FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. WINDSOR STREET CAPITAL, LP, f/k/a MEYERS ASSOCIATES, L.P. (CRD No. 34171), BRUCE MEYERS (CRD No. 1045447), IMTIAZ (RAANA) KHAN (CRD No. 4084250), ARTHUR TACOPINO (CRD No. 2455892), and EDWIN RODRIGUEZ (CRD No. 4710962), Respondents.	Disciplinary Proceeding No. 2016048912703 Hearing Officer—DW

ORDER DENYING BRUCE MEYERS' MOTION TO COMPEL

A. Background

The Complaint in this matter alleges two separate fraudulent schemes at Respondent Windsor Street Capital, L.P. between January 2013 and March 2016. The first scheme involves a broker at the firm who allegedly allocated certain profitable day trades to favored accounts as well as his personal account in a fraudulent manner. The second scheme involves Windsor Street Capital, LP's fraudulent and excessive markups on customer trades.

The majority of the Complaint's allegations do not directly allege violations against Respondent Bruce Meyers. The Complaint does allege that Meyers failed to establish and maintain supervisory procedures adequate to prevent the alleged fraudulent misconduct from occurring. The Complaint sets out a number of other claimed violations by Windsor Street and

other Respondents, including failure to supervise, failure to implement adequate AML policies, failure to maintain required books and records, and failure to timely produce documents and information requested by FINRA. Meyers also allegedly engaged in certain outside business activities without providing prior written notice to the firm.

After filing the case, the Department of Enforcement ("Enforcement") produced its investigative file pursuant to FINRA Rule 9251. Respondent Bruce Meyers now moves to compel Enforcement to supplement this production with an index to the produced materials; or in the alternative, a list of documents that Enforcement will rely on specifically as to the allegations against Meyers.

B. Meyers Is Not Entitled to an Index

FINRA Rule 9251(a) requires Enforcement to permit respondents to inspect and copy non-privileged "documents prepared or obtained by Interested FINRA Staff in connection with the investigation that led to the institution of proceedings."[1] Meyers agrees that Enforcement has completed its production pursuant to Rule 9251. Respondent Meyers contends that because the production contains nearly a million documents and lacks any cognizable organization, Enforcement should be required to provide him an index identifying the various materials produced. Or, in the alternative, Meyers asks for an order directing Enforcement to produce or identify those documents that Enforcement intends to rely upon to prove the Complaint's Meyers-specific claims. Enforcement argues that no index or supplemental production is warranted, because the production comported with the requirements of Rule 9251 and Enforcement cannot—and should not— determine for Meyers which of those materials might be relevant to the claims against him.[2]

I agree with Enforcement. As an initial matter, the language of Rule 9251 does not require Enforcement to index materials subject to production in this proceeding.[3] Meyers relies upon New York state court decisions for the proposition that an index should be required, but those authorities merely enforce compliance with a discovery rule that requires responding parties to either produce documents as they are "kept in the regular course of business" or

[1] The term "Interested FINRA Staff" is defined in FINRA Rule 9120(t)(1).

[2] Enforcement also contends that Meyers failed to adequately meet and confer before filing his motion. While Meyers' motion does not certify that he met and conferred with Enforcement before seeking relief, my review of email correspondence exhibited with his motion reflects that Meyers did request an index, and that request appears to have been denied. While I do not deny the motion for failure to meet and confer, I strongly encourage the parties to make genuine and substantial efforts to resolve disputes informally before seeking relief.

[3] OHO Order 98-20 (CAF970002) (Feb. 25, 1998), at 7 (denying request to compel "the Department of Enforcement to index, categorize, segregate, label, or otherwise identify the documents so that the movants can ascertain the witness or witnesses to whom each document relates"), http://www.finra.org/sites/default/files/OHODecision/p007753_0_0_0_0.pdf.

organized and labeled "to correspond to the categories in the [requesting party's] demands."[4] Rule 9251 contains no such organizational requirement.

And Meyers makes no adequate showing of good cause for an index or otherwise demonstrate that the circumstances of the production failed to comport with fundamental fairness.[5] He points only to the time that it will take him to review the materials, estimating that it will take counsel 186 days to individually review the documents. Meyers complains that "the documents are NOT organized in any fashion that would enable us to expedite review."[6]

But Enforcement explains that its production is organized, divided largely by responsive productions from Meyers and his former firm, Windsor Street.[7] More importantly, Meyers does not contest Enforcement's claim that the vast majority of the materials, including email communications, are searchable, electronically stored information.[8] If there is some reason that Meyers needs to conduct a manual review of searchable, electronically stored information, it is not mentioned in his motion. Where electronic materials are searchable, Respondents are presumably able to conduct a "quick and thorough search" of even voluminous materials to "home in on the documents that they need to prepare for the hearing."[9]

And I find no unfairness in requiring Meyers to conduct his own review of the materials given that it appears from Enforcement's descriptions that many of the documents now at issue came from Windsor Street—Meyers' own firm.[10] Fundamental fairness does not require Enforcement to index and sort Meyers' own records for him.[11]

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[4] *See H.P.S. Mgmt. Co., Inc. v. St. Paul Surplus Lines Ins. Co.*, 127 A.D.3d 1018, 2015 N.Y. App. Div. LEXIS 3290, at *2 (2d Dep't Apr. 22, 2015) (interpreting CPLR 3122(c); *Scialdone v. Stepping Stones, Assoc., L.P.*, 2013 N.Y. Misc. LEXIS 7108, at *6 (Sup. Ct. Westchester County Jan. 30, 2013) (same).

[5] *See* OHO Order 00-24 (C3A990071) (Aug. 28, 2000), at 5-7 ("The fact that the subject correspondence does not fall within one of the enumerated categories does not axiomatically mean that the documents are shielded from production upon reasonable request where fundamental fairness or the efficient administration of the proceeding requires disclosure."), http://www.finra.org/sites/default/files/OHODecision/p007930_0_0.pdf.

[6] Motion to Compel DOE to Provide Index to Document Production, at 3.

[7] Department of Enforcement's Opposition to Respondent Bruce Meyer's Motion to Compel ("Enforcement's Opposition"), at 5-7.

[8] Enforcement's Opposition, at 7-8.

[9] *John Thomas Capital Mgmt. Grp. LLC*, Exchange Act Release No. 71021, 2013 SEC LEXIS 3860, at *22-23 n.37 (Dec. 6, 2013); *Ironridge Global Partners, LLC*, Admin. Proc. Release No. 3060, 2015 SEC LEXIS 3437, at *7-8 (Aug. 20, 2015) (rejecting claim that Division of Enforcement "buried its evidence in a document dump of 43,000 documents"—"although Respondents say reviewing PDF versions of the evidence is difficult . . . they do not actually claim that the evidence cannot be searched using available software designed for such purpose or that the scanned documents cannot be rendered into a searchable format.").

[10] In his Answer, Meyers admits that he was CEO of Windsor Street during relevant periods.

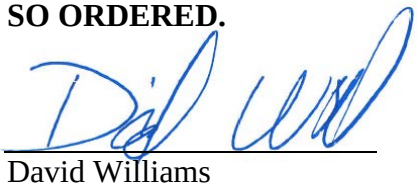
[11] *See U.S. v. Warshak*, 631 F.3d 266, 296 (6th Cir. 2010) (government need not provide an index to discovery materials obtained from defendants themselves. "[T]he overwhelming majority of the discovery at issue was taken directly from [defendants' corporate] computers, which means the defendants had ready access to that information.

There is no basis for ordering an index. To the extent that Meyers requests that Enforcement identify those documents that it intends to use to support its claims at the hearing, he will receive those materials at the time provided by the Scheduling Order for the exchange of hearing exhibits.[12]

C. Conclusion

For the reasons explained above, Respondent Meyers' Motion to Compel is **DENIED**.

SO ORDERED.



David Williams
Hearing Officer

Dated: October 8, 2018

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It also means that the defendants had access to the documents 'as they [were] kept in the usual course of business.'").

[12] Although Meyers seeks only those materials relevant to the claims against him, Enforcement is not required to marshal its evidence supporting specific claims. OHO Order 01-04, (CAF000045) (Feb. 14, 2001), at 16 ("Other than filing a motion for a more definite statement, the Respondents have no right to ask Enforcement to disclose its proof on each charge."); http://www.finra.org/sites/default/files/OHODecision/p007896_0_0_0_0.pdf; *and see Ironridge Global Partners, LLC*, 2015 SEC LEXIS 3437, at *5-8 (quashing subpoena seeking documents supporting claim against specific respondent).