

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

WILSON-DAVIS & CO., INC.

(CRD No. 3777),

JAMES C. SNOW, JR.

(CRD No. 2761102),

LYLE WESLEY DAVIS

(CRD No. 62352),

BYRON BERT BARKLEY

(CRD No. 12469),

and

CRAIG STANTON NORTON

(CRD No. 349405),

Respondents.

Disciplinary Proceeding

No. 2016048837401

Hearing Officer—DRS

**ORDER (1) GRANTING REQUEST FOR POSTPONEMENT AND (2) DENYING  
REQUEST FOR CHANGE OF HEARING LOCATION**

**I. Background**

The hearing in this case was originally scheduled for April 20–May 1, 2020.<sup>1</sup> Due to the COVID-19 pandemic, however, I postponed it twice: first to July 20–31, 2020,<sup>2</sup> and then to the

<sup>1</sup> Case Management and Scheduling Order (Oct. 3, 2019).

<sup>2</sup> Order (1) Granting Enforcement's Unopposed Motion to Extend March 20 Filing Deadlines and (2) Postponing Hearing (Mar. 13, 2020); Order (1) Granting Joint Motion Regarding Hearing Schedule and (2) Setting New Hearing Dates and Pre-Hearing Schedule (Mar. 18, 2020).

current hearing dates, October 26–November 6, 2020.<sup>3</sup> The Office of Hearing Officers (“OHO”) has administratively postponed all in-person disciplinary hearings through October 2, 2020, because of the pandemic.<sup>4</sup> But the current hearing dates do not fall within the window of that administrative postponement; so, absent any postponement I might grant, or any further administrative postponement that OHO might extend, the hearing would take place as scheduled.

The initial designated hearing location was Salt Lake City, Utah. But in an order I issued on August 3, 2020, I changed the location to the Washington, D.C. metropolitan area.<sup>5</sup> As I explained in the August 3 Order:

FINRA seeks to assist in limiting the spread of COVID-19 and to ensure that disciplinary hearings are held in a safe environment. Given the rapidly changing nature of the COVID-19 pandemic, until further notice, FINRA will conduct disciplinary hearings by either an in-person hearing (when FINRA resumes in-person hearings) or videoconference. . . . [I]n-person hearings will occur in one location equipped with safety features to address public health concerns. Alternatively, hearings can be conducted by videoconferencing, which will enable all parties and witnesses to see, hear, and communicate with the Hearing Panel while safely participating in the hearing from their homes or offices.<sup>6</sup>

The August 3 Order further informed the parties that “[w]hen FINRA resumes in-person disciplinary hearings, until further notice, all hearings, regardless of where originally scheduled to occur, will occur at a central location in the Washington, D.C. metropolitan area.”<sup>7</sup> The hearing in this matter will therefore take place “at a location to be determined in the Washington, D.C. metropolitan area.”<sup>8</sup>

The August 3 Order adheres to OHO’s current policy establishing where hearings will be held after the administrative postponement ends:

When OHO permits in-person disciplinary hearings to resume, until further notice, all disciplinary hearings, regardless of where originally scheduled to occur, will take place at a single location in the Washington, D.C. metropolitan area. The consolidation of hearings in a single location enables OHO to better assess public health conditions in light of the evolving pandemic and provide a venue that can support the appropriate health and safety protocols. OHO is monitoring the

---

<sup>3</sup> Order (1) Rescheduling Hearing and (2) Granting Enforcement’s Request to Extend Certain Pre-Hearing Deadlines (issued May 26, 2020) (“May 26 Order Rescheduling Hearing”).

<sup>4</sup> <https://www.finra.org/rules-guidance/key-topics/covid-19/hearings>.

<sup>5</sup> Order Addressing Hearings During COVID-19 Pandemic (Aug. 3, 2020) (“August 3 Order”).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Washington, D.C. metropolitan area to assess when public health conditions would permit a resumption of in-person disciplinary hearings. Furthermore, FINRA has partnered with public health experts to create health, safety, and security preparedness plans for in-person hearings.<sup>9</sup>

Respondents filed a response to the August 3 Order.<sup>10</sup> They contend that, assuming the current hearing dates remain, the August 3 Order unfairly placed them on the horns of a dilemma: they can exercise their right to an in-person hearing and jeopardize their health, or waive that right and have a hearing “through a medium with which participants are unfamiliar and, even if it worked well, would still have limitations.”<sup>11</sup>

As for the first option, Respondents assert that an in-person hearing in the Washington, D.C. metropolitan area would unavoidably expose all participants to unacceptable health risks. According to Respondents, participants would have to “meet face-to-face with counsel to prepare for the hearing, then travel to and from Washington”; experience “long hearing days with individuals from all across the country”; and “reside in hotels and live away from their homes for over two weeks.”<sup>12</sup> The health risks of an in-person hearing are especially acute in this case, Respondents argue, because of the number of persons attending the hearing and the age and medical histories of the individual Respondents and other participants.<sup>13</sup>

Respondents estimate that at least 16–18 persons will be in an enclosed hearing room for ten days.<sup>14</sup> But there will be even more hearing participants:

[T]he parties collectively have identified at least six additional fact and expert witnesses, all of who will have to travel, stay in hotels, and appear in person in the same room previously described with upwards of 20 other people who have recently traveled, and whose potential exposure to the virus will be completely unknown.<sup>15</sup>

Respondents also express concerns about the age and health of certain participants. All four individual Respondents, one of their witnesses, and a Firm representative are over 65 years

---

<sup>9</sup> <https://www.finra.org/rules-guidance/key-topics/covid-19/hearings>.

<sup>10</sup> Respondents’ Response to August 3, 2020 Order and Request for Status Conference (Aug. 13, 2020) (“Respondents’ Resp. to August 3 Order”).

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.* at 4–5.

<sup>14</sup> Respondents calculated this figure by adding these components: Respondents’ trial team, consisting of three attorneys plus one paralegal; the four individual Respondents; a non-Respondent representative of Wilson-Davis & Co., Inc. (“Firm”); three Hearing Panel members; a court reporter; and at least five or six Enforcement attorneys and staff members. *Id.* at 4.

<sup>15</sup> *Id.*

old<sup>16</sup> and have significant underlying medical conditions. These conditions include Type-2 diabetes; heart and kidney problems; hypertension; atrial fibrillation; asthma; and heart disease. Given their ages and health conditions, these persons, according to Respondents, are “at a substantially higher risk of suffering severe consequences if they were to contract COVID-19.”<sup>17</sup>

In light of these concerns, Respondents request that I hold the hearing in Salt Lake City, Utah, on January 11–15 and 18–22, 2021—alternative dates that the parties had earlier proposed and which I had accepted in case another postponement became necessary.<sup>18</sup>

In support of this request, Respondents represent the following: Nearly all percipient witnesses are in Utah; all Respondents’ attorneys are in Utah; the business that Respondents still run is in Salt Lake City; holding the hearing in Utah will substantially reduce the risk to the Respondents, who are over 65; and many members of Enforcement’s team and a Hearing Panelist reside in the western part of the country.<sup>19</sup>

On August 17, Enforcement filed a response opposing a continuance, arguing that it has an important regulatory interest in resolving this matter as soon as possible.<sup>20</sup> It bases this argument on the length of the proceeding to date; the two prior postponements; and the potential harm to the investing public, given that the charges are serious and the individual Respondents remain associated with the Firm in important positions.<sup>21</sup>

Enforcement does not, however, contest Respondents’ purported right to an in-person hearing. Nor does it dispute or minimize the safety concerns they raised. Rather, Enforcement asserts that “if OHO determines that it is safe for in-person hearings to resume in the Washington D.C. area” by the currently scheduled hearing dates, then the hearing should proceed as scheduled. “[B]ut [if] Respondents remain concerned about risks associated with travel,”

---

<sup>16</sup> The individual Respondents’ ages are: Davis—82; Snow—74; Barkley—73; and Norton—69. The Firm representative who will likely attend the hearing is 66, and the witness, a Firm employee, is 71. *Id.* at 5.

<sup>17</sup> *Id.* at 6. Respondents also raise “pragmatic concerns with holding the hearing in Washington, D.C.” They point out “that the District of Columbia currently requires persons traveling from a number of states, including Utah, to quarantine for 14 days upon arrival.” As a result, “[w]hile it is unknown whether that requirement will be in place in late October, it is difficult to plan for a hearing at that time because Respondents, their counsel and their witnesses do not know whether they would have to plan to arrive at least two weeks before the scheduled start date of the hearing.” *Id.*

<sup>18</sup> *Id.*; May 26 Order Rescheduling Hearing.

<sup>19</sup> Respondents’ Resp. to August 3 Order.

<sup>20</sup> Department of Enforcement’s Response to Respondents’ Filing Regarding August 3 Order (Aug. 17, 2020) (“Enforcement’s Resp. to Resps.’ Filing”).

<sup>21</sup> *Id.* at 1–2.

Enforcement submits, “they have the option to conduct the evidentiary hearing remotely via video.”<sup>22</sup>

On August 27, I held a pre-hearing videoconference to hear oral argument from the parties. At the conference, Respondents modified their position and requested that the hearing be held in Salt Lake City, Utah, even if I do not postpone it.

As explained below, I grant Respondents’ request for a postponement, but not their request to change the location of the hearing.

## **II. Discussion**

Under FINRA Rule 9222(b), a Hearing Officer may change the place of the hearing or postpone its commencement for a “reasonable period of time” for good cause shown. While Hearing Officers have broad discretion in deciding whether to grant a postponement,<sup>23</sup> they may not postpone a hearing for more than 28 days without providing reasons why a longer period is necessary.<sup>24</sup>

The Rule directs the Hearing Officer to consider five factors when evaluating a request to postpone the start of a hearing:

(A) the length of the proceeding to date; (B) the number of postponements, adjournments, or extensions already granted; (C) the stage of the proceedings at the time of the request; (D) potential harm to the investing public if an extension of time, adjournment, or postponement is granted; and (E) such other matters as justice may require.<sup>25</sup>

Upon careful consideration of the parties’ arguments, and balancing the foregoing factors, I conclude that there is good cause to postpone the hearing. On one hand, four of the factors weigh against a postponement: (1) the Complaint was filed over a year ago (July 19, 2019); (2) the hearing has been postponed twice; (3) the pre-hearing process is at a late stage—the parties have filed their pre-hearing submissions and I have issued orders on their pre-hearing motions and objections to witnesses and exhibits; and (4) there is potential harm to the investing

---

<sup>22</sup> *Id.* at 2. Enforcement also states that “Respondents do not explain why they cannot participate in a hearing via video if they believe it is unsafe to travel to the D.C. area and appear in person.” This is not entirely accurate. As I noted above, Respondents did say—though without further explanation—that the participants were unfamiliar with the medium and that “even if it worked well, [it] would still have limitations.”

<sup>23</sup> *Richard Allen Riemer*, Exchange Act Release No. 84513, 2018 SEC LEXIS 3022, at \*20 (Oct. 31, 2018) (“In [FINRA] proceedings, the trier of fact has broad discretion in determining whether to grant a request for a continuance.”) (quoting *Robert J. Prager*, 58 S.E.C. 634, 664 (2005)).

<sup>24</sup> FINRA Rule 9222(b)(2).

<sup>25</sup> FINRA Rule 9222(b)(1)(A)–(E).

public if I postpone the hearing, given the seriousness of the charges<sup>26</sup> and the fact that the individual Respondents remain associated with the Firm in positions of responsibility.<sup>27</sup>

On the other hand, justice requires that I consider Respondents' health and safety concerns about attending an in-person hearing in the Washington, D.C. area during a pandemic. Based on the specific circumstances presented here, I find Respondents' concerns are legitimate, serious, and weigh heavily in favor of a postponement.<sup>28</sup> Balancing these considerations against those weighing against a postponement, I find that good cause exists for postponing this case to January 11–15 and 18–22, 2021, the next dates on which the parties are available for hearing.

Finally, good cause does not exist at this time to change the location of the hearing to Salt Lake City, Utah. As discussed above, once OHO determines that it is safe to resume in-person hearings, until further notice, hearings will be conducted in the Washington, D.C. metropolitan area.

### **III. Order**

For the above reasons, the request for postponement is **GRANTED**. The hearing will be held **January 11–15 and 18–22, 2021**. The Office of Hearing officers will provide the exact hearing location in a subsequent notice. The Final Pre-Hearing Conference set for October 19 is **CANCELED** and will now be held on **January 4, 2021, at 2 p.m., Eastern Time**.

Respondents' request to change the location of the hearing from the Washington, D.C. metropolitan area to Salt Lake City, Utah, is **DENIED without prejudice**. If Respondents later determine that the passage of time resulting from this postponement has not ameliorated their

---

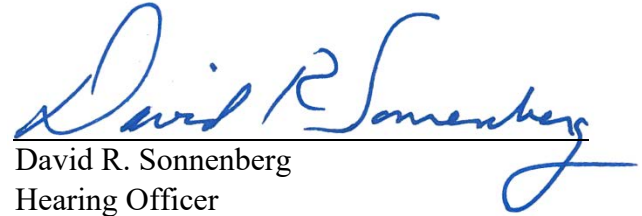
<sup>26</sup> The Complaint alleges the following wrongful conduct: willful stock market manipulation; deficient supervisory system and failure to supervise; unreasonable anti-money laundering system; and providing false and misleading information to FINRA.

<sup>27</sup> According to Enforcement, Norton is a registered representative and market-maker/trader at the Firm, and the remaining individual Respondents are the Firm's designated supervisors for its penny stock liquidation business. Enforcement's Resp. to Resps.' Filing 1. Respondents have not contested these assertions.

<sup>28</sup> Given that Enforcement does not contest Respondents' purported right to an in-person hearing, I reject its argument that Respondents should opt for a virtual hearing if they do not feel safe attending the currently scheduled in-person hearing. That said, I make no finding that Respondents have a right to an in-person hearing in this disciplinary proceeding.

health and safety concerns, they may renew their request to change the hearing location by no later than **November 11, 2020**.

**SO ORDERED.**

  
David R. Sonnenberg  
Hearing Officer

Dated: September 4, 2020

Copies to:

Richard F. Ensor, Esq. (via email)  
Evan S. Strassberg, Esq. (via email)  
Anne T. Freeland, Esq. (via email)  
D. Craig Parry, Esq. (via email)  
Mark O. Van Wagoner, Esq. (via email)  
Brody W. Weichbrodt, Esq. (via email)  
John R. Baraniak, Jr., Esq. (via email)  
Mark Fernandez, Esq. (via email)  
Carolyn Craig, Esq. (via email)  
Christopher Perrin, Esq. (via email)  
Jennifer L. Crawford, Esq. (via email)