FINANCIAL INDUSTRY REGULATORY AUTHORITY
OFFICE OF HEARING OFFICERS

DEPARTMENT OF ENFORCEMENT, Complainant, v. KRIS LYNN LEWIS (CRD No. 4505097), Respondent.	Disciplinary Proceeding No. 2015047154001 Hearing Officer–DRS

ORDER DENYING RESPONDENT'S MOTION FOR ADMISSION OF ADDITIONAL EXHIBITS

A. Introduction

On February 9, 2018, nine days after the hearing ended, Kris Lynn Lewis moved to admit three additional exhibits: (1) An audio recording of what purports to be a telephone conversation between her and Jennifer Adamson, formerly associated with Voya Financial Advisors, Inc., as a senior compliance analyst (RX-36); (2) what purports to be a transcript of that recording (RX-37); and (3) Lewis's supporting affidavit (RX-38). Lewis offers these exhibits because, she argues, the conversation "contravenes Ms. Adamson's hearing testimony that she did not speak to Ms. Lewis following Ms. Lewis's termination, and," she continues, "the call confirms Ms. Lewis's testimony that she sought contact information for Voya's legal department, as well as expressing concerns regarding her OSJ."[1] According to Lewis's affidavit, she first located the recording on February 4, 2018, while "searching for recordings" on her "hand held recording device."[2] She goes on to state that while she does not know the date of the recording, she concludes that, based on the substance of the conversation, the call occurred after her termination from Voya.

Enforcement filed its opposition on February 22, 2018, asserting four grounds: (1) the motion fails to establish good cause for not having offered these exhibits at the hearing; (2) the exhibits are not material to the issues in the case; (3) the transcript is unreliable; and (4) Enforcement would be prejudiced if I grant the motion.

For the reasons discussed below, I deny the motion.

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[1] Motion at 1.

[2] Lewis Affidavit, ¶¶ 1–2.

B. Discussion

Under FINRA Rule 9263(a), a "Hearing Officer shall receive relevant evidence, and may exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial." Lewis argues that the additional exhibits are relevant and material and, therefore, I should admit them. In order to admit them, I would have to reopen the hearing. I have that authority under FINRA Rule 9235(a)(5), which permits a Hearing Officer to reopen "any hearing, upon notice to all Parties, prior to the issuance of the decision of the Hearing Panel." But the rule does not address when a Hearing Officer should reopen a hearing to permit a party to add new exhibits.

Nevertheless, Rule 9235(a)(5) is modeled after SEC Rule of Practice 111.[3] And SEC Administrative Law judges applying that rule have relied on the standards set forth in SEC Rule of Practice 452, which governs the submission of additional evidence in proceedings before the SEC.[4] Rule 452 requires a movant to "show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously."[5] Therefore, I will apply this standard in deciding whether to reopen the hearing to admit additional evidence.[6]

In so doing, I find that the motion is deficient as it does not meet either requirement of Rule 452. The subjects discussed during the call between Lewis and Adamson are not material to the allegations or defenses in this case. And, to the extent the call contradicts Adamson's testimony that she had no post-termination conversations with Lewis, this is such a minor point that it would unlikely impact the Hearing Panel's overall assessment of Adamson's credibility. Finally, the motion does not establish that Lewis had reasonable grounds for not offering the evidence earlier. The motion does not address this issue, and reasonable grounds are not otherwise apparent. To the contrary, according to the motion, the recording was contained on Lewis's recording device and she conducted the search for recordings on that device after the hearing ended. Lewis offered no explanation for why she did not search the recording device

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[3] *See* Notice of Filing of Proposed Rule Change by NASD, Exchange Act Release No. 38545, 1997 SEC LEXIS 959, at *2 (Apr. 24, 1997).

[4] *See Michael J. Fee*, Administrative Proceedings Rulings Release No. 358, 1989 SEC LEXIS 5151, at *4–6 (Nov. 28, 1989) (applying Rule 21(d), the predecessor to Rule 452); *Ernst & Whinney*, Administrative Proceedings Rulings Release No. 277, 1987 SEC LEXIS 4690, at 4–6 (June 17, 1987) (same).

[5] 17 CFR 201.452.

[6] At least one other FINRA Hearing Officer has applied Rule 452 in deciding whether to reopen a hearing to permit the submission of additional evidence. *See Dep't of Enforcement v. Holaday*, No. 2012032519101, 2015 FINRA Discip. LEXIS 17, at *24–26 (OHO May 21, 2015), *rev'd on other grounds*, 2016 FINRA Discip. LEXIS 64 (NAC Oct. 3, 2016).

earlier and find—or through reasonable diligence could not have found—the recording before the hearing concluded. For these reasons, the motion is **DENIED.**[7]

SO ORDERED.

David R. Sonnenberg
Hearing Officer

Dated: March 5, 2018

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[7] In light of the above finding that Lewis failed to meet the requirements of Rule 452, it is not necessary for me to rule on the other grounds asserted by Enforcement.