

**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—RES

**ORDER GOVERNING THE USE OF LEADING QUESTIONS TO FORMER
EMPLOYEES OF RESPONDENT LEK SECURITIES CORPORATION**

The three-week hearing in this disciplinary proceeding is scheduled to begin July 24 and end August 10, 2023. The Department of Enforcement intends to call as hearing witnesses five former employees of Respondent Lek Securities Corporation (“Lek Securities”). The parties disagree as to whether Enforcement, on direct examination, can properly ask leading questions of these former employees. Enforcement contends they are identified with an adverse party—Lek Securities—and leading questions are allowed.¹ Lek Securities and Respondent Charles Lek object that none of the former employees currently work for the firm or otherwise have any interest in the outcome of this proceeding.² Lek Securities has ceased doing business and released nearly all its employees.³

The Federal Rules of Evidence do not govern FINRA disciplinary proceedings but may be instructive as to the proper form of direct examination of former employees of a respondent

¹ Department of Enforcement’s Submission at the Request of the Hearing Officer Regarding the Use of Leading Questions (“Enforcement Submission”) 2.

² Respondents’ Position on Witness Adversity (“Respondents Position”) 1.

³ Respondents Position 1.

member firm. Rule 611 provides that a court should allow leading questions when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party:

Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily, the court should allow leading questions:

- (1) On cross-examination; and
- (2) When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.⁴

Rule 611 enlarged the class of witnesses presumed hostile, and therefore subject to examination by leading questions without further showing of actual hostility.⁵ In determining whether a former employee is identified with an adverse party, courts applying Rule 611 consider the former employee's managerial or representative capacity and involvement in the transactions or occurrences that led to the litigation.⁶ With this guidance in mind, I reach these conclusions as to whether Enforcement will be allowed to ask leading questions of the following former employees of Lek Securities.

██████████ was a deposit specialist who allegedly failed to identify or investigate many red flags described in the Complaint.⁷ Enforcement makes a sufficient showing that this witness was present during and participated in the transactions in question (i.e., the failure to identify red flags), so that she is identified with an adverse party.⁸ Enforcement will be allowed to ask leading questions of this witness.

██████████ was Head Trader, Chief Operating Officer, and minority owner of Lek Securities.⁹ These senior management and ownership positions make this witness identified with an adverse party.¹⁰ Enforcement will be allowed to ask leading questions of this witness.

⁴ Fed. R. Evid. 611(c).

⁵ *Haney v. Mizell Mem'l Hosp.*, 744 F.2d 1467, 1477-78 (11th Cir. 1984); *Karthauser v. Columbia 9-1-1 Communs. Dist.*, No. 3:20-cv-127-SI, 2023 U.S. Dist. LEXIS 11738, at *8 (D. Ore. Jan. 24, 2023).

⁶ *Fehr v. Sus-Q Cyber Charter Sch.*, No. 4:13-cv-01871, 2015 U.S. Dist LEXIS 142187, at *8 (M.D. Pa. Oct. 20, 2015).

⁷ Enforcement Submission 5.

⁸ *SEC v. AIC, Inc.*, No. 3:11-cv-176, 2013 U.S. Dist. LEXIS 191621, at *10 (E.D. Tenn. Sept. 19, 2013) (“As to defendants’ former employees, the Court concludes that these witnesses, many of whom were present and participated in the transactions in question, also are considered to be identified with an adverse party under the Rule.”).

⁹ Enforcement Submission 3.

¹⁰ *Karthauser*, 2023 U.S. Dist. LEXIS 11738, at *8-9 (“The former executive directors of Defendant are sufficiently ‘identified’ with Defendant to satisfy this rule.”).

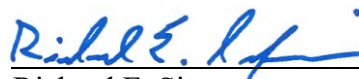
██████████ was a compliance officer at Lek Securities who allegedly reviewed problematic exception reports.¹¹ Enforcement makes a sufficient showing that this witness was present during and participated in the transactions in question (i.e., the review of problematic exception reports), so that he is identified with an adverse party. Enforcement will be allowed to ask leading questions of this witness.

██████████ was Chief Compliance Officer, AML Compliance Officer, and minority owner of Lek Securities.¹² These senior management and ownership positions make this witness identified with an adverse party. Enforcement will be allowed to ask leading questions of this witness.¹³

██████████ was responsible for reviewing microcap securities deposits at a time when a business line suspension was in effect.¹⁴ It is not clear that this witness knew or had reason to know there was a business line suspension, or discussed the suspension with other employees of Lek Securities. Enforcement fails to make a sufficient showing that this witness was present during and participated in the transactions in question (i.e., the violation of a business line suspension), to make the witness identified with an adverse party. Enforcement will **not** be allowed to ask leading questions of this witness.¹⁵

If Respondents dispute the use of leading questions on direct examination of a witness in the hearing, they can raise an appropriate objection at that time and preserve the issue for appeal.

SO ORDERED.



Richard E. Simpson
Hearing Officer

Dated: July 21, 2023

¹¹ Enforcement Submission 5.

¹² Enforcement Submission 4.

¹³ Respondents state that ██████████ has an ongoing indemnification claim against Lek Securities. Respondents Position 3. Respondents will be allowed to ask ██████████ about this claim to establish his alleged bias against them.

¹⁴ Enforcement Submission 5.

¹⁵ *Fehr*, 2015 U.S. Dist. LEXIS 142187, at *11 (“Plaintiff will be precluded from calling [certain witnesses] as on cross-examination absent a sufficient factual showing of hostility at trial”).

Copies to:

Ralph A. Siciliano, Esq. (via email)
Adam F. Felsenstein, Esq. (via email)
Andrew L. Dubin, Esq. (via email)
Lillianna R. Iorfino, Esq. (via email)
Gregory R. Firehock, Esq. (via email)
David Monachino, Esq. (via email)
Mark S. Geiger, Esq. (via email)
Perry C. Hubbard, Esq. (via email)
Jennifer L. Crawford, Esq. (via email)