

FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

KRIS LYNN LEWIS
(CRD No. 4505097),

Respondent.

Disciplinary Proceeding
No. 2015047154001

Hearing Officer—DRS

CASE MANAGEMENT AND SCHEDULING ORDER

I held the Initial Pre-Hearing Conference on May 10, 2017, in accordance with FINRA Rule 9241. On May 23, 2017, the Department of Enforcement filed a Joint Proposed Hearing Schedule (“proposed schedule”). Finding the proposed schedule generally reasonable, I have adopted the proposed schedule in all material respects. Accordingly, this Order sets the schedule and other requirements for this proceeding.¹

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 Mona Nadim, the Case Administrator assigned to this proceeding. Ms. Nadim’s email address is Mona.Nadim@finra.org and her telephone number is 202-728-8195.

I. Hearing and Final Pre-Hearing Conference

A. Hearing

By agreement of the parties the hearing shall be December 19–22, 2017, in Kansas City, Missouri. The parties will be notified of the exact time and location of the hearing in a subsequent notice.

B. Final Pre-Hearing Conference

The Final Pre-Hearing Conference shall be held by telephone at 2 p.m. Eastern Time on December 8, 2017. The parties will be notified of the procedures for participating in the final pre-hearing conference in a subsequent notice.

¹ 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.

II. Schedule

May 2, 2017	Enforcement makes investigatory file available to Respondent for inspection and copying.
June 2, 2017	Deadline for Respondent to file motions relating to the Department of Enforcement's production of documents under Rules 9251 and 9253.
June 16, 2017	Deadline for the Department of Enforcement to respond to Respondent's Rule 9251 and 9253 motions.
June 30, 2017	Deadline for the Respondent to file requests pursuant to Rule 9252 that the Department of Enforcement invoke Rule 8210 to compel the production of documents.
July 14, 2017	Deadline for the parties to file motions for summary disposition.
July 28, 2017	Deadline for filing opposition to motions for summary disposition.
August 14, 2017	Deadline for filing motions identifying experts and seeking leave to offer their testimony at hearing. Such motions shall include the information specified in Rule 9242(a)(5). Deadline for the Department of Enforcement to issue post-complaint Rule 8210 requests in connection with this proceeding (with the exception of using them to compel production of documents or testimony at the hearing).
August 28, 2017	Deadline for filing oppositions to motions for leave to offer expert testimony at hearing. Deadline for the parties to exchange proposed stipulations as to relevant undisputed facts (including the authenticity, content, and admissibility of specified documents).
September 8, 2017	Deadline for agreement as to stipulations.
September 12, 2017	Pre-Hearing Status Conference

October 6, 2017	Deadline for filing pre-hearing submissions (briefs, witness lists, exhibit lists, exhibits, stipulations, and mandatory reports of any expert witness who intends to testify at hearing).
October 19, 2017	Deadline for the Respondent to file requests pursuant to Rule 9252 that the Department of Enforcement invoke Rule 8210 to compel testimony at the hearing.
November 3, 2017	Deadline for filing objections to proposed witnesses and exhibits. Deadline for filing motions in limine, including motions for leave for specific witnesses to testify by telephone and motions for evidentiary rulings.
November 17, 2017	Deadline for filing responses to objections to proposed witnesses and exhibits and any counter-transcript designations. Deadline for filing responses to motions in limine, including motions for leave for specific witnesses to testify by telephone and motions for evidentiary rulings.
December 8, 2017	Final Pre-Hearing Conference by telephone. ²
December 19–22, 2017	Hearing in Kansas City, Missouri. ³

III. 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 OHOCASEFILINGS@FINRA.ORG.

Documents that are filed by email must be received by 11:59 p.m. (Eastern Time) on the due date.⁴ 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.

² A notice specifying the exact time and call in phone number will be issued to the Parties at a later date.

³ A notice specifying the exact time and location of the hearing will be issued to the Parties at a later date.

⁴ 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

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 (i) the body of each pleading shall be in Times New Roman 12-point font, double-spaced and (ii) 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 resolve each issue in the motion informally. 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.

IV. 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 (a) a supporting memorandum of law; (b) 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; (c) 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 (d) 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 (a) a supporting memorandum of law; (b) opposing affidavits or sworn declarations; and (c) 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 and opposition to a motion for summary disposition shall be filed by email in PDF format sent to 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 V(D), governing hearing exhibits.

V. 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 OHOCasFilings@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.⁵ The parties also shall bring to the hearing a copy of their exhibits in paper format for the witnesses' use during their testimony.

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

⁵ Under FINRA Rule 9261(a), proposed exhibits will not be included in the record unless the Hearing Officer or the Hearing Panel orders otherwise.

labelled 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 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.

VI. Restrictions on the Submission of Personal Confidential Information and Personal Sensitive Information

A Protective Order Governing Personal Confidential Information ("PCI") has been entered in this proceeding that 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).

VII. 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 prior 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.

VIII. 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.


David R. Sonnenberg
Hearing Officer

Date: May 25, 2017

Copies to: Kris Lynn Lewis (via first-class mail)
Jennifer L. Crawford, Esq. (via email and first-class mail)
R. Michael Vagnucci, Esq. (via email)
Jeffrey D. Pariser, Esq. (via email)