

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILSON-DAVIS & CO., INC.  
(CRD No. 3777),

JAMES C. SNOW, JR.  
(CRD No. 2761102),

LYLE WESLEY DAVIS  
(CRD No. 62352),

BYRON BERT BARKLEY  
(CRD No. 12469),

and

CRAIG STANTON NORTON  
(CRD No. 349405),

Respondents.

Disciplinary Proceeding  
No. 2016048837401

Hearing Officer–DRS

**ORDER GRANTING RESPONDENTS’ MOTION TO CONTINUE HEARING**

**A. Introduction**

This case is currently scheduled for an in-person hearing in the Washington, D.C. metropolitan area on April 28–May 1 and May 3–8, 2021 (“April/May dates”). My scheduling order provided that if the hearing were continued, it would be held on July 19–23 and 26–30, 2021 (“July dates”).<sup>1</sup> On February 23, 2021, Respondents moved to continue the hearing to the July dates (“Motion”) in order “to maximize the likelihood that the hearing can proceed safely and in person, whether in Washington, D.C. or in Salt Lake City.”<sup>2</sup> According to Respondents, they have “concerns about their health and safety” as well as “a strong desire to appear in person

<sup>1</sup> Order Amending Pre-Hearing and Hearing Schedule 2 (Dec. 18, 2020).

<sup>2</sup> Motion 2.

for the hearing.” And “it does now appear that by July it would be possible to have an in-person hearing.”<sup>3</sup> Finally, Respondents argue that the Department of Enforcement will not be unduly prejudiced by a postponement but, in any event, any prejudice “is outweighed by the importance of ensuring that Respondents receive . . . their right to a safe, in-person hearing.”<sup>4</sup>

Enforcement opposed the Motion on February 26, 2021 (“Opposition”). In its Opposition, Enforcement argues that Respondents failed to show good cause for a continuance, noting that, if the hearing cannot be safely held in person on the April/May dates, then the hearing can—and should—be held by videoconference on those dates.<sup>5</sup>

For the reasons explained below, I grant the Motion and postpone the hearing.

## **B. Discussion**

Under FINRA Rule 9222(b), a Hearing Officer may change the place of the hearing or postpone its commencement for a “reasonable period of time” for good cause shown. While Hearing Officers have broad discretion in deciding whether to grant a postponement,<sup>6</sup> they may not postpone a hearing for more than 28 days without providing reasons why a longer period is necessary.<sup>7</sup>

The Rule directs the Hearing Officer to consider five factors when evaluating a request to postpone the start of a hearing:

(A) the length of the proceeding to date; (B) the number of postponements, adjournments, or extensions already granted; (C) the stage of the proceedings at the time of the request; (D) potential harm to the investing public if an extension of time, adjournment, or postponement is granted; and (E) such other matters as justice may require.<sup>8</sup>

Upon careful consideration of the parties’ arguments, and balancing the foregoing factors, I conclude that there is good cause to postpone the hearing. On the one hand, as I ruled in in my September 4 and December 2, 2020 orders postponing the hearing, four of the factors weigh against a postponement<sup>9</sup>—even more so, now, with the passage of an additional three and

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<sup>3</sup> Motion 3.

<sup>4</sup> Motion 4.

<sup>5</sup> Opposition 2.

<sup>6</sup> *Richard Allen Riemer*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at \*20 (Oct. 31, 2018) (“In [FINRA] proceedings, the trier of fact has broad discretion in determining whether to grant a request for a continuance.”) (quoting *Robert J. Prager*, Exchange Act Release No. 51974, 2005 SEC LEXIS 1558, at \*51 (July 6, 2005)).

<sup>7</sup> FINRA Rule 9222(b)(2).

<sup>8</sup> FINRA Rule 9222(b)(1)(A)–(E).

<sup>9</sup> Sept. 4 Order 5; Dec. 2 Order 2–3.

a half months since I issued my December 2 order. Enforcement filed the Complaint in July 2019; the hearing has been postponed four times; and the proceedings are at a late stage, namely, other than the final pre-hearing conference, all scheduled pre-hearing events have occurred.

Additionally, as I found in my September 4 and December 2 orders,<sup>10</sup> there is potential harm to the investing public if I further postpone the hearing. The charges are serious;<sup>11</sup> the firm remains in business; and, according to an October 2020 report prepared by the firm's AML auditor, it "continues to have a high level of risk for AML in regard to certain issues." The report explained that it made this determination because "the Firm's primary business is the liquidation of low-priced securities. Historically, this business has had a significantly high level of fraud and AML related issues";<sup>12</sup> and the individual Respondents, at least two of whom are in positions of responsibility, remain associated with the firm.<sup>13</sup>

On the other hand, in the interest of justice, I have considered "other matters" and they favor granting a postponement. As I noted in my December 2 order, "In the best of all worlds, it may be preferable to have witnesses appear in person so that the trier of fact can observe the witnesses' demeanor."<sup>14</sup> But due to COVID-19-related safety concerns, it is not feasible to conduct a traditional in-person hearing in the Washington, D.C. metropolitan area on the April/May dates. Also, as I previously informed the parties, until further notice, "in-person hearings will occur in one location equipped with safety features to address public health concerns," and this location will be "in the Washington, D.C. metropolitan area."<sup>15</sup> Additionally, now that COVID-19 vaccines have started becoming available, an in-person hearing may be feasible if I continue the hearing to the July dates.

Finally, while holding a videoconference hearing is a viable option in every case,<sup>16</sup> granting a continuance would give this case a viable opportunity to be heard in person, which may be better suited to the unique facts and circumstances in this matter.

Therefore, having considered the arguments in support of and in opposition to the Motion, and under the totality of the circumstances, I find that good cause exists to continue this

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<sup>10</sup> Sept. 4 Order 5-6; Dec. 2 Order 3.

<sup>11</sup> The Complaint alleges the following wrongful conduct: willful stock market manipulation; deficient supervisory system and failure to supervise; unreasonable anti-money laundering system; and providing false and misleading information to FINRA.

<sup>12</sup> Thornton & Associates Anniversary Report, at 5 (Oct. 5, 2020) (submitted by Respondents in conjunction with their November 11, 2020 motion to continue ("Nov. 11 Motion")).

<sup>13</sup> Snow is the firm's President and AML officer, and Barkley is the firm's head of trading. Nov. 11 Motion 10.

<sup>14</sup> Dec. 2 Order 3 (quoting *Dep't of Enforcement v. Patel*, No. C02990052, 2001 NASD Discip. LEXIS 42, at \*22 (NAC May 23, 2001)).

<sup>15</sup> Order Addressing Hearings During COVID-19 Pandemic 1-2 (Aug. 3, 2020).

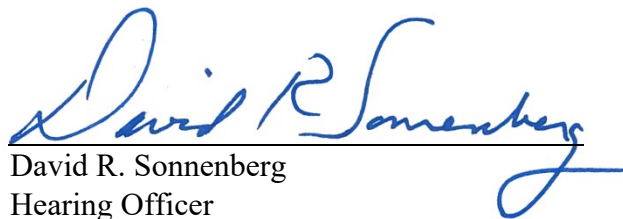
<sup>16</sup> Dec. 2 Order 4 (citing FINRA Rule 9261(b) which, through a temporary rule change, currently provides, in part, that "[u]pon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference").

proceeding to the July dates. That said, I also find that the interests of justice would be best served by granting no further continuances for the purpose of increasing the likelihood that the hearing can be held in person. With this in mind, and considering the totality of the circumstances and the parties' filings regarding whether the hearing should be held by videoconference, the Chief Hearing Officer today ordered that if a safe, in-person hearing is not feasible on the July dates due to COVID-19, then the hearing will be held on those dates by videoconference.

**C. Order**

Based on the foregoing, for good cause shown, I **GRANT** the Motion. The currently scheduled hearing in this case is **CONTINUED to July 19–23 and 26–30, 2021**, and the April 20, 2021 final pre-hearing conference is **CANCELED**. The final pre-hearing conference will now be held on **July 12, 2021**.<sup>17</sup> Further, in accordance with the Chief Hearing Officer's order issued today, if a safe, in-person hearing is not feasible on the July dates due to COVID-19, then the hearing will be held on those dates by videoconference.

**SO ORDERED.**

  
David R. Sonnenberg  
Hearing Officer

Dated: March 15, 2021

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<sup>17</sup> By separate order, the parties will be notified of the time of the final pre-hearing conference and provided with instructions for participating.