























Doubek was expected to testify on those matters. As such, I concluded in my September 16, 2021 Order that Doubek's June 2021 OTR transcripts fell within the parameters of Rule 9253(a)(1) and ordered Enforcement to produce them to Alpine Securities.

## **D. Conclusions**

### **1. Enforcement Fully Complied with Its Discovery Obligations**

For the reasons outlined below, I reject Alpine Securities' claim that Enforcement failed to comply with its discovery obligations under FINRA's rules.

#### **a. Rule 9251**

To find that Rule 9251 required Enforcement to produce to Alpine Securities Doubek's June 2021 OTR transcripts, audio recordings, or written narrative, I must find that these items meet the parameters outlined in subsection (a)(2) for post-complaint discovery. Under subsection (a)(2), Enforcement must produce documents (and, in this case, recordings) received in response to a post-complaint Rule 8210 request "issued under the same investigative file number" as the investigation leading to the issuance of this Complaint if they are "material and relevant" to the proceeding. As represented by Enforcement, and not disputed by Alpine Securities, the Rule 8210 requests that led to Doubek's June 2021 OTR interview and production of audio recordings and a written narrative relate to two FINRA investigations that are not connected to the investigation that led to the filing of the Complaint here. Accordingly, Enforcement was not required by the language of Rule 9251(a)(2) to produce them.

Enforcement, however, must comply not only with the clear language of Rule 9251, but also with the intent of the rule. For example, Enforcement cannot issue post-complaint Rule 8210 requests under other investigation numbers when, in fact, its true purpose is to obtain information relating to a pending matter.<sup>64</sup> Here, there is no evidence to suggest that the Doubek OTR transcripts, audio recordings, and narrative were obtained through Rule 8210 requests that, while identified as associated with other investigations, were in reality additional discovery related to this case. FINRA staff told Doubek at the start of both interview sessions that it was not interested in exploring matters related to this case and instructed him to advise staff if the questions veered into related subject matter.<sup>65</sup> Additionally, Doubek's OTR transcripts are

<sup>64</sup> Cf. OHO Order 18-06 (2014041860801) (Apr. 24, 2018), at 5, [https://www.finra.org/sites/default/files/OHO\\_Order\\_18-06\\_2014041860801.pdf](https://www.finra.org/sites/default/files/OHO_Order_18-06_2014041860801.pdf) (holding that fundamental fairness requires production of documents obtained by Enforcement post complaint from voluntary third-party productions if the third parties will be called as witnesses and the documents are relevant and material, even though Rule 9251 does not specifically require production); OHO Order 00-24 (C3A990071) (Aug. 28, 2000), at 6, [https://www.finra.org/sites/default/files/OHODecision/p007930\\_0\\_0.pdf](https://www.finra.org/sites/default/files/OHODecision/p007930_0_0.pdf) (holding that the fact that the documents that respondent requested do not "fall within one of the enumerated categories" of Rule 9251 "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").

<sup>65</sup> Exhibit E to Foukas Decl. at 9-11; Exhibit F to Foukas Decl. at 138.

replete with instances of FINRA staff redirecting Doubek back to the events of 2020 and 2021<sup>66</sup> if he began testifying about earlier time periods related to this case and as it asked specific questions.<sup>67</sup>

I ordered Alpine Securities to append to its brief any transcript pages in which FINRA staff asked questions seemingly designed to elicit answers related to the subject matter of this case. Alpine Securities did not provide transcript pages as ordered but cited to several pages in the transcripts.<sup>68</sup> The cited pages do not demonstrate that FINRA staff asked questions designed to elicit responses related to this case. While one or two questions may have tangentially related to matters at issue here, and Doubek may have strayed into matters related to this case in his answers, overall, FINRA staff's questions were unrelated to this matter.<sup>69</sup>

Similarly, Alpine Securities has not demonstrated that Doubek's audio recordings contain information material and relevant to this case. On September 16, 2021, after I ordered Enforcement to produce Doubek's June 2021 OTR transcripts, Enforcement reviewed the five legally created audio recordings and transcripts and produced them to Alpine Securities on the same day. Although Alpine Securities argues that the recordings and transcripts contain information material and relevant to this matter, it fails to identify any of the information by citing to and attaching pages of the transcripts.<sup>70</sup> In any event, Alpine Securities did not refer to the recordings during its examination of Doubek at the hearing or provide persuasive support for

<sup>66</sup> The Complaint in this case alleges that misconduct occurred at Alpine Securities in 2018 and 2019.

<sup>67</sup> See, e.g., Exhibits E and F to Foukas Decl. at 40-41 ("So in terms of time frame, was this occurring in the 2020 – 2021 time frame or only prior to that?"); 45 ("So, Mr. Doubek, maybe another way to frame it would be in 2020 – from 2020 forward . . ."); 45 ("From 2020 forward, have there been any instances where a position has been either unilaterally moved – or through negative consent . . ."); 49 (" . . . looking only at 2020 forward?"); 57 ("Was the DTC custody fee charged by Alpine to Scottsdale and Alpine customers from 2020 through the present?"); 65 ("Were these Worthless Securities Forms being sent to Alpine and Scottsdale customers in 2020 and 2021?"); 67 ("Did you have any conversations with Mr. Hurry about having customers sign Worthless Securities Forms to transfer those positions to Alpine in the 2020 to 2021 time frame?"); 71-72 ("Did Alpine ever make an effort to contact customers . . . to pay those fees in the 2020 to 2021 time frame?"); 74 ("Did you have any conversations like you're referring to now with Mr. Hurry in the 2020 to 2021 time frame on this topic?"); 74 ("Did you have any conversations of that nature with Mr. Hurry in the 2020 to 2021 time frame?"); 80 ("was the call volume of daily, like, relatively constant, or did it increase, say in 2021 versus 2020?"); 123 ("And I want to limit this question I'm about to ask to 2020 and 2021."); 124 ("But then if you get beyond 2019 and into 2020, I mean, those conversations to me, in that directive, carried over."); 126 ("So did you implement the DTC custody fee through the 2020/2021 time frame?"); 199 ("[B]etween the end of 2020 and June 2021, did Mr. Hurry . . ."); 314 (" . . . eight calls in 2020, the whole year.").

<sup>68</sup> Alpine Securities submitted the transcripts as proposed exhibits RX-255 and RX-256. Although RX-255 and RX-256 were not admitted as evidence in this case, I reviewed the pages that Alpine Securities cited because the transcripts are appended as exhibits E and F to the Foukas Decl.

<sup>69</sup> Alpine Securities also alleges in its motion that Enforcement's attorney in this case misrepresented the nature of FINRA staff's OTR interview questions of Doubek. For the reasons stated above, I reject this assertion.

<sup>70</sup> Alpine Securities cited to portions of the recordings themselves, but I do not have the recordings as they are not evidence in this case. See Brief in Support of Alpine Securities' Motion for Sanctions 9-10. Alpine Securities did not attach pages of the transcripts.

the suggestion that the recordings relate to this case. Simply put, FINRA staff obtained these recordings in connection with unrelated investigations and Alpine Securities has not shown a sufficient nexus to suggest that Enforcement should have produced them in this case under Rule 9251.

Finally, Alpine Securities has not provided support for its argument that Doubek's June 2020 OTR transcripts, audio recordings, and narrative include material exculpatory information.<sup>71</sup> Indeed, Alpine Securities has not demonstrated that any of these items, all of which are in the firm's possession, include information material and relevant to this case, let alone material exculpatory evidence.

In sum, I find that Enforcement complied with the requirements of FINRA Rule 9251.

### **b. Rule 9253**

Rule 9253 places the onus on the respondent to file a motion to seek production of witness statements under Rule 9253.<sup>72</sup> The rule does not require production without a motion. Alpine Securities clearly knew on June 28, 2021 of Doubek's June 29 OTR interview.<sup>73</sup> If it suspected that the OTR interview had not proceeded as planned, it could have asked FINRA staff who conducted the OTR interview and with whom Alpine Securities' attorney corresponded, or Enforcement staff in this matter. It did not. It also did not request that FINRA staff who conducted Doubek's OTR interview provide it with the transcripts, and did not discuss the possible production of the transcripts with Enforcement in this case until September 10, 2021, notwithstanding that Alpine Securities received copies of FINRA staff's June 29, 2021 Rule 8210 requests (issued under investigation numbers unrelated to this proceeding).<sup>74</sup> Alpine Securities waited until September 14, 2021, to file a motion for the production of Doubek's OTR transcripts. I held oral argument on September 15 and ordered the production of Doubek's OTR transcripts on September 16. I reject the argument that Enforcement is responsible for any delay in the production of Doubek's June 2021 OTR transcripts.

Furthermore, Alpine Securities did not file a Rule 9253 motion for the production of Doubek's audio recordings, notwithstanding that it received a copy of the July 6, 2021 Rule 8210 request for the production of the audio recordings (issued under investigation numbers unrelated to this proceeding). Enforcement nevertheless produced the recordings on September 16, 2021.

<sup>71</sup> See OHO Order 14-04, at 5 (stating that respondent bears the burden of establishing that withheld documents contain material exculpatory information). FINRA applies Rule 9251(b)(2) consonant with the principles enunciated by the Supreme Court in *Brady v. Maryland*, 373 U.S. 83 (1963). See OHO Order 07-29 (2005001919501) (July 13, 2007), at 7, [https://www.finra.org/sites/default/files/OHODecision/p037091\\_0\\_0\\_0\\_0.pdf](https://www.finra.org/sites/default/files/OHODecision/p037091_0_0_0_0.pdf). Under Rule 9251(b)(3), Enforcement must produce any document withheld under Rule 9251(b)(1) if it includes material exculpatory evidence.

<sup>72</sup> See FINRA Rule 9253(a)(1) and (a)(2).

<sup>73</sup> Fritz Decl. ¶ 3; Foukas Decl. ¶¶ 8-12.

<sup>74</sup> Fritz Decl. ¶ 2-4; Foukas Decl. ¶¶ 15-17.

Doubek's narrative would not even fall within the parameters of Rule 9253 in that it is not a contemporaneous recording or verbatim transcription of Doubek's oral statement.

Accordingly, I find that Enforcement complied with the requirements of FINRA Rule 9253.

## **2. Alpine Securities' Request for the Production of Three Additional Recordings Is Denied**

During the hearing, I denied Alpine Securities' request for copies of the three recordings that FINRA staff determined were made in contravention of Illinois and Massachusetts privacy statutes. I directed Alpine Securities to provide citation to authority for the proposition that my ordering such production would be permissible. Although it cited two criminal cases in its Brief in Support of Alpine Securities' Motion for Sanctions, neither was persuasive on this issue. Accordingly, I deny Alpine Securities request for the production of three additional Doubek audio recordings.<sup>75</sup>

**SO ORDERED.**



Carla Carloni  
Deputy Chief Hearing Officer

Dated: October 28, 2021

<sup>75</sup> See Mass. Gen. Laws Ch. 272, § 99(C)(3) (prohibiting the disclosure or use of any interception, which is defined in § 99(B)(4) as "secretly hear, secretly record, or aid another to secretly hear or secretly record the contents of any wire or oral communication through the use of any intercepting device by any person other than a person given prior authority by all parties to such communication"); 720 Ill. Comp. Stat. 5/14-2(a)(5) (prohibiting the use or disclosure of any information obtained from a private conversation in violation of the article); 720 Ill. Comp. Stat. 5/14-2(a)(2) (prohibiting the use of "transmitting or recording all or any part of any private conversation to which he or she is a party unless he or she does so with the consent of all other parties to the private conversation").

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