This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 12-06 (2011026664301).

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. RESPONDENT 1, and RESPONDENT 2, Respondents.	Disciplinary Proceeding No. 2011026664301 Hearing Officer – MC

ORDER GRANTING IN PART AND DENYING IN PART THE DEPARTMENT OF ENFORCEMENT'S MOTION TO STRIKE THE ANSWER AND ORDER THE FILING OF A NEW ANSWER

On August 9, 2012, the Department of Enforcement filed the Complaint in this disciplinary proceeding. It charges Respondents 1 and 2, with violating MSRB Rules G-17 (Fair Dealing) and G-27 (Supervision). The Complaint alleges that Respondents violated their obligation to deal fairly with several client municipalities seeking credit ratings and bond insurance because Respondents improperly obtained reimbursement from the municipalities for expenses incurred during business trips to New York City for meetings with credit analysts and bond insurers.

On September 6, 2012, Respondents filed an Answer and Affirmative Defenses of Respondents and Request for Hearing ("Answer"). In their Answer, Respondents refer to four exhibits they attached to the Answer. On September 11, 2012, Enforcement filed a Motion to Strike the Answer and Order the Filing of a New Answer ("Motion to Strike"). In the Motion to

Strike, Enforcement argues that the exhibits attached to the Answer contain 10 "extraneous letters, affidavits, news articles, and memoranda" and are "Impertinent Documents." Citing FINRA Rules 9215 and 9136, Enforcement seeks an order (1) striking the exhibits and all references to them; (2) requiring Respondents to file a new Answer making no reference to the "Impertinent Documents;" and (3) "holding in abeyance" Enforcement's discovery obligations under FINRA Rule 9251 for an indeterminate period.

On September 25, 2012, Respondents filed a Response to the Motion to Strike ("Response"). In it, Respondents argue that the exhibits support Respondents' defenses. Respondents assert that three of the exhibits consist of letters from municipalities asserting that they were not treated unfairly and that they approved Respondents' reimbursement requests. Respondents argue that the fourth exhibit, consisting of correspondence with FINRA, supports their affirmative defense of estoppel and selective enforcement.

FINRA Rule 9136 addresses allegedly "impertinent matter" and the procedure for dealing with it:

> Any scandalous or impertinent matter contained in any brief, pleading, or other filing, or in connection with any oral presentation in a proceeding may be stricken on order of an Adjudicator.

"Scandalous" matter "casts a derogatory light on someone, usually a party to the action," and "impertinent" matter is "not responsive or relevant to the issues involved."[1]

In this case, Respondents' exhibits are neither scandalous nor impertinent. Respondents claim that they are "relevant to the defenses to be asserted by the Respondents in this proceeding."

[1] *Egan-Jones Rating Company*, 2012 SEC LEXIS 2204, at *4 (July 13, 2012), *quoting Donald T. Sheldon*, Administrative Proceedings Release No. 304, 1988 SEC LEXIS 5258, at *2 (July 22, 1988).

On their face, the exhibits appear to support the denials, admissions and defenses set forth in the Answer. This does not make them appropriate for inclusion as attachments to the Answer, however. As Enforcement notes, Respondents may seek to introduce them at the appropriate time as evidence supporting their defenses to the Complaint, subject to any objections Enforcement may assert.

For these reasons, Enforcement's Motion to Strike the exhibits Respondents attached to the Answer is granted. Striking the exhibits from the Answer does not, of course, preclude Respondents from seeking to introduce them at the hearing. In addition, the references to Exhibits 1, 2, and 3 in Paragraph 1 of Respondents' Answer are stricken,[2] as are the references to Exhibit 4 in the second and third sentences of Paragraph 66.

Enforcement's request to require Respondents to file a new Answer, for which Enforcement cites no supporting authority, is denied. In light of the ruling to strike the exhibits and references to them, this request is unnecessary.

Enforcement's request for a suspension of its discovery obligations under FINRA Rule 9251, for which Enforcement cites no rationale or authority, is also denied.

SO ORDERED.

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Matthew Campbell
Hearing Officer

October 23, 2012

[2] The stricken language in Paragraph 1 comprises the following: "Attached as Composite Exhibit 1 are letters from the three municipalities stating that"; "Attached as Composite Exhibit 2 are letters from bond counsel from two to the three municipalities stating"; and "Attached as Exhibit 3 is a letter from the undersigned counsel to FINRA's Office of Ombudsman complaining that".