

This Order has been published by the NASDR Office of Hearing Officers and should be cited as OHO Order 99-09 (CAF980031).

**NASD REGULATION, INC.
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,	:	
	:	Disciplinary Proceeding
	:	No. CAF980031
Complainant,	:	
	:	Hearing Officer - JN
v.	:	
	:	
	:	
	:	
Respondents.	:	

ORDER DENYING MOTIONS TO SEVER

Respondents _____ have moved to sever. The Department of Enforcement opposes severance.

The Complaint in this case alleges the following, as a summary:

.... Respondents, each of whom was either a principal or registered representative with [member firm] _____, ... participated in and/or facilitated a “boiler room” operation and engaged in widespread, fraudulent sales practices in disregard of their obligations of fair dealing and commercial honor. The Respondents lured customers into highly speculative investments in risky securities, ... underwritten by _____, by a variety of fraudulent sales practices, including (i) baseless price predictions, profit guarantees and other misrepresentations; (ii) unauthorized trading ...; (iii) refusal or failure to execute sell orders; and (iv) tie-ins and solicitation of purchases of aftermarket securities before completion of the distribution (Complaint. Par. 1).

In seeking severance, the movants argue that their individual cases are not sufficiently linked to one another; that a joint hearing subjects them to prejudicial “guilt by association;” and that such a hearing imposes financial and time burdens. The Chief

This Order has been published by the NASDR Office of Hearing Officers and should be cited as OHO Order 99-09 (CAF980031).

Hearing Officer, having reviewed these arguments and those set out in Enforcement's Memorandum in opposition, concludes that the motions should be denied.

A. Legal standard: common issues

The Association may properly join multiple respondents in one disciplinary hearing, where the case involves "common issues of law or fact."¹

The present case meets that standard. The allegations against Respondents involve three particular _____ underwritten stocks, which are said to be speculative and risky. Each movant was allegedly involved in misconduct concerning one of the three stocks, and some were allegedly involved with all three. Enforcement correctly argues that the nature of one or more of these stocks is an issue in common to all Respondents. In addition, evidence of the firm's policies and sales practices - offered to corroborate customer testimony concerning particular alleged misconduct - is also common to all. Conducting six separate proceedings, with six separate panels, to examine the same evidence as to the involved stocks and the firm's practices would be wasteful and inefficient.

B. Claimed prejudice

Each of the moving Respondents contends that he is prejudiced by being joined with the others. The SEC has rejected such arguments in the course of sustaining joinders,² and there is no reason for any different result here. The Hearing Panel, chaired

¹ In re Carlton Wade Fleming, Exchange Act Rel. No. 36215, 1995 SEC LEXIS 2326 at *10, citation omitted (September 11, 1995).

² See Fleming, supra, where one person in a multi-respondent case claimed that "he would be prejudiced by evidence elicited during the hearing which related to other respondents." See also In re Richard C. Spangler, Inc., Exchange Act Rel. No. 12104, 1976 SEC LEXIS 2418 at *35, fn. 62 (February 12, 1976).

This Order has been published by the NASDR Office of Hearing Officers and should be cited as OHO Order 99-09 (CAF980031).

by an independent professional Hearing Officer, who is a lawyer, will insure that each Respondent is judged solely on the basis of the record evidence pertaining to him.

C. Alleged burdens

As to the burdens of time and money, the Hearing Officer has already opened the subject with counsel and discussed the feasibility of presenting some evidence on a respondent-by-respondent basis (Enforcement Memorandum, pp. 6-7). The Chief Hearing Officer is confident that the Hearing Panel and the Parties can devise a schedule which avoids requiring that each respondent be present on all days and minimizes financial and other burdens (for example, by hearing the evidence in common on certain days, followed by the evidence relevant to a particular respondent on a particular day).

Accordingly, the Motions to Sever are hereby denied.

SO ORDERED.

Linda D. Fienberg
Chief Hearing Officer

Dated: Washington, DC
 May 7, 1999