

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

THOMAS JOHN LYKOS, JR.  
(CRD No. 2017220),

Respondent.

Disciplinary Proceeding  
No. 2018059510201

Hearing Officer–DDM

**CASE MANAGEMENT AND SCHEDULING ORDER**

The Hearing Officer held the Initial Pre-Hearing Conference on October 30, 2019, in accordance with FINRA Rule 9241. This Order sets the schedule and other requirements for this proceeding.<sup>1</sup>

If the parties have any questions about this Order or the conduct of this proceeding, or wish to schedule a pre-hearing conference, they should contact the Case Administrator assigned to this proceeding, April Blackwood, who can be reached at 202-728-8202 or [April.Blackwood@FINRA.org](mailto:April.Blackwood@FINRA.org).

**I. Hearing and Final Pre-Hearing Conference**

**A. Hearing**

The Hearing Officer grants Respondent's request for a hearing.<sup>2</sup> The hearing shall be on January 28 – 30, 2020, in Houston, TX. The parties will be notified of the exact time and location of the hearing in a subsequent notice.

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<sup>1</sup> The parties also should consult the Series 9000 Rules of FINRA's Code of Procedure, which are available at [www.finra.org/industry/finra-rules](http://www.finra.org/industry/finra-rules).

<sup>2</sup> If Respondent subsequently withdraws his request for hearing, the Hearing Officer may order the Complaint to be set for hearing pursuant to FINRA Rule 9221(b).

## **B. Final Pre-Hearing Conference**

The Final Pre-Hearing Conference shall be held by telephone at 2:00 p.m. Eastern Time on January 21, 2020. The parties will be notified of the procedures for participating in the final pre-hearing conference in a subsequent notice.

## **II. Schedule**

<b>Date</b>	<b>Activity</b>
November 22, 2019	Deadline for the Department of Enforcement to complete production of documents for inspection and copying under Rule 9251.
December 6, 2019	Deadline for Respondent to file motions concerning Enforcement's production of documents under Rule 9251.  Deadline for Enforcement to issue requests for information under Rule 8210 (other than attendance of witnesses at the hearing).
December 13, 2019	Deadline for Enforcement to file oppositions to motions concerning its production of documents under Rule 9251.  Deadline for Respondent to request production of documents under Rule 9252.
December 20, 2019	Deadline for Enforcement to respond to Rule 9252 requests.  Deadline for parties to file motions for summary disposition under Rule 9264.
December 30, 2019	Deadline for parties to file oppositions to motions for summary disposition.  Deadline for the parties to exchange (but not file with the Office of Hearing Officers) proposed witness and exhibit lists.  Deadline for the parties to exchange (but not file with the Office of Hearing Officers) proposed stipulations to relevant and undisputed facts, including the authenticity, content, and admissibility of specified documents.

<b>Date</b>	<b>Activity</b>
January 7, 2020	<p>Deadline for the parties to file and serve the following pre-hearing submissions in accordance with Rule 9242 and the requirements of this Order:<sup>3</sup></p> <ul style="list-style-type: none"> <li>• pre-hearing briefs;</li> <li>• witness lists;</li> <li>• exhibit lists, including a list of joint exhibits;</li> <li>• copies of proposed exhibits marked for identification; and</li> <li>• stipulations.</li> </ul> <p>Deadline for the parties to file all other pre-hearing motions, including motions for permission to present testimony by telephone or videoconference and motions in limine.</p>
January 13, 2020	<p>Deadline for the parties to file objections to proposed witnesses and exhibits.</p> <p>Deadline for the parties to file and serve oppositions to all other pre-hearing motions.</p>
January 17, 2020	Deadline for the parties to file responses to objections to proposed witnesses and exhibits.
January 21, 2020	Final Pre-Hearing Conference at 2:00 p.m. Eastern Time.
January 28 – 30, 2020	Hearing in Houston, TX.

### **III. Discovery Obligations**

FINRA’s Rule 9250 series governs discovery. It includes three rules: 9251, 9252, and 9253.

*Rule 9251—Inspection and Copying of Documents in Possession of Staff*

Rule 9251(a)(1) addresses discovery of documents prepared or obtained before the filing of a complaint. Pursuant to Rule 9251(a), Enforcement is obligated to allow respondents to inspect and copy non-privileged documents prepared or obtained by “Interested FINRA Staff in

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<sup>3</sup> Filings that do not comply with the requirements set forth in this Order may be rejected.

connection with the investigation that led to the institution of proceedings.”<sup>4</sup> Rule 9251(a)(1) does not contain a relevance or materiality requirement.

A separate rule deals with the production of a category of documents obtained post-complaint. Under Rule 9251(a)(2), Enforcement must make available for inspection and copying any documents “material and relevant to the disciplinary proceeding in which such Respondent is a Party” obtained in response to a post-complaint FINRA Rule 8210 request “issued under the same investigative file number under which the investigation leading to the institution of disciplinary proceedings was conducted.”

In accordance with Rule 9251, and subject to the following conditions, Enforcement is required to make available to Respondent for inspection and copying all documents material and relevant to this proceeding that were received by Interested FINRA Staff (1) after the filing of the Complaint and (2) in connection with this proceeding. Such documents shall be produced as follows:

- Any such documents received by Interested FINRA Staff as of the date of this Order shall be made available to Respondent at the same time as documents prepared or obtained by Interested FINRA Staff in connection with the investigation that led to the institution of this proceeding.
- If Interested FINRA Staff receives any such documents after the date of this Order, Enforcement shall make them available to Respondent not later than 14 days after Interested FINRA Staff receives them, and not less than ten days before the hearing on the merits is scheduled to begin. If Interested FINRA Staff receives such documents ten days or fewer before the hearing is scheduled to begin or after the hearing begins, Enforcement shall make the additional documents available to Respondent immediately.
- Enforcement may withhold from production any documents that fall within the categories enumerated in Rule 9251(b), except as limited by Rule 9251(b)(3), as referenced below.
- If Enforcement wants to withhold documents that do not fall within Rule 9251(b), it must seek and obtain prior leave from the Hearing Officer. Leave will be granted only upon a showing of good cause. Filing such a request for leave shall stay until further order Enforcement’s production obligations under this Order.

Notwithstanding Enforcement’s obligation under Rule 9251(a), Enforcement may withhold any documents protected by Rules 9251(b)(1) and (b)(2), which include the following:

- documents subject to attorney-client privilege;

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<sup>4</sup> The term “Interested FINRA Staff” is defined in FINRA Rule 9120(t).

- attorney work product;
- internal reports, memoranda, notes, and other writings prepared by FINRA staff that shall not be offered as evidence;
- documents that would reveal an enforcement technique or guideline, the identity of a source, or an action under consideration by a regulator; and
- documents prohibited from disclosure by federal law.

Enforcement's ability to withhold otherwise discoverable documents is limited by Rule 9251(b)(3), which requires Enforcement to produce any document it withheld if it contains material exculpatory evidence.

#### *Rule 9252—Requests for Information*

Under Rule 9252, a respondent may request that the Hearing Officer order Enforcement to invoke Rule 8210 to compel the production of documents or testimony from entities or individuals that are subject to FINRA's jurisdiction. Rule 9252(a) states that the request must describe with specificity the testimony or documents sought; why the testimony or documents are material; and the requesting party's previous good faith efforts to obtain the testimony or documents through other means. The request must also state whether the person requested to testify or the person in possession of the documents is subject to FINRA's jurisdiction.

Rule 9252(b) provides that the Hearing Officer may grant such a request only upon a showing that the information sought is relevant, material, and non-cumulative; the respondent has previously attempted to obtain the documents or testimony through other means, but has been unsuccessful; and the person from whom the documents or testimony are sought is subject to FINRA's jurisdiction. Rule 9252(c) gives the Hearing Officer the authority to impose conditions and limitations on the request if it is "unreasonable, oppressive, excessive in scope or unduly burdensome."

Consistent with this Order's requirement for parties to meet and confer before filing motions, as set forth in Part IV(D) below, Respondent must confer with Enforcement regarding discovery materials before filing Rule 9252 requests. If Enforcement agrees to issue Rule 8210 request letters, Respondent need not file a Rule 9252 request with the Office of Hearing Officers.

#### *Rule 9253—Production of Witness Statements*

Rule 9253 requires Enforcement to produce certain types of witness statements. Rule 9253(a)(1) requires Enforcement to produce any document containing a substantially verbatim transcription of a statement made by a potential witness where the transcription was made contemporaneously with the making of the statement. Rule 9253(a)(2) requires Enforcement to produce a contemporaneously written statement made by Interested FINRA Staff during a routine exam or inspection about the substance of oral statements made by a non-FINRA person

if either person testifies as a witness and the statement for which production is sought directly relates to that person's testimony.

Because Rule 9253 relates solely to witness statements, discovery motions under this Rule should be filed shortly after the parties submit proposed witness lists as part of their pre-hearing submissions, as described in Part VI below. See Part II above for the deadline specific to this case.

#### **IV. General Requirements for Motions and Other Papers**

##### **A. Method of Filing and Service**

All papers shall be served and filed by email unless a party lacks the capability to send and receive emails or the filing exceeds 80 pages in length. All papers filed by email shall be sent in Portable Document Format (PDF) to OHOCasFilings@FINRA.org.

Documents that are filed by email must be received by 11:59 p.m. (Eastern Time) on the due date.<sup>5</sup> The subject line of the email shall include the case name and the title of the filing. The Office of Hearing Officers' electronic filing system will generate a confirmation of receipt.

If the papers to be filed either exceed the size limit for filing by email or a party lacks the capability to file papers by email, the papers shall be filed by first-class mail or one of the other methods specified in Rule 9134.

##### **B. Signatures on Documents Filed in PDF Format**

A document filed by email that is dated and has a scanned image of a handwritten signature shall satisfy the requirements of Rule 9136(b) and shall be deemed to have been signed by the party, the party's attorney, or the party's authorized representative for all purposes under Rule 9137.

Unless otherwise ordered by the Hearing Officer, the filing party shall maintain all original signed documents filed by email until final disposition of the case and the expiration of all appeal opportunities.

##### **C. Format of Pleadings**

All pleadings filed with the Office of Hearing Officers must comply with the requirements of FINRA Rule 9136, except that (1) the body of each pleading shall be in Times

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<sup>5</sup> After the specified due date, the parties may not file motions, oppositions, or other papers without first moving for an extension of time. Any party requesting an extension of time must (1) discuss the extension request with all other parties; (2) include in the request proposed alternative dates; and (3) take steps to ensure, to the extent possible, that the alternative due dates are agreeable to all parties.

New Roman 12-point font, double-spaced, and (2) footnotes shall be in Times New Roman 10 or 12-point font, single-spaced.

Except for motions for summary disposition under Rule 9264, or as otherwise ordered by the Hearing Officer, motions and oppositions shall not exceed ten double-spaced pages (exclusive of pages containing any table of contents, table of authorities, or addenda).

Pleadings and other documents filed in paper format must be double-sided. If documents are filed in three-ring binders, the binders must not be wider than three inches.

No party shall file motions or other pleadings in letter format. No party shall send copies of its correspondence with another party to the Office of Hearing Officers.

#### **D. Meet and Confer Requirement**

Motions must include a certification that the moving party has made a reasonable, good-faith effort to meet and confer with the opposing party to informally resolve each issue in the motion. Motions that do not contain this certification may be rejected.

#### **E. Replies**

A moving party may not file a reply to any opposition to a motion without the Hearing Officer's permission.

#### **F. Oral Argument**

Motions usually will be decided based on the papers the parties file without oral argument. A party may request oral argument in a motion or opposition.

### **V. Requirements for Specific Motions**

#### **A. Motions to Allow a Witness to Testify by Telephone or Videoconference**

Motions for permission to offer live testimony by telephone or videoconference shall include the following information: (1) the witness's identity; (2) the witness's location; (3) a summary of the substance of the witness's expected testimony; (4) the efforts made by the sponsoring party to secure the witness's attendance at the hearing; (5) the reason the witness is unable to appear in person; and (6) whether the witness is subject to FINRA's jurisdiction.

#### **B. Motions for Permission to Offer Expert Testimony**

A party may not offer expert testimony (including expert testimony by FINRA staff) without the Hearing Officer's approval.

A party seeking permission to offer expert testimony must establish that the proposed expert's opinion will help the Hearing Panel understand the evidence or determine a fact in issue.

Motions for permission to offer expert testimony must include (1) the name of the proposed expert; (2) a statement of the witness's qualifications; (3) a summary of each of the expert's opinions; (4) a list of other proceedings in which the witness has given expert testimony in the last four years; (5) a list of publications the witness authored or co-authored in the last ten years; (6) a statement establishing that the witness's opinion will help the Hearing Panel understand the evidence or determine a material fact in issue; and (7) if the witness is a former FINRA officer, a statement that the witness is not subject to the restriction imposed by Rule 9141(c).

When expert testimony is permitted, the parties should expect that the expert's report will serve as part of the witness's direct examination and that the presiding Hearing Officer may limit the amount of time for the witness's direct and cross-examination.

### **C. Motions for Summary Disposition**

#### **1. Requirements in Support of Motion**

With each motion for summary disposition filed under Rule 9264, the moving party shall serve and file (1) a supporting memorandum of law; (2) a statement of material facts as to which the moving party contends there is no genuine issue and that entitle the moving party to summary disposition as a matter of law; (3) affidavits or sworn declarations that set forth relevant facts that would be admissible at the hearing and show that the affiant is competent to testify about them; and (4) any other evidentiary materials upon which the movant relies.

The statement of material facts shall set forth, in numbered paragraphs, each material fact about which the moving party contends there exists no genuine issue. Each fact listed shall set forth a specific reference to the record where the fact is established.

#### **2. Requirements in Opposition to Motion**

Each party opposing a motion for summary disposition shall serve and file (1) a supporting memorandum of law; (2) opposing affidavits or sworn declarations; and (3) a concise response, in matching numbered paragraphs, admitting or denying each statement of material fact and, in case of any disagreement, that includes specific references to the affidavits, sworn declarations, parts of the record, or other materials relied upon to support the opposition.

#### **3. Form and Filing Requirements**

Unless the file size exceeds 80 pages or the parties lack the capability to send and receive emails, all papers in support of and opposition to a motion for summary disposition shall be filed by email in PDF format sent to [OHOCASEFILINGS@FINRA.ORG](mailto:OHOCASEFILINGS@FINRA.ORG). When a party is unable to file by email, the documents shall be filed in paper in the format specified below.

Each memorandum of law must not exceed 35 double-spaced pages (exclusive of any table of contents, table of authorities, or addenda) in Times New Roman 12-point font. Long



quotations may be single-spaced, and footnotes may be single-spaced in Times New Roman 10 or 12-point font.

Paper documents that cannot be stapled conveniently must be submitted in three-ring binders that are not wider than three inches.

An opposing party may refer to documents submitted by the moving party rather than submitting additional copies of the same documents.

Exhibits and other attachments shall be separately tabbed and marked for identification in the manner specified below in Part VI(D), governing hearing exhibits.

## **VI. Pre-Hearing Submissions**

Each party shall submit (1) a pre-hearing brief; (2) a list of witnesses who will testify on its behalf; and (3) a list and copies of exhibits it intends to introduce at the hearing.

### **A. Pre-Hearing Briefs**

Pre-hearing briefs should include a narrative summary of the facts and the legal theories upon which the party relies, as well as a discussion of sanctions. Briefs shall not exceed 35 double-spaced pages unless otherwise permitted by the Hearing Officer.

### **B. Witness Lists**

Witness lists shall include the names and addresses of all prospective witnesses, their occupations, and a brief summary of the substance and scope of the witness's anticipated testimony.

### **C. Exhibit Lists**

Exhibit lists shall include all documents that a party expects to use at the hearing for any purpose, including documents that are relevant only for impeachment purposes. Exhibit lists shall include a description of each exhibit and a brief statement of the purpose for which the exhibit will be offered in evidence.

When a party files its pre-hearing submissions with the Office of Hearing Officers, it should send a duplicate copy of its exhibit list in Microsoft Word format to [OHOCASEFILINGS@FINRA.org](mailto:OHOCASEFILINGS@FINRA.ORG).

## **D. Hearing Exhibits**

The parties shall submit to the Office of Hearing Officers—in paper format—four sets of all exhibits they intend to introduce at the hearing.<sup>6</sup> The parties also shall bring to the hearing a copy of their exhibits in paper format for the witnesses' use during their testimony.

The parties shall also submit to the Officer of Hearing Officers an electronic copy of all exhibits they intend to introduce at the hearing no later than seven days *after* the pre-hearing submission deadline. The parties shall contact the Case Administrator to discuss the format and delivery of the electronic submission.

Any portable media device a party submits to the Office of Hearing Officers shall be encrypted using a method that meets industry standards for strong encryption. The password or other key needed to access the encrypted information shall be provided in a communication separate from the encrypted information itself. Each portable media device shall be labeled with (1) the case name; (2) the case number; (3) and submitting party's identity.

### **1. Exhibit Binders**

Paper exhibits shall be submitted in three-ring binders that do not exceed three inches in width, and shall be organized and numbered as provided below. Each exhibit binder shall be labeled on the cover and the spine, indicating the submitting party and the range of exhibits included in the binder.

The parties must ensure that each exhibit is legible. When it is necessary to offer a poor quality copy, the offering party must note on the exhibit that it is the "best available copy."

### **2. Exhibit Numbers**

Exhibits must be sequentially numbered and labeled in a manner that identifies the party offering the exhibit. For multiple page documents, each page shall be marked with the exhibit number followed by the page number and the total number of pages in the exhibit. For example, if Enforcement's first exhibit is a ten-page document, it should be marked as follows: CX-1, Page 1 of 10; CX-1, Page 2 of 10, etc. Similarly, if Respondent's first exhibit is a five-page document, it should be marked RX-1, Page 1 of 5; RX-1, Page 2 of 5, etc. Joint exhibits shall be labeled and numbered in a similar manner using the prefix "JX." Enforcement shall mark and submit joint exhibits.

### **3. Summary Exhibits**

The parties shall use summary exhibits in place of voluminous collections of data, writings, or recordings. A party intending to offer a summary exhibit must provide the

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<sup>6</sup> Under FINRA Rule 9261(a), proposed exhibits will not be included in the record unless the Hearing Officer or the Hearing Panel orders otherwise.

underlying source documents to all opposing parties when exchanging pre-hearing submissions unless the source documents were provided at an earlier date during pre-hearing discovery. All proposed summary exhibits shall be submitted with the other pre-hearing submissions. Summary exhibits shall reference the underlying source documents.

#### **4. Objections to Exhibits**

Prior to serving objections to proposed exhibits or witnesses, the parties shall confer to attempt to resolve the objections. No party may file an objection unless the objecting party certifies in writing that the objecting party has attempted to resolve the objection with the opposing party.

Objections not made by the deadline in the pre-hearing schedule may be deemed waived.

#### **E. Stipulations**

The parties are expected to stipulate to facts that cannot reasonably be contested and to the authenticity of documents that are expected to be offered in evidence, unless they have a good-faith basis to question the genuineness of the documents. Enforcement shall initiate the discussion of stipulations and the parties shall cooperate fully to reach stipulations consistent with the spirit of this Order.

### **VII. Restrictions on the Submission of Personal Confidential Information and Personal Sensitive Information**

A Protective Order Governing Personal Confidential Information (“PCI”) entered in this proceeding governs the production, handling, and use of PCI. The parties also shall comply with the following restrictions on the submission of PCI and Personal Sensitive Information (“PSI”) to the Office of Hearing Officers.

#### **A. Hearing Exhibits**

Where practical, the parties shall remove (redact) the following PCI from exhibits submitted to the Office of Hearing Officers, unless the information is necessary for the determination of the issues in this disciplinary proceeding:

- Social Security numbers;
- taxpayer identification numbers (last four digits allowed);
- passport numbers (last four digits allowed);
- driver’s license numbers (last four digits allowed);
- state-issued identification numbers (last four digits allowed); and

- financial account numbers (including checking and savings account numbers, credit card numbers, debit card numbers, or any other numbers or information that can be used to access the person’s financial resources) (last four digits allowed).

By producing a non-redacted exhibit(s), the submitting party represents that it is impractical to remove the foregoing PCI and acknowledges that the exhibit(s), including PCI, may be further disseminated to the other parties in the proceeding.

#### **B. Pleadings and Other Submissions Prepared by the Parties**

Also, the parties shall not include the foregoing PCI or any of the following PSI in motions, briefs, memoranda, pleadings, and other written submissions prepared by the parties, and shall not refer to this information in testimony, arguments, or statements on the record:

- home address (other than city and state);
- personal telephone numbers;
- date of birth (other than year);
- names and initials of minor children; or
- sensitive health information identifiable by individual (such as an individual’s medical records).

### **VIII. The Hearing**

#### **A. Examination of Witnesses and Order of Proof**

Enforcement presents its evidence first because it bears the burden of proof. Nonetheless, the parties may request permission to proceed in another manner either to accommodate a witness’s schedule or to avoid the need to have a witness testify multiple times. Such joint proposals must be made at or before the final pre-hearing conference. Also, to aid in the orderly and expeditious disposition of the proceeding, the Hearing Officer may require the parties to call non-party witnesses only once.

#### **B. Prior Sworn Investigative Testimony and Statements**

##### **1. Non-Party Witnesses**

The Hearing Officer will entertain—but not automatically grant—a motion to admit a non-party’s prior sworn investigative testimony or other sworn statement if the evidence is admissible under Rule 9263(a) and either:

- a. the witness is unavailable to testify in person or by telephone at the hearing, unless it appears that the absence of the witness was procured by the party offering the prior sworn testimony or sworn statement;

- b. the Hearing Officer determines in the interests of justice that it would be appropriate to allow the use of the prior sworn testimony or sworn statement;
- c. the witness's prior testimony is shown to be inconsistent with the witness's hearing testimony; or
- d. the parties have stipulated to accept the prior sworn testimony or statement in lieu of live testimony.

**2. Respondents**

A party may use a Respondent's prior sworn investigative testimony or statement for any purpose if it is otherwise admissible under Rule 9263(a). The Hearing Officer may nonetheless require the Respondent to testify at the hearing.

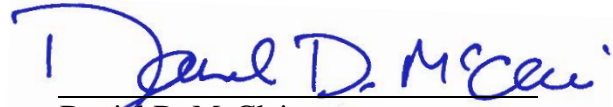
**3. Introducing Transcripts of Prior Sworn Testimony**

If a party intends to offer a witness's prior sworn testimony for any purpose, the transcript shall be included as a proposed exhibit on the party's exhibit list. The exhibit should include only the portions of the transcript that the party intends to offer as evidence, together with the pages identifying the caption of the proceeding, the date on which the testimony was given, the identity of the witness, and the court reporter's certification. The Hearing Officer may require that all relevant portions of the testimony or statement be introduced. The Hearing Officer also may require that irrelevant portions be excluded.

**IX. Evidence Relevant to Sanctions**

The Hearing Panel will not hold a separate hearing to determine the appropriate remedial sanction if a violation is found. Thus, all evidence bearing on both liability and sanctions must be presented at the hearing, including, if applicable, detailed financial information in support of an individual respondent's claim of financial hardship that would prevent the payment of a monetary sanction.

**SO ORDERED.**

  
Daniel D. McClain  
Hearing Officer

Dated: November 6, 2019

Copies to:

Lawrence S. Rothenberg, Esq. (via email and first-class mail)

Karen E. Whitaker, Esq. (via email and first-class mail)

Penelope Brobst Blackwell, Esq. (via email)

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