

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

SPENCER EDWARDS INC.  
(CRD No. 22067),

Respondent.

Disciplinary Proceeding  
No. 2014041862701

Hearing Officer-KBW

**CASE MANAGEMENT AND SCHEDULING ORDER**

The Hearing Officer held the Initial Pre-Hearing Conference on January 10, 2018, in accordance with FINRA Rule 9241. This Order sets the schedule and other requirements for this proceeding.<sup>1</sup>

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 the Case Administrator assigned to this proceeding, Tonya Howe-Curry, at 202-728-8349 or [Tonya.Howe-Curry@FINRA.org](mailto:Tonya.Howe-Curry@FINRA.org).

**I. Hearing and Final Pre-Hearing Conference**

**A. Hearing**

The hearing shall be held on June 25-29, 2018 in Denver, Colorado. 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 11:00 a.m. Eastern time on June 18, 2018. The parties will be notified of the procedures for participating in the final pre-hearing conference in a subsequent notice.

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<sup>1</sup> 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](http://www.finra.org/industry/finra-rules).

**II. Schedule**

<b>Date</b>	<b>Activity</b>
January 31, 2018	Deadline for the Department of Enforcement to complete producing documents for inspection and copying under Rule 9251.
February 1, 2018	Deadline to file motions for summary disposition under 9264 and for leave to offer expert testimony.
February 15, 2018	Deadline to file opposition briefs to any motions for summary disposition and for leave to offer expert testimony (other than motions to allow rebuttal expert testimony). <sup>2</sup>
February 23, 2018	Deadline for Respondent to file motions concerning Enforcement's production of documents under Rule 9251.
March 9, 2018	Deadline for responses to Respondent's motions concerning Enforcement's production of documents under Rule 9251.
	Deadline for Respondent to request production of documents and testimony under Rule 9252 and witness statements under Rule 9253.
	Deadline for Enforcement to issue requests for information under Rule 8210 (other than attendance of witnesses at the hearing).
March 30, 2018	Case Management Conference.
April 20, 2018	Deadline to exchange (but not file with the Office of Hearing Officers) proposed stipulations to relevant and undisputed facts, including the authenticity, content, and admissibility of specified documents.

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<sup>2</sup> If a motion to permit expert-witness testimony is granted, the opposing Party shall have 14 days from the dates of that order to file a motion to permit testimony of a counter-expert witness. Papers filed in support of a motion to permit testimony of a counter expert witness shall conform to the requirements for a motion to permit testimony. Any opposition to such motion must be filed within seven days of the date of service.

<b>Date</b>	<b>Activity</b>
April 27, 2018	<p>Deadline for the parties to file and serve the following pre-hearing submissions in accordance with Rule 9242 and the requirements of this Order:<sup>3</sup></p> <ul style="list-style-type: none"><li>• pre-hearing briefs;</li><li>• witness lists;</li><li>• exhibit lists, including a list of joint exhibits;</li><li>• copies of proposed exhibits marked for identification (including summary and demonstrative exhibits); and</li><li>• stipulations, if any, as to relevant and undisputed facts, including the authenticity, content, and admissibility of specified documents.</li></ul>
	<p>Deadline for Respondent to request that FINRA invoke Rule 8210 to compel testimony at the hearing under Rule 9252.</p>
May 18, 2018	<p>Deadline for the parties to file objections to proposed witnesses and exhibits, and any counter-transcript designations.</p>
	<p>Deadline for the parties to file all other pre-hearing motions, including motions to allow telephonic/video testimony at the hearing and motions in <i>limine</i>.</p>
	<p>Deadline for Enforcement to issue any 8210 requests to compel attendance of witnesses or production of documents at the hearing</p>
June 1, 2018	<p>Deadline for parties to file responses to objections to proposed exhibits and witnesses.</p>
	<p>Deadline for parties to file opposition briefs to any other pre-hearing motions, including motions to allow telephonic/video testimony at the hearing and motions in <i>limine</i>.</p>
June 18, 2018	<p>Final Pre-Hearing Conference.</p>
June 25-29, 2018	<p>Hearing in Denver, CO.</p>

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<sup>3</sup> Filings that do not comply with the requirements set forth in this Order may be rejected.

### **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.<sup>4</sup> 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.

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 (1) the body of each pleading shall be in Times New Roman 12-point font, double-spaced, and (2) 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.

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<sup>4</sup> 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

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 of and opposition to a motion for summary disposition shall be filed by email in PDF format sent to [OHOCaseFilings@FINRA.org](mailto: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 [OHOCaseFilings@FINRA.org](mailto:OHOCaseFilings@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.<sup>5</sup> 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.

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

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 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.**



**Kenneth B. Winer**  
Hearing Officer

**Dated:** January 10, 2018

**Copies to:** David A. Zisser, Esq. (via email and first-class mail)  
Jeffrey Bloom, Esq. (via email and first-class mail)  
Perry Hubbard, Esq. (via email)  
Jeffrey D. Pariser, Esq (via email)