

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

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DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondents.

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Disciplinary Proceeding  
No. C8A990015

Hearing Officer - Andrew H. Perkins

**HEARING PANEL ORDER GRANTING RESPONDENT'S  
MOTION FOR LEAVE TO INTRODUCE EXPERT WITNESS TESTIMONY**

Respondent \_\_\_\_\_ (\_\_\_\_\_) has moved for leave to introduce expert witness testimony at the hearing in this proceeding. The Department of Enforcement has opposed the motion. For the reasons set forth below, \_\_\_\_\_ motion is granted.

**I. Factual Background and the  
Proposed Expert Witness Testimony**

As to \_\_\_\_\_, the Complaint alleges that from in or about September 1993 through in or about July 1995 he “failed to enforce supervisory procedures and failed reasonably to supervise Respondent \_\_\_\_\_ with a view to achieving compliance with the NASD’s Free-Riding Interpretation.” (Compl. ¶ 8.) More specifically, the Complaint alleges that \_\_\_\_\_ failed to prevent Respondent \_\_\_\_\_ from effecting 19 trades in hot issues.

**This Order has been published by the NASDR Office of Hearing Officers and should be cited as OHO Order 99-11 (C8A990015).**

\_\_\_\_\_ seeks to offer expert witness testimony regarding \_\_\_\_\_ supervisory responsibilities while he was a manager of \_\_\_\_\_ and the steps he took to satisfy those responsibilities. More particularly, \_\_\_\_\_ proposes offering an expert witness to opine on the supervisory delegation needed to ensure that all areas of a Mega branch's business are adequately monitored and on the appropriate level of follow-up that is required in such circumstances. \_\_\_\_\_ anticipates that his proposed expert witness will testify that \_\_\_\_\_ satisfied the standards of reasonable supervision required of managers in the securities industry.

## **II. Ruling**

In support of its present motion, \_\_\_\_\_ argues that the charges levied against him concern supervision in the context of a technical and complex set of rules—the NASD's Free-Riding and Withholding Interpretation—for which there is little reported precedent. \_\_\_\_\_ further argues that his conduct must be considered in light of the complex organizational structure of the office he managed and the very broad scope of his responsibilities. He points out that at the time he supervised \_\_\_\_\_, which consisted of 125 registered representatives, a 50-person support staff, and a multi-layered team of management professionals. According to \_\_\_\_\_ motion, the office was one of the largest, if not the largest, retail branch office in the industry, which presented a unique set of circumstances from those faced by the typical branch manager. Enforcement argues in opposition that \_\_\_\_\_ has failed to demonstrate that the issues presented are so complex as to require the assistance of an expert. In essence, Enforcement argues that the Hearing Panelists have sufficient expertise to decide this case, and the testimony of an expert is unnecessary. Enforcement does not, however, challenge the qualifications of \_\_\_\_\_ proposed expert.

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Generally, in NASD disciplinary proceedings, because two of the three Hearing Panelists will have considerable expertise about the securities industry and industry practice, the use of expert witness testimony is far less necessary or routine than it may be in federal court proceedings. Typically, expert witness testimony is not offered in NASD disciplinary matters, unless novel issues or new, complex, or unusual securities products are involved. This is not to say, however, that expert witness testimony may never be appropriate in other circumstances. The fundamental question is whether the proposed testimony would assist the Hearing Panel in understanding the evidence or a fact at issue in the proceeding.

The use of expert witness testimony in this case presents a close question. The record is not sufficiently developed to determine if the proposed expert ultimately will prove helpful to the Hearing Panel. However, it does appear that the issues presented are not as simple as Enforcement suggests; therefore, the Hearing Panel is not prepared at this stage of the proceeding to preclude \_\_\_\_\_ from presenting expert testimony. As \_\_\_\_\_ points out in his motion, expert testimony on supervision issues is used frequently in SEC administrative actions. *See In re Qwest Capital Strategies*, Initial Dec. Rel. No. 141 (April 12, 1999) and *In re Steven Erik Johnson*, Admin. Proc. No. 3-7528, 1992 SEC LEXIS 1598 (June 23, 1992). Accordingly, the Hearing Panel concludes that it is appropriate to allow \_\_\_\_\_ to adduce expert witness testimony on the subjects he has identified. The industry members of the Hearing Panel of course will bring their own expertise to the matters at issue, and expert witness testimony will not substitute for the Hearing Panel's own analysis and evaluation of whether \_\_\_\_\_ reasonably performed his supervisory responsibilities.

\_\_\_\_\_ shall file a narrative summary of his expert's anticipated testimony, along with the underlying data supporting his opinions and conclusions, by July 1, 1999. \_\_\_\_\_ is further

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ordered to file a report by June 24, 1999, on the feasibility of presenting the expert's direct testimony by affidavit.

**SO ORDERED.**

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Andrew H. Perkins  
Hearing Officer  
For the Hearing Panel

Dated: Washington, DC  
June 17, 1999