful guidance on this issue.

After careful review of the Introduction, the Hearing Officer grants the Department's motion. The Hearing Officer has the authority to limit the scope of disciplinary proceeding to relevant evidence. Accordingly, all references to the conversations between Jeffrey P. Bloom, counsel for the Department, and counsel for the Respondent are stricken from the Answer. NASD disciplinary proceedings are civil actions, and settlement discussions of the nature described in the Introduction are not admissible. In addition, the personal opinions of the Department's counsel are not relevant to any of the issues in this proceeding.

The Respondent shall file an Amended Answer on or before January 11, 2007, that conforms to this ruling.

**IT IS SO ORDERED.**

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Andrew H. Perkins  
Hearing Officer

December 28, 2006