

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

LEK SECURITIES CORP.  
(CRD No. 33135),

and

CHARLES FREDERIK LEK  
(CRD No. 4672129),

Respondents.

Disciplinary Proceeding  
No. 2021071137001

Hearing Officer–DDM

**ORDER GRANTING ENFORCEMENT'S MOTION  
FOR LEAVE TO OFFER EXPERT TESTIMONY**

**I. Introduction**

The Department of Enforcement filed a six-count Complaint against Respondents Lek Securities Corp. (“LSC” or the “Firm”) and Charles F. Lek. In the Fourth Cause of Action, Enforcement alleges that Respondents did not establish and implement a reasonable anti-money laundering (“AML”) program with respect to microcap securities, in violation of FINRA Rules 3310(a) and 2010. Specifically, Enforcement alleges that LSC, under Lek’s direction, “failed to implement AML policies, procedures, and internal controls reasonably designed to detect and cause the reporting of suspicious transactions[.]”<sup>1</sup> Enforcement also alleges that LSC’s AML policies, procedures, and internal controls were deficient in several ways, and that “LSC’s microcap customer activity regularly implicated red flags of potentially violative behavior set forth in regulatory guidance, but that the Firm and Lek failed to detect and reasonably investigate such red flags.”<sup>2</sup> In their Answer, Respondents deny Enforcement’s allegations in the fourth cause of action, and deny violating FINRA’s AML rules.<sup>3</sup>

<sup>1</sup> Complaint (“Compl.”) ¶ 300.

<sup>2</sup> Compl. ¶ 306.

<sup>3</sup> Answer ¶¶ 295-309.

Enforcement moved for leave to call an expert to testify about issues related to the Fourth Cause of Action. Enforcement's proposed expert witness is Arthur Middlemiss, who has previously testified as an expert about AML-related issues in FINRA disciplinary proceedings.<sup>4</sup> In an email dated February 24, 2023, Respondents' counsel said that Respondents do not oppose the motion. Enforcement's motion is **GRANTED**, subject to certain conditions outlined in this Order.

## II. Qualifications and Proposed Testimony from Middlemiss

According to his curriculum vitae, which was attached to Enforcement's motion, Middlemiss is currently the managing partner of the New York office of law firm Lewis Baach Kaufmann Middlemiss pllc, where his practice focuses on AML and anti-corruption issues.<sup>5</sup> He previously worked as an assistant district attorney, where he prosecuted securities fraud and money-laundering cases, and was the head of AML surveillance for two large investment banks.<sup>6</sup> According to Enforcement, Middlemiss "is a frequent speaker on AML and Bank Secrecy Act issues and has testified as an expert on AML issues."<sup>7</sup> In sum, Enforcement asserts, Middlemiss has "extensive experience with AML issues as a prosecutor, in-house counsel at major financial institutions, and as a consultant."<sup>8</sup>

Enforcement proposes that Middlemiss testify as an expert on the following topics:<sup>9</sup>

1. The AML considerations and risks posed by microcap securities trading generally and specifically with respect to LSC's microcap business line.
2. The features of an AML program that is reasonably designed to achieve and monitor the firm's compliance with the requirements of the Bank Secrecy Act and its implementing regulations for a microcap business line.
3. Whether the AML program for which Lek was responsible as CEO of LSC was consistent with a reasonably designed AML program and, if not, how it differed.
4. Whether Respondents developed and implemented an AML program that was reasonably tailored to fit LSC's business model and, if not, how it differed from a reasonably tailored AML program.

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<sup>4</sup> Department of Enforcement's Amended Motion for Leave to Offer Expert Testimony ("Expert Mot."), Exhibit ("Exh.") A, at 2.

<sup>5</sup> Expert Mot., Exh. A, at 4.

<sup>6</sup> Expert Mot., Exh. A, at 1-2.

<sup>7</sup> Expert Mot. 4.

<sup>8</sup> Expert Mot. 1-2.

<sup>9</sup> Expert Mot. 5-6.

5. How a firm should reasonably monitor and investigate red flags in customer accounts, and whether Respondents reasonably monitored and investigated red flags in customer accounts of potentially suspicious activity.
6. Whether Respondents took appropriate actions regarding this activity to determine whether they needed to file Suspicious Activity Reports in appropriate instances.
7. The role of an AML Compliance Officer (“AMLCO”) within a reasonably designed AML program and whether the Firm’s AMLCO’s familiarity with and engagement with LSC’s microcap business line was consistent with a reasonably designed AML program.

## I. Discussion

A party seeking to introduce expert testimony must first obtain permission from the Hearing Officer,<sup>10</sup> who has broad discretion in deciding whether to permit expert testimony.<sup>11</sup> In applying that discretion, the Hearing Officer considers whether the proposed expert testimony is relevant<sup>12</sup> and reliable.<sup>13</sup> To assist in making that determination, the Federal Rules of Evidence and related case law, though not binding,<sup>14</sup> are instructive.<sup>15</sup> Federal Rules of Evidence Rule 702 provides, in pertinent part, that “[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if . . . the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.” And, indeed, the key factor in this forum is whether the anticipated expert testimony would be helpful to the Hearing Panel.<sup>16</sup> As the

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<sup>10</sup> Case Management and Scheduling Order (“CMSO”), at 10.

<sup>11</sup> See, e.g., OHO Order 17-07 (2013035817701) (Mar. 21, 2017), at 1, [http://www.finra.org/sites/default/files/OHO\\_Order\\_17-07\\_2013035817701.pdf](http://www.finra.org/sites/default/files/OHO_Order_17-07_2013035817701.pdf); OHO Order 16-20 (20120342425-01) (July 28, 2016), at 4, [http://www.finra.org/sites/default/files/OHO\\_Order16-20\\_20120342425-01\\_0.pdf](http://www.finra.org/sites/default/files/OHO_Order16-20_20120342425-01_0.pdf); OHO Order 15-04 (2011025706401) (Feb. 3, 2015), at 2, <http://www.finra.org/sites/default/files/OHO-Order-15-04-ProceedingNo.2011025706401.pdf>; OHO Order 12-07 (2010020846601) (Nov. 9, 2012), at 1, <http://www.finra.org/sites/default/files/OHODecision/p229431.pdf>.

<sup>12</sup> OHO Order 16-20, at 4; OHO Order 12-01 (2009018771602) (Mar. 14, 2012), at 2-3, <http://www.finra.org/sites/default/files/OHODecision/p126068.pdf>. See also FINRA Rule 9263 (The Hearing Officer may admit evidence that is relevant, but may exclude evidence that is “irrelevant, immaterial, unduly repetitious, or unduly prejudicial.”).

<sup>13</sup> OHO Order 16-20, at 4; OHO Order 15-04, at 2 (citing *Pipitone v. Biomatrix, Inc.*, 288 F.3d 239, 244 (5th Cir. 2002) (“In short, expert testimony is admissible only if it is both relevant and reliable.”)).

<sup>14</sup> See FINRA Rule 9145(a) (“The formal rules of evidence shall not apply in a proceeding brought under the Rule 9000 Series.”).

<sup>15</sup> OHO Order 17-07, at 1; OHO Order 16-20, at 4; OHO Order 12-07, at 2 n.3.

<sup>16</sup> OHO Order 17-07, at 2; OHO Order 16-20, at 4; OHO Order 15-04, at 2; OHO Order 12-01, at 3.

movant, Enforcement has the burden of establishing the conditions for offering expert testimony.<sup>17</sup>

I find that good cause exists for granting Enforcement's motion. Issues involving AML have frequently been the subject of expert testimony in FINRA disciplinary proceedings.<sup>18</sup> Here, Middlemiss appears qualified to opine about the topics identified in Enforcement's motion.<sup>19</sup> Further, expert testimony on those topics would be helpful to the Hearing Panel in resolving the issues in this case. Finally, Respondents may object at the hearing to any testimony by Middlemiss beyond these topics or that encompasses issues that are within the exclusive province of the Hearing Panel.

Enforcement's motion for leave to call Middlemiss as an expert witness is **GRANTED**,<sup>20</sup> subject to the following:

1. Enforcement shall file an expert report for Middlemiss by **May 8, 2023**, as provided in the CMSO.<sup>21</sup>
2. The report shall contain:
  - a. a description of the Middlemiss's qualifications;
  - b. his expert opinions;
  - c. the basis and reasons for such opinions;
  - d. a summary, at the beginning of the report, of: Middlemiss's opinions, the basis, and reasons for such opinions;

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<sup>17</sup> OHO Order 17-07, at 2 ("It is the proponent's burden to show that the expert's testimony satisfies the conditions for admission."); OHO Order 12-01, at 4 (same).

<sup>18</sup> *See, e.g.*, OHO Order 15-04, at 2 ("AML procedures are a sufficiently specialized area that expert testimony . . . may well assist the Panel in evaluating the AML-related allegations in the Complaint, notwithstanding the Panelists' generalized expertise in securities industry issues."); OHO Order 12-07, at 3 (finding that AML expert testimony "will assist the Hearing Panel in understanding pertinent legal and regulatory requirements and the reasonable steps firms should take to comply with those requirements.").

<sup>19</sup> I make this finding solely for the purpose of deciding whether Middlemiss meets the threshold for being permitted to testify. How much weight, if any, should be accorded to his testimony—including how his qualifications may impact credibility findings—will be determined by the Hearing Panel based on the evidence presented at the hearing.

<sup>20</sup> Under the CMSO, Respondents have 21 days from the date of this Order – or until March 21, 2023 -- to file a motion to call a counter-expert witness. Papers filed in support of a motion to permit counter-expert testimony shall conform to the requirements for a motion to permit expert testimony. Any opposition shall be filed within seven days of the filing of the motion.

<sup>21</sup> CMSO, at 4.

- e. a statement of the compensation paid or to be paid for Middlemiss's work on the case (including but not limited to the compensation paid or to be paid for preparing the expert report); and
  - f. a listing of all documents relied on in forming Middlemiss's opinions. Copies of all such documents, along with any related demonstrative exhibits, shall be served with the report on **May 8, 2023**.
3. The report and supporting documents shall be included in Enforcement's proposed hearing exhibits.
  4. To the extent they are admitted at the hearing, the expert report and supporting documents will be considered part of Middlemiss's direct testimony.
  5. At the hearing, Enforcement's direct examination of Middlemiss shall consist of a summary direct examination, presenting his qualifications and opinions subject to the scope of the expert report, and the bases and explanation for his opinions.

**SO ORDERED.**



Daniel D. McClain  
Hearing Officer

Dated: February 28, 2023

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