

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MICHAEL JOSEPH CLARKE
(CRD No. 1078211),

Respondent.

Disciplinary Proceeding
No. 2016050938301

Hearing Officer-RES

**ORDER GRANTING DEPARTMENT OF ENFORCEMENT'S UNOPPOSED MOTION
FOR LEAVE TO AMEND ITS EXHIBIT LIST**


The hearing in this disciplinary proceeding is scheduled to begin February 5, 2019 and last four days. The Complaint charges Respondent Michael Clarke with violating FINRA Rule 2010 by allegedly converting funds, misrepresenting facts, writing bad checks, and making electronic funds transfers that failed to clear because of insufficient funds. In his Answer, Respondent denies he violated any FINRA Rule. The Department of Enforcement has filed a motion ("Motion") for leave to amend its exhibit list to add, as a new exhibit CX-20, a check allegedly provided by Respondent in repayment of a loan. Enforcement has discussed the Motion with Respondent, who does not oppose it.

FINRA Rule 9261 allows the parties, for good cause shown, to seek the submission of additional evidence "as the Hearing Officer, in his or her discretion, determines may be relevant and necessary for a complete record." Enforcement demonstrates good cause for the late submission of CX-20 because it did not learn of and obtain the exhibit until within the last week. Enforcement contends the exhibit is relevant and necessary for a complete record because it is equivalent to a bad check, similar to the alleged bad checks for which Respondent is charged in the Complaint.¹

¹ Evidence of misconduct that is not alleged in a FINRA complaint, but is similar to the alleged misconduct, is admissible to determine sanctions. *Dep't of Enforcement v. Ahmed*, No. 2012034211301, 2015 FINRA Discip. LEXIS 45, at *121 n.107 (NAC Sept. 25, 2015).

Therefore, for good cause shown, the Motion is granted. Enforcement has leave to add CX-20 and file an amended exhibit list.

SO ORDERED.



Richard E. Simpson
Hearing Officer

Dated: January 9, 2019

Copies to:

Stefan Savic, Esq. (via email and first-class mail)
Melissa K. DePetris, Esq. (via email and first-class mail)
Colleen O'Loughlin, Esq. (via email)
Savvas A. Foukas, Esq. (via email)
Lara Thyagarajan, Esq. (via email)