

This Order has been published by FINRA's Office of Hearing Officers and should be cited as OHO Order 08-08 (2005003437102).

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

Respondent.

Disciplinary Proceeding
No. 2005003437102

Hearing Officer – LBB

**ORDER GRANTING RESPONDENT'S MOTION PURSUANT TO RULE 9252
TO COMPEL TESTIMONY AT HEARING**

On March 12, 2008, pursuant to Rule 9252, Respondent filed a motion requesting that Enforcement invoke Rule 8210 to compel the appearance of WF, SM, and JN at the hearing, arguing that the three witnesses may provide "relevant and critical" testimony. All three witnesses are currently registered with FINRA, and subject to FINRA's jurisdiction. The Department of Enforcement has opposed the motion, arguing that the witnesses are less knowledgeable about relevant issues than witnesses who are already scheduled to testify, and that it would be unduly burdensome to require the witnesses to travel substantial distances to provide testimony that will not add substantially to the evidentiary record. For the reasons set forth below, the motion is granted.

WF is currently employed by ["MFD"] in _____. At all times relevant to this case, WF was employed by ["MFS"] as Vice President of Sales. Although not in direct contact with Respondent, WF nevertheless had a role in MFS's participation in the directed brokerage arrangement that is the subject of this case. Respondent represents that WF discussed the arrangement with SAI and MFS employees who were directly involved in establishing the

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directed brokerage arrangement, and may have information about the arrangement in general, including who came up with the idea of using directed brokerage to reimburse Respondent for the expenses of hiring a former MFS employee. Respondent has shown that WF's testimony is likely to be relevant, material and noncumulative. The request is not unreasonable, oppressive, excessive in scope or unduly burdensome. Respondent represents that MFS has refused to provide witnesses voluntarily, including WF.

SM was Chairman, President and CEO of ["SAI"], Respondent's member firm at the time of the events alleged in the Complaint. Respondent has suggested a number of topics on which SM might be knowledgeable, including whether SAI's senior management knew of and approved the directed brokerage arrangement. SM supervised one or more of the SAI employees who was directly involved in putting the arrangement together, and apparently was personally involved in determining the amount of brokerage commissions allocated to Respondent. Respondent has shown that SM's testimony is likely to be relevant, material and noncumulative. The request is not unreasonable, oppressive, excessive in scope or unduly burdensome. Respondent represents that SAI has refused to provide SM voluntarily.

JN was the Chief Financial Officer of SAI. Respondent proposes to call JN to testify concerning, among other things, JN's approval of "commission adjustments" that were provided to Respondent by SAI and the allegedly improper receipt of funds paid by MFS directly to Respondent. Respondent has shown that JN's testimony is likely to be relevant, material and noncumulative. The request is not unreasonable, oppressive, excessive in scope or unduly burdensome. Respondent represents that SAI has refused to provide JN voluntarily.

Respondent has shown that all three witnesses may be knowledgeable concerning issues that have been raised by the Complaint, Answer, or pre-hearing submissions of the parties.

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Enforcement argues that some of the issues are irrelevant or uncontested. If so, Enforcement should be willing to agree to stipulations on those issues. Enforcement also argues that the testimony of these witnesses may be cumulative, but the knowledge and involvement of the three is sufficient to justify calling them as witnesses in light of the contentions of both parties.

Respondent should not be bound to rely on the witnesses called by Enforcement or those whom Enforcement selected for pre-hearing testimony if the witnesses may provide relevant and reliable testimony.

Conclusion

Respondent has met the requirements under Rule 9252 for the issuance of requests for information, compelling the three witnesses to testify. He has shown that the testimony of the witnesses is likely to be relevant, material and noncumulative. The request is not unreasonable, oppressive, excessive in scope or unduly burdensome. Respective counsel for the employers of the three witnesses have represented that the witnesses will not appear voluntarily.

Respondent's motion to compel the testimony of WF, SM, and JN is granted. The Department of Enforcement is directed to issue Rule 8210 requests to the three witnesses, compelling them to appear and testify at the hearing. In light of the travel required to attend the hearing for all three witnesses, Respondent should consider whether these witnesses may be able to testify by telephone to minimize the burden on the witnesses, and move for leave to offer the testimony by telephone if appropriate.

SO ORDERED.

Lawrence B. Bernard
Hearing Officer

Dated: April 4, 2008
Washington, DC