

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

JOHN LOWRY
(CRD No. 4336146),

and

KIM MONCHIK
(CRD No. 2528972),

Respondents.

Disciplinary Proceeding
No. 2022075597101

Hearing Officer–BDC

**ORDER REGARDING PRE-HEARING OBJECTIONS TO
EXHIBITS AND WITNESSES**

I. Background

In Cause One of its Complaint, the Department of Enforcement alleges that Respondent Kim Monchik violated FINRA Rules 8210 and 2010 by failing to timely respond to several requests for documents and information made pursuant to Rule 8210 and issued to FINRA member firm Spartan Securities, LLC (“Spartan” or “the Firm”). In Cause Two, Enforcement alleges that Monchik and the Firm’s Chief Executive Officer, John Lowry, failed to timely respond to requests for documents and information made under FINRA Rule 8210 and issued to Lowry. Cause Three alleges that Lowry failed to maintain a reasonable system for Spartan’s compliance with Rule 8210 and failed to supervise Monchik’s submission of responses to Rule 8210 requests.

The parties filed their pre-hearing submissions, including their witness and exhibit lists, on June 25, 2025. Enforcement objected to four witnesses included on Respondents’ witness list and 12 of Respondents’ proposed exhibits. Respondent Lowry objected to 19 of Enforcement’s proposed exhibits. Enforcement and Lowry both filed responses to the other’s objections.

II. Discussion

A. Legal Standard

FINRA Rule 9263 provides that “[t]he Hearing Officer shall receive relevant evidence, and may exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial.”¹ The Hearing Officer has broad discretion to admit or reject evidence on grounds of relevance or any other ground in FINRA Rule 9263.² Rule 401 of the Federal Rules of Evidence—which does not govern FINRA proceedings but may be instructive—defines evidence as relevant if “(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.”³ The standard of relevance in the Federal Rules of Evidence is not high.⁴ Rule 403 provides for the exclusion of even relevant evidence if its probative value is substantially outweighed by one or more of the following specified factors:

unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.⁵

FINRA Hearing Officers generally disfavor objections seeking to exclude broad categories of evidence and will sustain such objections only if the challenged evidence is inadmissible for any purpose.⁶ The Hearing Officer is almost always better situated in the hearing to assess the value and utility of evidence.⁷

B. Enforcement’s Objections to Respondent’s Proposed Exhibits

1. RX-3 through RX-5

Proposed Exhibits RX-3 through RX-5 are BrokerCheck reports for three former Financial and Operations Principals (“FINOPs”) for Spartan, none of whom are on either party’s witness list. Enforcement objects to these exhibits on relevance grounds. Lowry argues that RX-3 through RX-5 are necessary to establish the qualifications and experience of each FINOP, which is relevant to show that Respondent’s reliance on these FINOPs to provide information in response to FINRA’s request was reasonable based on their experience.

¹ FINRA Rule 9263(a).

² OHO Order 23-22 (2021071137001) (July 17, 2023), at 3–4, https://www.finra.org/sites/default/files/2023-09/oho_order_23-22_2021071137001_lek.pdf.

³ Fed. R. Evid. 401; *accord*, OHO Order 23-06 (2017055886402) (Feb. 21, 2023), at 4, https://www.finra.org/sites/default/files/2023-05/oho_order_23-06_2017055886402_cantone.pdf.

⁴ *See* OHO Order 16-04 (2012033393401) (Feb. 3, 2016), at 2, https://www.finra.org/sites/default/files/OHO_Order16-04_2012033393401_0.pdf.

⁵ Fed. R. Evid. 403.

⁶ OHO Order 23-22, at 4.

⁷ OHO Order 23-06, at 3.

2. RX-6 through RX-8

Proposed Exhibits RX-6 through RX-8 are emails between Respondents, Spartan's counsel, Spartan's audit firm, and Spartan's former FINOP's employing firm. Enforcement contends the exhibits offer no probative value to any issue in this proceeding and would confuse the issues. Respondents' Exhibit List indicates that these exhibits relate to the Rule 8210 requests FINRA sent to Spartan in connection with the net capital examination, but Enforcement contends Spartan's communications with its former FINOP, after he left Spartan, and with its auditors do not make any facts relating to any issue in this case more or less probable.

Lowry argues that the emails, which date from March through June, 2022, are direct evidence of the delays and confusion caused by Spartan's former FINOP and his inability to provide access to Spartan's books and records. Lowry maintains the emails demonstrate Spartan's efforts to obtain the necessary information from the former FINOP in order to respond to FINRA's request.

3. RX-14; RX-17 through RX-19

Proposed Exhibits RX-14 and RX-17 through RX-19 are screenshots from FINRA's Gateway system and file folders that were uploaded in response to FINRA's requests related to its investigation into Spartan's sale of interests in unregistered funds (the "Funds Investigation"). Enforcement objects to these exhibits on relevance and authenticity grounds. According to Enforcement, pages six through fourteen of RX-14 appear to be duplicates of pages one through five and the information on pages one through five is already contained in CX-40. Thus, Enforcement contends RX-14 offers no probative value to any issue in this proceeding. As for RX-17 through RX-19, Enforcement contends the exhibits, which include a cover page that refers to a FINRA request along with several pages of filenames, also do not make any facts at issue more or less probable. Enforcement contends the exhibits do not demonstrate the date the referenced productions were made and appear to simply be a list of Enforcement's discovery.

Lowry contends these exhibits are necessary to establish the timing, size, and scope of Respondents' document production. Lowry acknowledges that the first five pages of RX-14 are the same document as CX-40, and notes that the remaining nine pages are enlarged screenshots of the same information contained on pages one through five and are included in the exhibit to allow the witnesses and the panel to read the date and time stamps. According to Lowry, RX-17 through RX-19 are screenshots of the computer files and folders that Respondents produced to FINRA and evidence the immense amount of data produced.

4. RX-15 and RX-16

Proposed exhibits RX-15 and RX-16 are copies of Rule 8210 requests sent to Respondent Monchik. Enforcement objects to these exhibits because neither request is at issue in this proceeding. Enforcement notes that RX-16 does not relate to the Funds Investigation or the net capital examination. Enforcement therefore objects on relevance grounds. Lowry argues that Enforcement is alleging that Lowry failed to adequately supervise Spartan's system for complying with Rule 8210, which encompasses more than just the Rule 8210 requests at issue in

this case. He contends the exhibits are relevant because they demonstrate Respondents' ongoing cooperation with FINRA and their responsiveness to FINRA's document request.

I find that Enforcement failed to establish that Respondents' proposed exhibits discussed above would be inadmissible for any purpose. As noted above, the Hearing Officer is almost always better situated in the hearing to assess the value and utility of evidence.⁸ Thus, I **DEFER** ruling on Enforcement's objections to Respondents' exhibits until the hearing so that I can assess their admissibility in the proper context.

C. Enforcement's Objections to Respondents' Proposed Witnesses

1. [REDACTED] [REDACTED] and [REDACTED] [REDACTED]

Respondents intend to call as witnesses [REDACTED] [REDACTED] and [REDACTED] [REDACTED], both of whom worked in FINRA's Member Supervision Department and were involved in the early stages of the Funds Investigation. According to Respondents' Witness List, [REDACTED] and [REDACTED] will testify regarding "matters alleged in the Complaint related to the 8210 Requests issued to Spartan" in the Funds Investigation.

Enforcement objects to these witnesses. Enforcement notes that [REDACTED] and [REDACTED] ceased work on the Funds Investigation in October 2021 and subsequently left FINRA in 2024. According to Enforcement, FINRA assigned examiner Kevin Macfadden to the matter in March 2021. He participated in drafting all of the Funds Investigation requests at issue in this case and he will testify regarding all of the Rule 8210 requests issued by FINRA and the responses to those requests. In September 2021, Roger Kiley, counsel for Enforcement joined the investigation and worked alongside MacFadden. Enforcement notes that both parties' witness lists include Macfadden and Respondents' witness list includes Kiley. Since the expected testimony of Macfadden and Kiley covers the same topics that [REDACTED] and [REDACTED] will testify about, Enforcement argues their testimony would be repetitious of Macfadden's and Kiley's and would cause undue delay and the presentation of unnecessary cumulative testimony.

Lowry argues that [REDACTED] and [REDACTED]—not Macfadden and Kiley—issued regulatory request letters to Spartan in March and April 2021, and that [REDACTED] signed the June 3, June 25, and August 23, 2021 Rule 8210 requests issued to Spartan. According to Lowry, Monchik had communications with [REDACTED] and [REDACTED] regarding Spartan's responses through July 2021. Lowry argues they are the only FINRA witnesses who can testify about Respondents' communications with FINRA regarding the first three Rule 8210 requests at issue, and that Macfadden and Kiley could only speculate about Respondents' communications with [REDACTED] and [REDACTED]. Lowry also contends [REDACTED] and [REDACTED] can testify about Respondents' efforts to comply with the Rule 8210 requests in the summer of 2021 because Respondents explained those efforts to them and, thus, their testimony is necessary for this limited purpose.

⁸ OHO Order 23-06, at 3.

I find that Enforcement failed to demonstrate that the testimony of [REDACTED] and [REDACTED] would be inadmissible for any purpose. Enforcement contends their testimony would be duplicative and cumulative, but that is difficult to assess before the hearing. Should I determine at the hearing that their testimony is cumulative or duplicative of other witnesses' testimony, I can limit their testimony at that point. Accordingly, Enforcement's objection is **OVERRULED**.

2. [REDACTED] [REDACTED] and [REDACTED] [REDACTED]

Respondents intend to call as witnesses attorneys [REDACTED] [REDACTED] and [REDACTED] [REDACTED], who represented Respondents in their dealings with FINRA. Enforcement objects to these witnesses to the extent they seek to provide testimony regarding privileged communications with Respondents absent a waiver of the attorney-client privilege. Lowry contends that the testimony of [REDACTED] and [REDACTED] will be limited to non-privileged communications concerning their discussions with FINRA staff and counsel, and that they will not testify regarding privileged discussions with their clients.

Respondents' witness list indicates that [REDACTED] and [REDACTED] are "expected to testify as to non-privileged communications" they had with FINRA staff and Respondents. Lowry also states in his response to Enforcement's objection that their testimony will be limited to non-privileged communications concerning their discussions with FINRA staff and counsel. Accordingly, Enforcement's objection is **OVERRULED**. Enforcement may renew its objection at the hearing should the witnesses attempt to testify regarding privileged communications with their clients.

D. Respondent Lowry's Objections to Enforcement's Proposed Exhibits

1. CX-1 through CX-6

Proposed Exhibits CX-1 through CX-6 purport to contain a summary of the Rule 8210 requests at issue in this case and the responses to those requests. Lowry objects to the exhibits, arguing they improperly include legal conclusions and statements of purported fact that are not evident from the underlying source material. For example, CX-1 states that on July 7, 2022, "Monchik submits partial response to Item 1 and responses to Items 2-4 and 6."⁹ Lowry contends the cited source document, JX-90, which is an email from Monchik, does not state that the response is incomplete. Rather, JX-90 indicates that Monchik believed the response addressed all outstanding requests. Lowry also cites examples in CX-2 through CX-5 where no source document supporting Enforcement's statements were referenced. Regarding CX-6, which purports to calculate the approximate number of months to complete the response to FINRA's request, Lowry argues the numbers are misleading because the amount of time it took to complete the responses is a disputed matter.

Enforcement argues that Lowry's attempt to prevent Enforcement from offering CX-1 through CX-6 should be rejected. Enforcement contends that the exhibits rely on information contained in the joint exhibits and from proposed Enforcement exhibits. As for Lowry's

⁹ CX-1, at 3.

objection to Enforcement’s description of certain of Respondents’ productions as “partial,” Enforcement argues that is not a legal conclusion but rather a description based on subsequent document productions by Respondents. Enforcement contends that Respondents can testify at the hearing why they believe that certain productions that Enforcement characterized as partial were in fact complete.

While CX-1 through CX-6 contain statements of disputed facts and Enforcement will need to present sufficient evidence at the hearing to support the factual statements in CX-1 through CX-6, I cannot find at this point that the exhibits are unduly prejudicial and therefore inadmissible. Accordingly, I **DEFER** ruling on Lowry’s objections until the hearing.

2. CX-46 through CX-51

Proposed Exhibits CX-46 through CX-51 are primarily excerpts from on-the-record testimony (“OTR”) that Monchik and Lowry provided in connection with the Funds Investigation.¹⁰ Lowry objects to these exhibits on relevancy grounds, arguing that Lowry’s and Monchik’s testimony about the sales of interests in unregistered private funds has no bearing on whether Respondents impeded FINRA’s investigation. Lowry also states the excerpts are lengthy and reference many exhibits that are not proposed exhibits in this proceeding. Thus, Lowry argues the excerpts are incomplete, prejudicial, and misleading.

Enforcement argues that Lowry and Monchik testified during their OTRs about their roles and responsibilities with respect to the Funds, access to Funds documentation, and, in part, the Rule 8210 requests at issue in this proceeding. Enforcement argues that it intends to use their prior OTR testimony to impeach Respondents should they testify inconsistently during the hearing. Enforcement represents that it is not seeking to introduce the transcripts in their entirety.

I cannot find at this point that CX-46 through CX-51 would be inadmissible for any purpose. Accordingly, I **DEFER** ruling on Lowry’s objections until the hearing.

3. CX-52 through CX-58

Proposed Exhibits CX-52 through CX-58 are transcript excerpts from testimony Lowry and Monchik gave in a disciplinary hearing in 2022 involving their failure to update their respective Uniform Application for Securities Industry Registration or Transfer (Form U4). Lowry objects to these exhibits as irrelevant, immaterial, and unduly prejudicial. He argues that the transcripts were from a hearing on an unrelated matter that predates the events at issue in this proceeding, and that their admission would be unfairly prejudicial. He further contends that the use of these transcripts runs afoul of the Federal Rules of Evidence. Finally, Lowry argues that admitting the transcript exhibits would lead to another hearing on Respondents’ Form U4 compliance.

According to Enforcement, Lowry and Monchik testified at length during the Form U4 disciplinary hearing about their regulatory obligations, how they comply with those obligations,

¹⁰ CX-49 is an email to Monchik dated August 23, 2023, that was used as an exhibit at her OTR.

and the structure of Spartan’s compliance department, all of which Enforcement contends are relevant in this proceeding. Enforcement contends it is “relying on CX-52 through CX-58 to ‘[d]emonstrate statements made by [Monchik and Lowry] in connection with [their] past disciplinary hearing and possibly impeach inconsistent testimony at the hearing in this matter.’”¹¹ Enforcement argues that whether the exhibits are relevant for impeachment purposes cannot be known until Respondents testify at the hearing.

While it is unclear from a review of the transcripts how the testimony from this unrelated disciplinary hearing may be relevant to any issue in this case, I cannot at this point rule that CX-52 through CX-58 are inadmissible for any purpose. I therefore **DEFER** ruling on Lowry’s objections until the hearing.

III. Order

For the reasons discussed above, I **OVERRULE** Enforcement’s objections to Respondents’ proposed witnesses. I **DEFER** ruling on Enforcement’s objections to RX-3 through RX-8 and RX-14 through RX-19. I also **DEFER** ruling on Respondents’ objections to CX-1 through CX-6 and CX-46 through CX-58.

SO ORDERED.



Brian D. Craig
Hearing Officer

Dated: September 18, 2025

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¹¹ Enforcement’s Opposition to Lowry’s Pre-Hearing Objections at 9.