

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF MARKET REGULATION,

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. 2005000440701

Hearing Officer – AWH

ORDER REGARDING PRE-HEARING MOTIONS

As a result of a pre-hearing conference held on March 27, 2007, the following provisions shall govern the future course of this proceeding:

- 1) Based on Respondent's representation that he will offer no evidence on any issue that lies outside of matters alleged in his Answer to the Complaint or in his contested Offer of Settlement, Market Regulation's Motion to Compel Respondent to Submit a Pre-Hearing Brief is *denied*.
- 2) For good cause shown, Market Regulation's Motion for Leave to Offer Testimony by Videoconference, Videotaped Deposition, or Telephone, is *granted*, to the extent that the testimony of witness CU may be presented at the hearing by videoconference or telephone subject to these conditions:
 - a) The Department of Market Regulation shall have a notary public available at the witness' locations to swear the witness, or, alternatively, shall offer, at the time the witness is called, a sworn statement by that witness confirming her unavailability, inability, or unwillingness to travel to New

York in order to testify in person, and attesting that the testimony she will give at the hearing will be truthful.

- b) The Department of Market Regulation shall ensure that the witness has, at the time of testifying, copies of all exhibits that relate to her direct testimony, as well as any exhibits that Respondent may designate to Complainant, no less than three days prior to the commencement of the hearing, for possible use on cross-examination.
 - c) The Department of Market Regulation shall ensure that the witness will be available by telephone during a block of time when it is reasonable to expect that the witness will be called to testify at the hearing, so that the hearing is not unduly disrupted if the testimony of prior witnesses is longer or shorter than expected.
- 3) Respondent's Objections to Market Regulation's proposed Exhibit C-21 are *overruled*, except that (1) Market Regulation shall have until April 5, 2007, to designate the specific portions of Respondent's on-the-record interview that it relies upon for each issue it alleges those portions support; and Respondent shall have until April 25, 2007, to designate such portions of the on-the-record interview that he asserts counter Market Regulation's designations or puts them into proper context or perspective.
- 4) Market Regulation's objection to Respondent's intention to call Counsel Matthew Campbell as a witness in this matter is *sustained*; however, its objections to Respondent's exhibits R-6 through R-14 are *overruled*.

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 07-12 (2005000440701).

- 5) Market Regulation's Motion to Strike Respondent's Contested Offer of Settlement is *denied*; however, Market Regulation shall have until April 4, 2007, to file its written opposition to the Contested Offer of Settlement.

SO ORDERED.

Alan W. Heifetz
Hearing Officer

Dated: March 27, 2007