

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

DEPARTMENT OF ENFORCEMENT,	:	
	:	
	:	
Complainant,	:	Disciplinary Proceeding
	:	No. C9B970016
v.	:	
	:	Hearing Officer - DMF
	:	
	:	
Respondent.	:	

ORDER REGARDING PRODUCTION UNDER RULE 9251

During the pre-hearing conference held on January 21, 1998, the parties discussed the status of the Department of Enforcement's production of documents pursuant to Rule 9251. At the Hearing Officer's request, Enforcement thereafter filed a post-conference submission explaining in greater detail what materials it had disclosed to the Respondent, and what materials it had withheld. In his request for a hearing filed on January 29, 1998, Respondent acknowledged receipt of Enforcement's post-conference submission, and stated that he would submit a response "within the next 2 business days." Respondent has not, however, filed any such response.

Enforcement has provided to Respondent copies of documents from the examination file directly related to the charge that Respondent failed to appear for an on-the-record interview, in violation of Rule 8210. Enforcement acknowledges, however, that it has not produced documents relating to the broader investigation to which Respondent's interview related. Enforcement argues that the documents relating to the broader investigation are not relevant to

This order has been published by the NASDR Office of the Hearing Officers and should be cited as OHO Order 98-18 (C9B970016).

the charge in the Complaint; that many of the documents could be withheld from disclosure under Rule 9251(b); and that documents relating to the underlying investigation are not part of the “investigation that led to the institution of proceedings” under Rule 9251.

Under the particular circumstances of this case, the Hearing Officer agrees with Enforcement’s position. Based on the allegations in the Complaint and Respondent’s Answer, documents relating only to the underlying investigation are not relevant to the charge against Respondent in this proceeding. Accordingly, Enforcement need not produce those documents to the Respondent.¹

SO ORDERED

David M. FitzGerald
Hearing Officer

Dated: Washington, DC
February 17, 1998

¹ This is not to suggest that documents relating to an underlying investigation could never be subject to production under Rule 9251 in any case charging a violation of Rule 8210, but merely that those documents are not within the scope of Rule 9251 as the issues have been articulated and joined in this case.