

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
OFFICE OF HEARING OFFICERS**

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

CANTONE RESEARCH INC.  
(CRD No. 26314),

ANTHONY J. CANTONE  
(CRD No. 1066139),

and

RAYMOND J. DEROBIO  
(CRD No. 1092310),

Respondents.

Disciplinary Proceeding  
No. 2017055886402

Hearing Officer–LOM

**ORDER SUSTAINING ONE OF RESPONDENTS' OBJECTIONS  
TO THE DEPARTMENT OF ENFORCEMENT'S PROPOSED EXHIBITS  
AND OVERRULING OTHER OBJECTIONS**

This case involves two separate municipal bond offerings. One is referred to here as the Quad Cities offering, which closed in 2013 and financed the acquisition and rehabilitation of a college dormitory in Illinois. The other is referred to as the Montgomery offering, which closed in 2015 and financed the acquisition, rehabilitation, and operation of an assisted living facility in Alabama. Respondent Cantone Research Inc. ("CRI" or the "Firm") was the underwriter for the offerings. Respondents Anthony J. Cantone and Raymond J. DeRobbio worked on the offerings and sold the bonds in the initial offerings and secondary market. An Order issued contemporaneously with this one more fully describes the nature of the case.<sup>1</sup>

Prior to the hearing in this matter, the Department of Enforcement and Respondents submitted proposed exhibits. Respondents objected to certain of Enforcement's exhibits. Respondents' objections focused entirely on exhibits relating to the 2015 Montgomery bond

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<sup>1</sup> See Order Rejecting Respondents' Pre-Hearing Objections to Enforcement's Proposed Witnesses and Denying Respondents' Motion in Limine (Feb. 21, 2023).

offering. For the reasons discussed below, I sustain one of Respondents' objections and overrule the others.

These rulings are governed by FINRA Rule 9263, which provides that a Hearing Officer "may exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial."<sup>2</sup> Hearing Officers apply this rule while exercising the broad authority granted by FINRA Rule 9235 "to do all things necessary and appropriate to discharge [their] duties," which duties include "regulating the course of the hearing." Under these rules, a Hearing Officer has "broad discretion" to admit or reject any evidence offered by a party.<sup>3</sup> The standard for precluding evidence prior to the hearing is a high one. "A Hearing Officer should grant such pre-hearing motions only if the evidence at issue is clearly inadmissible for any purpose."<sup>4</sup> Adjudicators generally prefer to resolve questions of admissibility as they arise at a hearing.<sup>5</sup>

### **CX-8, CX-9, CX-13, and CX-16**

CX-8, CX-9, CX-13, and CX-16 are charts collecting information about some of the people involved with the 2015 Montgomery bond offering. Enforcement says that the charts summarize a voluminous amount of information.

CX-8 summarizes information about offerings between 2003 and 2009 that involved Christopher Brogdon and CRI. CRI was the underwriter or remarketing agent for all those offerings. The chart includes a 2004 municipal bond offering that enabled Brogdon to acquire the Montgomery assisted living facility involved in this case.

CX-9 shows that the same appraiser was used in five municipal bond offerings relating to Brogdon's properties. One of the properties on the list is the assisted living facility involved in the 2015 Montgomery bond offering. CRI was the underwriter for that offering and for another municipal bond offering on the list.

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<sup>2</sup> *Dep't of Enforcement v. Brookstone Sec., Inc.*, No. 2007011413501, 2015 FINRA Discip. LEXIS 3, at \*110 (NAC Apr. 16, 2015).

<sup>3</sup> OHO Order 22-13 (2019061528001) (OHO July 14, 2022), at 2–3, *available at* <https://www.finra.org/sites/default/files/2022-08/22-13-Order-Denying-the-Parties-Motions-in-Limine.pdf>. *See also Dep't of Enforcement v. Ghosh*, No. 2016051615301, 2021 FINRA Discip. LEXIS 32, at \*41 (NAC Dec. 16, 2021); *Dep't of Enforcement v. Reyes*, No. 2016051493704, 2021 FINRA Discip. LEXIS 29, at \*58 (NAC Oct. 7, 2021).

<sup>4</sup> OHO Order 18-09 (2014039775501) (May 2, 2018), at 4, [http://www.finra.org/sites/default/files/OHO\\_Order\\_18-09\\_2014039775501.pdf](http://www.finra.org/sites/default/files/OHO_Order_18-09_2014039775501.pdf); OHO Order 16-18 (2014043020901) (May 24, 2016), at 2, *available at* <https://www.finra.org/sites/default/files/OHO-Order-16-18-2014043020901.pdf> ("A Hearing Officer should grant such motions only if the evidence at issue is clearly inadmissible for any purpose.") (quoting OHO Order 16-04 (2012033393401) (Feb. 3, 2016), at 2, *available at* [http://www.finra.org/sites/default/files/OHO\\_Order16-04\\_2012033393401.pdf](http://www.finra.org/sites/default/files/OHO_Order16-04_2012033393401.pdf)). (citing *Miller UK Ltd. v. Caterpillar, Inc.*, No. 10-cv-03770, 2015 U.S. Dist. LEXIS 156874, at \*5 (N.D. Ill. Nov. 20, 2015))).

<sup>5</sup> OHO Order 22-01 (2018057235801) (Jan. 12, 2022), at 11, *available at* <https://www.finra.org/sites/default/files/2022-05/22-01-Order-Omnibus-Order-on-Pre-Hearing-Motions-and-Objections.pdf>.

CX-13 summarizes private placements that involved Brogden and were underwritten by CRI. They span from December 2008 through April 2012, before the 2015 Montgomery offering closed. The chart appears to show that Brogden was involved in multiple private placements that ended in default. One of those private placements that ended in default was a 2011 private placement that provided additional financing to the Montgomery assisted living facility involved in this case.

CX-16 collects information about municipal bond offerings involving Brogden and Dwayne Edwards. Edwards is the person who took charge of the Montgomery assisted living facility after Brogden. The 2015 Montgomery offering involved in this case provided Edwards with the financing to acquire the facility. CRI was also involved in another offering listed in the exhibit.

Respondents object to these exhibits. They assert that this case is not about Brogden. While it is true that Brogden is not the center of this case, Enforcement argues that Respondents' relationship and experience with him are relevant. Enforcement appears to argue that Respondents' long history with Brogden and his professional advisors gave Respondents knowledge of facts that should have been disclosed to investors in connection with the 2015 Montgomery offering. Enforcement also appears to suggest that there is a history of relationships between Brogden and others involved in the Montgomery offering at issue, and that history bears on the extent and sufficiency of Respondents' due diligence.

I find Enforcement's statement of purpose for some of these exhibits vague. I also notice that Enforcement's pre-hearing brief does not discuss the appraiser or other offerings referred to in the charts. It may be that these exhibits are too peripheral to the issues in the case to be relevant. On the other hand, I cannot say with certainty that these exhibits are irrelevant or inadmissible for any purpose. I do not preclude Enforcement from offering these exhibits at the hearing.

#### **CX-41**

CX-41 contains a notice from FINRA staff to CRI, Respondent Anthony Cantone, and Christine Cantone, telling them of a preliminary determination to recommend disciplinary action. The exhibit also contains what is called a "Wells submission" arguing against disciplinary action. The potential disciplinary action involved in that correspondence concerns a different matter.

Enforcement argues that the exhibit is relevant to this case for two reasons. First, it says that Respondents CRI and Anthony Cantone made admissions in the Wells submission relevant to the assisted living project in Alabama. Enforcement does not identify those admissions. Second, Enforcement says that the exhibit shows that Respondents were on notice of certain regulatory concerns prior to marketing and selling the Montgomery bonds on the secondary market and those regulatory concerns should have been disclosed to investors. Enforcement asserts that the exhibit is also relevant to sanctions. Although the connection of this

exhibit to the case at hand is still unclear, I cannot say at this point that the exhibit is irrelevant or inadmissible for any purpose. I will not preclude Enforcement from offering it.

#### **CX-44**

CX-44 is a complaint filed by the Securities and Exchange Commission against Brogdon and certain relief defendants on November 20, 2015, shortly after the closing of the 2015 Montgomery municipal bond offering in this case. The SEC complaint charges Brogdon with fraud in connection with 54 municipal bond and private placement transactions, beginning in 1992. According to the complaint, in his fraud, Brogdon used 43 entities to raise over \$190 million.

Respondents contend that the proceeding against Brogdon is irrelevant. Enforcement asserts that the complaint provides relevant background regarding prior failed offerings, a loan Respondent Cantone made to Brogdon, and Respondents' potential motive for its misconduct in connection with the Montgomery offering. Respondents have failed to show the document is inadmissible for any purpose. I will not preclude Enforcement from offering it.

#### **CX-45**

CX-45 is a press release issued by the SEC about the filing of its complaint against Brogdon. It is simply a news report on the SEC complaint against Brogdon. It does not add anything to the complaint itself and would be cumulative. CX-45 is **EXCLUDED**.

#### **CX-92**

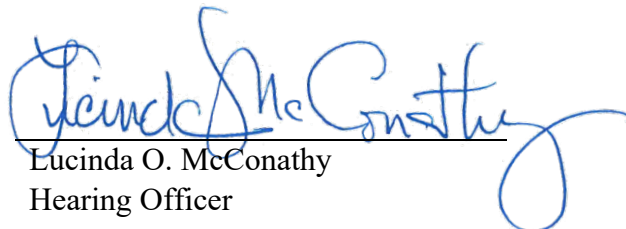
CX-92 is a February 2013 email from Respondent Cantone to Brogdon. The email suggests that Brogdon was in financial difficulty and Cantone knew it. It appears that Cantone was trying to work out some extensions of time in connection with various offerings to give Brogdon some ability to meet his payment obligations. Cantone "warned" Brogdon that if he defaulted on his obligations in connection with the Montgomery assisted living facility and another project, then Cantone would have no choice but to take Brogdon to court "to enforce your personal guarantee."

Respondents assert that this document is irrelevant. Enforcement asserts that it reflects the nature of Cantone's relationship with Brogdon and reveals that Cantone knew about the poor financial performance of the assisted living facility prior to the Montgomery offering at issue.

What Cantone knew about the financial viability of the Montgomery assisted living facility is relevant to the issues in this case. I will not preclude Enforcement from offering this exhibit.

To summarize, Respondents' objection to CX-45 is sustained, and CX-45 is **EXCLUDED**. Respondents' objections to the other exhibits discussed above are overruled. Enforcement will not be precluded from offering those other exhibits.

**SO ORDERED.**

  
Lucinda O. McConathy  
Hearing Officer

Dated: February 21, 2023

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