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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

RESPONDENT,

Respondent.

Disciplinary Proceeding
No. 2010020846601

Hearing Officer – RLP

**ORDER GRANTING ENFORCEMENT'S MOTION TO OFFER
EXPERT WITNESS TESTIMONY AND
RESPONDENT'S MOTION TO ALLOW EXPERT TESTIMONY**

On October 19, 2012, the Department of Enforcement filed a Motion for Leave to Offer Expert Testimony and Respondent filed a Motion to Allow Expert Testimony. For the reasons set forth below, both motions are granted.¹

I. INTRODUCTION

Hearing Officers have broad discretion to accept expert testimony where the expert is qualified to give expert testimony on the specified topics and the evidence meets the standard set forth in FINRA Rule 9263. Rule 9263 provides that relevant evidence may be admitted but that "irrelevant, immaterial, unduly repetitious, or unduly prejudicial" evidence may be excluded.²

¹ In its motion, Respondent sought leave to have two witnesses testify as experts. During a conference held on November 9, 2012, however, Respondent withdrew its request with respect to one of the proposed witnesses. Accordingly, this order concerns only the remaining witness.

² OHO Order 12-01 (2009018771602) (Mar. 14, 2012) at 2-4.

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In determining whether to permit expert testimony, it is appropriate to look to Federal Rule of Evidence 702 for guidance.³ That Rule specifies that a witness who is “qualified as an expert by knowledge, skill, experience, training, or education” may give opinion testimony if his or her “specialized knowledge will help the trier of fact” and the testimony meets certain measures of reliability. Of these criteria, the overarching and critical factor is whether the proposed testimony would be helpful to the Hearing Panel.⁴

This proceeding involves the adequacy of Respondent’s Anti-Money Laundering Program (“AML”) in, among other areas, collecting and verifying customer identifying information for delivery-versus-payment (“DVP”) accounts; identifying foreign bank accounts; obtaining foreign bank certifications; and formulating written compliance procedures. Accordingly, if a proposed witness is qualified to give expert testimony about these matters and his testimony will assist the Hearing Panel in resolving the issues before it, the witness’ testimony should be admitted.

II. ENFORCEMENT’S MOTION

Enforcement proffers the testimony of Joseph F. Hanvey concerning the laws and regulations governing AML programs and written procedures, as well as the adequacy of Respondent’s program and written procedures. Because Mr. Hanvey is qualified as an expert and his testimony would be helpful to the Hearing Panel, he may testify as an expert.

Mr. Hanvey is well qualified to deliver testimony about AML-related matters. As set forth in the materials supporting Enforcement’s motion, Mr. Hanvey has devoted much of his

³ FINRA Rule 9145(a) specifies that the Federal Rules of Evidence do not apply in FINRA disciplinary proceedings, but the Federal Rules of Evidence and case law analyzing issues arising under them can provide helpful guidance. *See* OHO Order 11-04 (2009017798201) (Mar. 24, 2011) at 3-4.

⁴ *See* OHO Order 12-01 at 2-4.

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career to the study and implementation of AML programs. As a compliance examiner with NASD early in his career, Mr. Hanvey led joint SEC, NYSE, and NASD AML on-site examinations of broker-dealers. Thereafter, he served as AML Compliance Officer for BNY Brokerage, Associate Director of AML Compliance for ABN AMRO, Head of U.S. AML for CIBC World Markets Corporation, and Head of AML for the Americas for Nomura Securities International, Inc. At present, he is a senior manager with Deloitte Financial Advisory Services LLP, focusing on, among other things, AML, Bank Secrecy Act, and Office of Foreign Assets Control compliance. He also is a lecturer and instructor on these topics.

Mr. Hanvey's testimony will be helpful to the Hearing Panel. It will assist the Hearing Panel in understanding pertinent legal and regulatory requirements and the reasonable steps firms should take to comply with those requirements. Accordingly, Enforcement's motion is granted.

III. RESPONDENT'S MOTION

Respondent proffers the testimony of Peter G. Djinis. As set forth below, Respondent's motion is granted given Mr. Djinis' expertise and the nature of his proposed testimony. According to Respondent's submission, Mr. Djinis would testify about the origins, development, objectives, and applicability of AML laws, including requirements relating to foreign banks and DVP accounts, as well as the reasonableness of Respondent's AML policies and procedures in light of those requirements.

Mr. Djinis, like Mr. Hanvey, is well qualified to give expert testimony about these matters. Earlier in his career, Mr. Djinis served as Executive Assistant Director for Regulatory Policy for the Treasury Department's Financial Crimes Enforcement Network and was responsible for establishing regulatory policy and overseeing all aspects of Bank Secrecy Act compliance by U.S. financial institutions. In that position, he helped develop AML legal

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requirements and controls, both in the U.S. and abroad. Currently, he provides compliance guidance to the financial services community and is a frequent lecturer on AML compliance matters. He also has qualified as an AML expert in numerous court and regulatory proceedings and has written two reference books on the topic.

Having previously determined that Mr. Hanvey's testimony—on matters similar to those Mr. Djinis will address—will be helpful to the Hearing Panel, the Hearing Officer makes the same finding with respect to Mr. Djinis' testimony. Accordingly, the Hearing Officer grants Respondent's motion insofar as Mr. Djinis' testimony is concerned.

IV. CONCLUSION

Enforcement's Motion for Leave to Offer Expert Testimony is granted and Mr. Hanvey will be permitted to testify as an expert. Respondent's Motion to Allow Expert Testimony also is granted and Mr. Djinis will be permitted to testify as an expert. The parties shall file and serve their expert reports on December 30, 2012. In addition, on December 30, 2012, each party shall file a statement of its expert's qualifications; a listing of other proceedings in which the expert has given expert testimony; a listing of the expert's publications; and copies of those publications that are not readily available to the other party and the Hearing Panel, as required by Rule 9242(a)(5). Failure to strictly comply with the requirements of Rule 9242(a)(5) may result in the exclusion of the proffered expert testimony.

Each expert report shall state all opinions the expert will deliver in testimony and the bases for each opinion. The report shall be considered part of the expert's direct testimony when offered at the hearing. The report shall clearly identify the data or information the information the expert considered in forming the opinions contained in the report. Documents relied upon by the expert shall be filed and served with the expert report, or, if such documents are part of the

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pre-hearing submissions, they should be clearly identified for the Hearing Panel as part of the basis for the expert's opinion. Any objections or motions relating to the reports shall be due on February 12, 2013, and any responses shall be due on February 19, 2013.

SO ORDERED.

Rada Lynn Potts
Hearing Officer

Dated: November 9, 2012
Washington, D.C.