

This Order has been published by NASD's Office of Hearing Officers and should be cited as OHO Order 06-04 (E8A2004065102).

NASD OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,	:	
	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. E8A2004065102
v.	:	
	:	Hearing Officer - SW
	:	
	:	
	:	
Respondent.	:	

ORDER REQUIRING RESPONDENT TO SUPPLEMENT HIS RULE 9252 REQUEST

On November 30, 2005, Respondent filed a Rule 9252 motion requesting that NASD invoke Rule 8210 to obtain certain documents and testimony at the hearing scheduled for February 7 and 8, 2006. On December 14, 2005, the Department of Enforcement ("Enforcement") filed an opposition to Respondent's motion, arguing that Respondent's motion was essentially a civil discovery motion and failed to meet the requirements of Rule 9252.

Rule 9252 provides, in part, that a request to compel the production of documents or testimony at a hearing (i) describe with specificity the testimony or documents sought, (ii) state whether the testimony is material, (iii) describe the requesting party's previous efforts to obtain the testimony or documents through other means, and (iv) state whether each proposed witness is subject to NASD's jurisdiction.

I. Respondent's Requests
A. Information and Documents

Respondent requested the following information and documents from Banc One Securities Corporation ("BOSC"), n/k/a Chase Investment Services:

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- (a) All documents that contradict or do not support the allegations made in the Complaint;
- (b) All documents contained in Respondent's employment or human resources file with BOSC and/ or its affiliates;
- (c) All documents contained in Respondent's compliance or registration file;
- (d) All documents contained in AB's (CSA II at the Kedzie Banking Center) employment or human resources file with BOSC and/or its affiliates;
- (e) All documents contained in AB's (CSA II at the Kedzie Banking Center) compliance or registration file with BOSC;
- (f) Documents sufficient to provide the phone, email and address information for customer SW;
- (g) All documents that explain or describe any assistance Respondent provided to SW on or about April 7, 2004;
- (h) Identify the last name of Respondent's immediate Manager, "Paula;"
- (i) All documents sufficient to describe, explain or reveal BOSC or its affiliate's "established security policies," as detailed in the memo "BANK ONE CORPORATION Recommendation for Termination";
- (j) All documents revised, compiled, or produced or created in "Corporate Security's" investigation, as detailed in BOSC's reply letter to the NASD dated August 10, 2004;
- (k) All information and documents contained in the hyperlink, "Request for Detail" from the client contact sheet provided to the NASD on or about August 10, 2004; and
- (l) All documents, correspondence and/or notes referred to or utilized by SC in answering the NASD's inquires during 2004.

B. Witnesses

Respondent also requested that the following witnesses be compelled to testify at the hearing:

- (a) JK;
- (b) AB;
- (c) SC; and
- (d) Paula (Respondent's immediate supervisor).

II. Enforcement's Opposition

Rule 9252 requires a showing that "the information sought is relevant, material and non-cumulative," and also directs the Hearing Officer to consider "whether the request is unreasonable, oppressive, excessive in scope, or unduly burdensome, and whether the request should be denied, limited, or modified."

Enforcement argued that Respondent's motion should be denied in full, arguing that Respondent's motion failed to state with specificity what documents he sought to be produced and why the documents were material. Moreover, Enforcement argued that the request was unreasonable, excessive in scope, and unduly burdensome.

With respect to the witnesses, Enforcement argued that Respondent failed to specify how the testimony of the individuals is relevant and material. With respect to AB, Enforcement stated, on page 3 of its opposition, its belief that she is not subject to NASD jurisdiction.

III. Ruling Deferred Until Respondent Supplements His Motion

After carefully reviewing Respondent's motion and Enforcement's opposition, the Hearing Officer finds that, with respect to paragraphs (a), (b), (c), (d), (e), (f), (h), (i), (j), (k), and (l) of the request, Respondent has failed to specify how the documents are material and

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relevant. With respect to the witnesses, Respondent failed to specify how their testimony would be material and relevant. A general statement that the witnesses interacted with Respondent surrounding BOSC's and/or the NASD's investigation of this matter and, therefore, their testimony is material, relevant and non-cumulative is not sufficient to meet the Rule 9252 standard. Respondent must indicate what he anticipates that the testimony will be and why the testimony is material, relevant, and non-cumulative. In addition, with respect to AB, Respondent should explain the basis for his good faith belief that AB is subject to NASD jurisdiction.

The Hearing Officer hereby directs Respondent to supplement his request no later than January 20, 2006 to explain the material relevancy of the information and testimony requested to the allegations of the Complaint.

In supplementing his request, Respondent should also address the concerns cited in OHO Order 00-30 (C07000023).¹

SO ORDERED.

Sharon Witherspoon
Hearing Officer

Dated: Washington, DC
January 10, 2006

¹ OHO Order 00-30 (C07000023) is available at "www.nasd.com," "Regulatory Enforcement," "Adjudication," "Office of Hearing Officers Decisions and Proceedings," and "OHO Disciplinary Orders," and then 2000 Orders.