

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

MATTHEW J. DODDS  
(CRD No. 2176100),

Respondent.

Disciplinary Proceeding  
No. 2014043020901

Hearing Officer—CC

**ORDER GRANTING JOINT MOTION TO PERMIT WITNESSES TO HAVE  
COUNSEL PRESENT DURING TESTIMONY**

On August 23, 2016, the parties filed a Joint Motion to Allow Counsel to Witnesses to be Present during the Hearing Testimony of Their Clients. FINRA's disciplinary proceedings are not public proceedings.

FINRA's Code of Procedure does not specifically address whether testifying witnesses, upon request, may be accompanied by counsel. The Hearing Officer, however, has general authority under FINRA Rule 9235(a)(2) to regulate the course of the hearing. In appropriate cases, Hearing Officers have allowed counsel to accompany testifying witnesses.<sup>1</sup> Because a testifying witness may not be aware of the operation of certain legal privileges, such as attorney-client privilege, and may unwittingly waive the privilege by divulging protected communications, in the interest of fairness, such a witness may be allowed to have counsel present during his or her testimony.

The Hearing Officer grants the parties' request to allow witnesses in the upcoming hearing to be accompanied by counsel during testimony, subject to the following restrictions. Counsel for the testifying witnesses may attend the hearing only during their client's testimony and only as an observer of that testimony. The witnesses' counsel may not ask questions or otherwise participate in the hearing. Counsel may raise objections only to questions that may elicit privileged information, such as attorney-client communications or material protected by the attorney work product doctrine. Counsel for the witnesses may not consult or collaborate with the parties or counsel for the parties during witness testimony. Furthermore, testifying witnesses

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<sup>1</sup> See OHO Order 11-01 (2008014621701) (Jan. 28, 2011)  
<http://www.finra.org/sites/default/files/OHODecision/p123463.pdf>.

**This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 16-23 (2014043020901).**

and their respective attorneys may not consult with each other during the witnesses' testimony unless specifically allowed by the Hearing Officer.

**SO ORDERED.**

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Carla Carloni  
Hearing Officer

Date: August 24, 2016