

**THE NASDAQ STOCK MARKET LLC
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Lek Securities Corporation,
(CRD No. 33135),

Respondent.

Disciplinary Proceeding
No. 20100215956-02

Hearing Officer - LOM

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: February 27, 2018

INTRODUCTION

Disciplinary Proceeding No20100215956-02 was filed on November 18, 2016, by the Department of Enforcement of the Financial Industry Regulatory Authority on behalf of The NASDAQ Stock Market LLC ("Nasdaq" or "Complainant"). Respondent Lek Securities Corporation ("LSCI" or the "Respondent") submitted an Offer of Settlement (Offer) to Complainant on January 16, 2018. Pursuant to Nasdaq Rule 9270(e), the Complainant and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs (ODA) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Nasdaq Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the Complainant and approved by ODA.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Complaint, as amended by the Offer of Settlement and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of Nasdaq, or to which Nasdaq is a party, to the entry of findings and violations consistent with the allegations of

the Complaint, as amended by the Offer of Settlement, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by Nasdaq.

BACKGROUND

LSCI is a Delaware corporation headquartered in New York, New York. LSCI has been registered with the United States Securities and Exchange Commission (the "Commission") since March 1990 and has been registered with FINRA since April 1, 1996. LSCI has been a Nasdaq member since July 2006.

LSCI operates as an independent order-execution and clearing firm providing customers direct market access to numerous exchanges, including Nasdaq. Nasdaq has jurisdiction over LSCI because it is currently registered as a Nasdaq member firm and it committed the misconduct at issue while a Nasdaq member.

FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

Summary

1. This matter involves systemic supervisory violations committed by LSCI.
2. Specifically, LSCI's supervisory procedures, including its written supervisory procedures ("WSPs"), were inadequate and failed to provide for all minimum requirements for adequate supervision in numerous areas.
3. Similarly, LSCI failed to evidence that it performed supervisory reviews in numerous areas, including in many of the same areas in which its WSPs were deficient.
4. By failing to establish, maintain, and enforce supervisory systems and procedures that were reasonably designed to achieve compliance with Nasdaq rules and federal securities

laws, rules and regulations, LSCI violated Nasdaq Rules 3010, 2110 (for conduct occurring prior to November 21, 2012) and 2010A (for conduct on or after November 21, 2012).

5. Due, in part, to these supervisory failures, LSCI violated Rule 200(g) of Regulation SHO (“Reg SHO”) of the Securities Exchange Act of 1934 (the “Exchange Act”) (Definition of “Short Sale” and Marking Requirements) and Rule 203(b)(1) of Reg SHO (Borrowing and Delivery Requirements); and Nasdaq Rules 4702 and 4755 (Order Entry Parameters).

Respondent and Jurisdiction

6. LSCI has been registered with the Commission since March 1990. LSCI has been a Nasdaq member since July 2006. LSCI operates as an independent order-execution and clearing firm providing customers direct market access to numerous exchanges, including Nasdaq. Nasdaq has jurisdiction over LSCI because it is currently registered as a Nasdaq member firm and it committed the misconduct at issue while a Nasdaq member.

Statement of Facts

7. This matter stems from the 2010, 2013, 2014, and 2016 Cycle Examinations of LSCI by TFCE.

8. The TFCE examination program supplements Market Regulation’s automated surveillance capabilities through the use of on-site market activity-focused examinations. TFCE staff primarily conducts yearly cycle trading examinations on behalf of FINRA and various exchanges, including Nasdaq. The cycle examination program reviews compliance with various rules relating to equity trading, including but not limited to supervision (including both WSPs and maintaining documentary evidence of supervisory reviews conducted) by FINRA member organizations and the members of the various exchanges, including Nasdaq.

9. TFCE's cycle examinations assess a broker-dealer's compliance across a range of regulatory obligations. Accordingly, TFCE focuses its review on a sample of trading activity during selected trading dates as indicative of overall compliance with relevant trading rules.

10. In connection with the 2010 Cycle Examination of LSCI, TFCE reviewed LSCI's trading activity, with particular focus on activity during the period of June 21, 2010 through June 25, 2010 (the "2010 Review Period").

11. In connection with the 2013 Cycle Examination of LSCI, TFCE reviewed LSCI's trading activity, with particular focus on activity during the period of June 17, 2013 through June 21, 2013 (the "2013 Review Period").

12. In connection with the 2014 Cycle Examination of LSCI, TFCE reviewed LSCI's trading activity, with particular focus on activity during the period of June 9, 2014 through June 13, 2014 (the "2014 Review Period").

13. In connection with the 2016 Cycle Examination of Respondent, TFCE reviewed Respondent's trading activity with particular focus on the activity during the period of February 22, 2016 through February 23, 2016 (the "2016 Review Period").

(Reg SHO Borrowing and Delivery Requirements – Rule 203(b)(1) of Reg SHO and Nasdaq Rule 2010A)

14. Rule 203(b)(1) of Reg SHO states, in relevant part, that "[a] broker or dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker or dealer has: (i) Borrowed the security, or entered into a bona-fide arrangement to borrow the security; or (ii) Reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) Documented compliance with this paragraph (b)(1)."

15. The Securities and Exchange Commission (the “Commission”) implemented this “locate” requirement to protect and enhance the operation, integrity, and stability of the markets, including by assisting the Commission in its enforcement efforts against naked short selling activity, which can have deleterious effects on both individual securities and the markets as a whole.

16. As part of the 2014 Cycle Examination of LSCI, TFCE sampled 1,254 short sales, of which 311 were entered into the Nasdaq System, for compliance with the Rule 203(b)(1) security location requirement.

17. Of the orders entered into the Nasdaq System, LSCI, on at least one occasion, accepted a short sale order from a customer without borrowing the security, entering into a bona fide arrangement to borrow the security; or having reasonable grounds to believe that the security could be borrowed so it could be delivered on the date delivery is due; and documenting its compliance with Rule 203(b)(1) of Reg SHO.

18. As part of the 2016 Cycle Examination of LSCI, TFCE reviewed 5,529 short sell orders by LSCI for compliance with the Rule 203(b)(1) security location requirement.

19. TFCE’s review disclosed 19 instances in which LSCI accepted a short sale order from a customer without borrowing the security, entering into a bona-fide arrangement to borrow the security, or having reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and/or documenting its compliance with Rule 203(b)(1) of Reg SHO.

20. As a result of the foregoing, LSCI violated Rule 203(b)(1) of Reg SHO, with each instance constituting a separate and distinct violation.

21. In addition, as a result of the foregoing conduct, LSCI failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of Nasdaq Rule 2010A.

(Definition of “Short Sale” and Marking Requirements – Rule 200(g) of Reg SHO and Nasdaq Rule 2010A)

22. Pursuant to Rule 200(g) of Reg SHO, “[a] broker or dealer must mark all sell orders of any equity security as ‘long,’ ‘short,’ or ‘short exempt.’”

23. Moreover, Rule 200(g)(1) of Reg SHO states that “(1) An order to sell shall be marked ‘long’ only if the seller is deemed to own the security being sold . . . and either: (i) The security to be delivered is in the physical possession or control of the broker or dealer; or (ii) It is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction.”

24. The marking of orders as long or short serves multiple purposes in the financial markets. Order marking facilitates the surveillance of the Commission and self-regulatory organizations for compliance with (or violations of) various short sale related obligations. Additionally, requiring a broker-dealer to have possession or control of the securities before it can mark an order long assists in mitigating settlement and credit risks that can affect the stability and integrity of the financial system as a whole.

25. As part of the 2014 Cycle Examination of LSCI, TFCE reviewed 1,512 customer orders, of which 314 were entered into the Nasdaq System, to determine if such orders were marked consistent with Rule 200(g) of Reg SHO.

26. Of the orders entered into the Nasdaq System, LSCI, on three occasions, marked a sale order “short” when the customer’s position was long.

27. Of the orders entered into the Nasdaq System, LSCI, on at least one occasion, marked a sale order “long” when the customer’s position was short.

28. As part of the 2016 Cycle Examination of LSCI, TFCE reviewed 6,689 sell orders entered by LSCI to determine if such orders were marked consistent with Rule 200(g) of Reg SHO. TFCE’s review disclosed 674 orders, 150 of which were entered into the Nasdaq System, in which LSCI either marked a long sale “short” when the customer’s position was long or marked a short sale “long” when the customer’s position was short.

29. Of these orders entered in the Nasdaq System, LSCI, on 131 occasions, marked a long sale “short” when the customer’s position was long.

30. Of these orders entered in the Nasdaq System, LSCI, on 19 occasions, marked a short sale “long” when the customer’s position was short.

31. As a result of the foregoing, LSCI violated Rule 200(g) of Reg SHO, with each instance constituting a separate and distinct violation.

32. In addition, as a result of the foregoing conduct, LSCI failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of Nasdaq Rule 2010A.

(Order Marking Requirements – Nasdaq Rules 4755, 4702 and 2010A)

33. Pursuant to Nasdaq Rules 4755(1)(a), (for conduct during the 2014 Review Period) and 4702 (for conduct during the 2016 Review Period), an order entered into the Nasdaq System for display and/or execution must indicate, among other things, whether they are a buy, short sale, or long sale.

34. As noted above, LSCI, on at least 134 occasions, identified a sell order entered into the Nasdaq System as “short” when the customer’s position was long.

35. As noted above, LSCI, on at least 20 occasions, identified a sell order entered into the Nasdaq System as “long” when the customer’s position was short.

36. As a result of the foregoing, LSCI violated Nasdaq Rules 4755 (for conduct during the 2014 Review Period) and 4702 (for conduct during the 2016 Review Period, with each instance constituting a separate and distinct violation.

37. In addition, as a result of the foregoing conduct, LSCI failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of Nasdaq Rule 2010A.

(Supervision – Nasdaq Rules 3010, 2110 and 2010A)

38. Pursuant to Nasdaq Rule 3010, “[e]ach member shall establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules.”

39. In addition, pursuant to Nasdaq Rule 3010(a), “Nasdaq members shall comply with NASD Rule 3010 as if such Rule were part of Nasdaq’s Rules.”

40. NASD Rule 3010(b)(1) states that “[e]ach member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD.”

41. LSCI violated Nasdaq Rules 3010 and 2010A in that it failed to reasonably supervise and implement adequate controls and supervisory procedures, including a separate system of follow up and review and written supervisory procedures, reasonably designed to

achieve compliance with, among other things, Rules 200(g) and 203(b)(1) of Reg SHO, and Nasdaq Rules 4755 and 4702.

42. In addition, LSCI violated Nasdaq Rules 3010, 2110 (for conduct occurring prior to November 21, 2012) and 2010A (for conduct on or after November 21, 2012), in that it failed to establish, maintain, and enforce written procedures reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of Nasdaq.

43. At a minimum, WSPs should describe:

- a. Specific identification of the individual(s) responsible for supervision;
- b. The supervisory steps and reviews to be taken by the appropriate supervisor;
- c. The frequency of such reviews; and
- d. How such reviews shall be documented.

44. Without adequate WSPs on a particular topic, Firm supervisory personnel lack sufficient written direction on how to conduct supervisory reviews so as to reasonably ensure compliance with applicable securities laws and regulations.

45. Creating documentary evidence of supervisory reviews allows broker-dealers to verify that their supervisory personnel are discharging their supervisory obligations and those of the broker-dealer. Absent documentary evidence of review, neither the broker-dealer nor its regulators can adequately review to ensure that the broker-dealer has, in fact, conducted required supervision.

46. During the 2010 Review Period, for the following areas, LSCI's WSPs failed to identify the individual(s) responsible for supervision, the supervisory steps and reviews to be taken, the frequency of such reviews and how such reviews are to be documented:

- a. Trade Reporting: Nasdaq capacity requirements; and
- b. Other Trading Rules: Nasdaq clearly erroneous trades and Nasdaq short sale indicator.

47. During the 2013 Review Period, for the following areas, LSCI's WSPs failed to identify the individual(s) for supervision, the supervisory steps and reviews to be taken, the frequency of such reviews and how such reviews are to be documented:

- a. Trade Reporting: Nasdaq capacity requirements; and
- b. Other Trading Rules: ensuring integrity of orders, Nasdaq clearly erroneous trades and Nasdaq short sale indicator.

48. During the 2014 Review Period, for the following areas, LSCI's WSPs failed to identify the individual(s) for supervision, the supervisory steps and reviews to be taken, the frequency of such reviews and how such reviews are to be documented:

- a. Trade Reporting: Nasdaq capacity requirements; and
- b. Other Trading Rules: ensuring integrity of orders, Nasdaq clearly erroneous trades, review and detection of order entry errors and Nasdaq short sale indicator.

49. During the 2016 Review Period, for the following areas LSCI's WSPs failed to identify the individual(s) responsible for supervision, the supervisory steps and review to be taken, the frequency of such reviews and how such reviews are to be documented:

- a. Other Trading Rules: order marking accuracy; and

- b. **Other Rules:** information barriers, disclosures by associated persons of accounts and/or other activities in which they have a direct or indirect financial interest, or make investment decisions, are an officer, director or 10% shareholder in a company.

50. During the 2016 Review Period, for the following areas LSCI's WSPs failed to identify the supervisory steps and review to be taken, the frequency of such reviews and how such reviews are to be documented:

- a. **Trade Reporting:** order capacity; and
- b. **Other Trading Rules:** controls to ensure the integrity and accuracy of orders entered into Nasdaq systems, Nasdaq clearly erroneous filings, review and detection of potential Nasdaq order entry errors.

51. As part of its 2016 Cycle Examination of LSCI, TFCE requested LSCI to provide documentary evidence that in February 2016 it performed the supervisory reviews set forth in its WSPs related to Nasdaq trading practice rules in the following areas:

- c. **Trading Practice Rules:** prohibited trading practices;
- d. **Trade Reporting:** entering accurate capacity information into the Nasdaq system;
- e. **Other trading rules:** ensuring the accuracy and integrity of orders entered and routed to the Nasdaq system, filing accuracy of clearly erroneous transactions, review and detection of potential order entry errors; and

- f. **Other Rules: information barriers, advising associated persons in writing against misuse of inside information, signed attestations regarding misuse of inside information.**

52. **LSCI failed to provide TFCE with documentary evidence that LSCI performed the supervisory reviews set forth in its WSPs related to the Nasdaq trading practice rules described in Paragraph 51.**

53. **As a result of the foregoing, LSCI violated Nasdaq Rule 3010.**

54. **In addition, as a result of the foregoing conduct, LSCI failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of Nasdaq Rules 2110 (for conduct occurring prior to November 21, 2012) and 2010A (for conduct on or after November 21, 2012).**

Based upon the foregoing, Respondent violated Nasdaq Rules 4755, 4702, 2110 and 2010A, and violated Rules 200(g) and 203(b)(1) of Reg SHO of the Exchange Act.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent from any future misconduct, and represent a proper discharge by Nasdaq, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be censured, fined in the amount of \$175,000, of which \$37,250 shall be paid to Nasdaq, and the following undertaking:¹

a. Respondent shall:

- 1) Retain, within 30 days of the date of the Notice of Acceptance of this Offer, an Independent Consultant, not unacceptable to FINRA staff to conduct a comprehensive review of the adequacy of Respondent's policies, systems and procedures (written and otherwise) and training relating to the violations identified in this Offer.
- 2) The Independent Consultant, any firm with which the Independent Consultant is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties, shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the date of the Notice of Acceptance of this Offer;
- 3) Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant;
- 4) Cooperate with the Independent Consultant in all respects, including by providing staff support. Respondent shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and Respondent and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, Respondent shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval; Respondent shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA;
- 5) At the conclusion of the review, which shall be no more than 150 days after the date of the Notice of Acceptance of this Offer, require the Independent Consultant to submit to Respondent and FINRA staff a Written Report. The Written Report shall address, at a minimum, (i) the adequacy of Respondent's policies, systems, procedures, and training

¹ The remainder of the fine is to be paid to Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., The New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc.

relating to the violations identified in this Offer; (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's recommendations for modifications and additions to Respondent's policies, systems, procedures and training; and

- 6) Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performing his or her duties pursuant to this Offer, shall not, without prior written consent of FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- b. Within 90 days after delivery of the Written Report, Respondent shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. Respondent shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide Respondent with a written decision reflecting his or her determination. Respondent will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.
- 1) Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), Respondent shall provide FINRA staff with a written implementation report, certified by an officer of Respondent, attesting to, containing documentation of, and setting forth the details of Respondent's implementation of the Independent Consultant's recommendations.
 - 2) Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

SO ORDERED.

NASDAQ

Signed on behalf of the
Director of ODA, by delegated authority

A handwritten signature in black ink, appearing to read "Robert A. Marchman", written over a horizontal line.

Robert A. Marchman
Executive Vice President
Department of Enforcement

**NASDAQ STOCK MARKET LLC
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Lek Securities Corporation,
(CRD No. 33135),

Respondent.

Disciplinary Proceeding
No. 20100215956-02

Hearing Officer - LOM

OFFER OF SETTLEMENT

I.

Respondent Lek Securities Corporation (“LSCI” or “Respondent”) makes this Offer of Settlement (“Offer”) to The NASDAQ Stock Market LLC (“Nasdaq”), with respect to the matters alleged by the Financial Industry Regulatory Authority (“FINRA”), on behalf of Nasdaq, in Disciplinary Proceeding No. 20100215956-02 filed on November 18, 2016 (“Complaint”), as amended by this Offer.

This Offer is submitted to resolve this proceeding and is made without admitting or denying the allegations of the Complaint, as amended by this Offer. It is also submitted upon the condition that Nasdaq shall not institute or entertain, at any time, any further proceeding as to Respondent based on the allegations of the Complaint, as amended by this Offer, and upon further condition that it will not be used in this proceeding, in any other proceeding, or otherwise, unless it is accepted by the Nasdaq Review Council or the Office of Disciplinary Affairs, pursuant to Nasdaq Rule 9270(e).

II.

ORIGIN OF DISCIPLINARY ACTION

This matter stems from the 2010, 2013, 2014 and 2016 Cycle Examinations of Respondent (“LSCI” or the “Respondent”) by FINRA Market Regulation’s Trading and Financial Compliance Examinations (“TFCE”) group, formerly known as Trading and Market Making Surveillance (“TMMS”).¹

III.

ALLEGED ACTS OR PRACTICES AND VIOLATIONS BY RESPONDENT

As alleged in the Complaint, as amended herein, Respondent engaged in the following acts, or failed to act as follows:

Summary

1. This matter involves systemic supervisory violations committed by LSCI.
2. Specifically, LSCI’s supervisory procedures, including its written supervisory procedures (“WSPs”), were inadequate and failed to provide for all minimum requirements for adequate supervision in numerous areas.
3. Similarly, LSCI failed to evidence that it performed supervisory reviews in numerous areas, including in many of the same areas in which its WSPs were deficient.
4. By failing to establish, maintain, and enforce supervisory systems and procedures that were reasonably designed to achieve compliance with Nasdaq rules and federal securities laws, rules and regulations, LSCI violated Nasdaq Rules 3010, 2110 (for conduct occurring prior to November 21, 2012) and 2010A (for conduct on or after November 21, 2012).

¹ The findings in the 2016 Cycle Examination were not included in the Complaint; however, as amended by this Offer, the parties have agreed to include the 2016 Cycle Examination findings for the purpose of resolving all open matters.

5. Due, in part, to these supervisory failures, LSCI violated Rule 200(g) of Regulation SHO (“Reg SHO”) of the Securities Exchange Act of 1934 (the “Exchange Act”) (Definition of “Short Sale” and Marking Requirements) and Rule 203(b)(1) of Reg SHO (Borrowing and Delivery Requirements); and Nasdaq Rules 4755 (Order Entry Parameters).

Respondent and Jurisdiction

6. LSCI has been registered with the United States Securities and Exchange Commission (the “Commission”) since March 1990. LSCI has been a Nasdaq member since July 2006. LSCI operates as an independent order-execution and clearing firm providing customers direct market access to numerous exchanges, including Nasdaq. Nasdaq has jurisdiction over LSCI because it is currently registered as a Nasdaq member firm and it committed the misconduct at issue while a Nasdaq member.

Statement of Facts

7. This matter stems from the 2010, 2013, 2014, and 2016 Cycle Examinations of LSCI by TFCE.

8. The TFCE examination program supplements Market Regulation’s automated surveillance capabilities through the use of on-site market activity-focused examinations. TFCE staff primarily conducts yearly cycle trading examinations on behalf of FINRA and various exchanges, including Nasdaq. The cycle examination program reviews compliance with various rules relating to equity trading, including but not limited to supervision (including both WSPs and maintaining documentary evidence of supervisory reviews conducted) by FINRA member organizations and the members of the various exchanges, including Nasdaq.

9. TFCE's cycle examinations assess a broker-dealer's compliance across a range of regulatory obligations. Accordingly, TFCE focuses its review on a sample of trading activity during selected trading dates as indicative of overall compliance with relevant trading rules.

10. In connection with the 2010 Cycle Examination of LSCI, TFCE reviewed LSCI's trading activity, with particular focus on activity during the period of June 21, 2010 through June 25, 2010 (the "2010 Review Period").

11. In connection with the 2013 Cycle Examination of LSCI, TFCE reviewed LSCI's trading activity, with particular focus on activity during the period of June 17, 2013 through June 21, 2013 (the "2013 Review Period").

12. In connection with the 2014 Cycle Examination of LSCI, TFCE reviewed LSCI's trading activity, with particular focus on activity during the period of June 9, 2014 through June 13, 2014 (the "2014 Review Period").

13. In connection with the 2016 Cycle Examination of Respondent, TFCE reviewed Respondent's trading activity with particular focus on the activity during the period of February 22, 2016 through February 23, 2016 (the "2016 Review Period").

(Reg SHO Borrowing and Delivery Requirements – Rule 203(b)(1) of Reg SHO and Nasdaq Rule 2010A)

14. Rule 203(b)(1) of Reg SHO states, in relevant part, that "[a] broker or dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker or dealer has: (i) Borrowed the security, or entered into a bona-fide arrangement to borrow the security; or (ii) Reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) Documented compliance with this paragraph (b)(1)."

15. The Securities and Exchange Commission (the “Commission”) implemented this “locate” requirement to protect and enhance the operation, integrity, and stability of the markets, including by assisting the Commission in its enforcement efforts against naked short selling activity, which can have deleterious effects on both individual securities and the markets as a whole.

16. As part of the 2014 Cycle Examination of LSCI, TFCE sampled 1,254 short sales, of which 311 were entered into the Nasdaq System, for compliance with the Rule 203(b)(1) security location requirement.

17. Of the orders entered into the Nasdaq System, LSCI, on at least one occasion, accepted a short sale order from a customer without borrowing the security, entering into a bona fide arrangement to borrow the security; or having reasonable grounds to believe that the security could be borrowed so it could be delivered on the date delivery is due; and documenting its compliance with Rule 203(b)(1) of Reg SHO.

18. As part of the 2016 Cycle Examination of LSCI, TFCE reviewed 5,529 short sell orders by LSCI for compliance with the Rule 203(b)(1) security location requirement.

19. TFCE’s review disclosed 19 instances in which LSCI accepted a short sale order from a customer without borrowing the security, entering into a bona-fide arrangement to borrow the security, or having reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and/or documenting its compliance with Rule 203(b)(1) of Reg SHO.

20. As a result of the foregoing, LSCI violated Rule 203(b)(1) of Reg SHO, with each instance constituting a separate and distinct violation.

21. In addition, as a result of the foregoing conduct, LSCI failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of Nasdaq Rule 2010A.

(Definition of "Short Sale" and Marking Requirements – Rule 200(g) of Reg SHO and Nasdaq Rule 2010A)

22. Pursuant to Rule 200(g) of Reg SHO, "[a] broker or dealer must mark all sell orders of any equity security as 'long,' 'short,' or 'short exempt.'"

23. Moreover, Rule 200(g)(1) of Reg SHO states that "(1) An order to sell shall be marked 'long' only if the seller is deemed to own the security being sold . . . and either: (i) The security to be delivered is in the physical possession or control of the broker or dealer; or (ii) It is reasonably expected that the security will be in the physical possession or control of the broker or dealer no later than the settlement of the transaction."

24. The marking of orders as long or short serves multiple purposes in the financial markets. Order marking facilitates the surveillance of the Commission and self-regulatory organizations for compliance with (or violations of) various short sale related obligations. Additionally, requiring a broker-dealer to have possession or control of the securities before it can mark an order long assists in mitigating settlement and credit risks that can affect the stability and integrity of the financial system as a whole.

25. As part of the 2014 Cycle Examination of LSCI, TFCE reviewed 1,512 customer orders, of which 314 were entered into the Nasdaq System, to determine if such orders were marked consistent with Rule 200(g) of Reg SHO.

26. Of the orders entered into the Nasdaq System, LSCI, on three occasions, marked a sale order "short" when the customer's position was long.

27. Of the orders entered into the Nasdaq System, LSCI, on at least one occasion, marked a sale order “long” when the customer’s position was short.

28. As part of the 2016 Cycle Examination of LSCI, TFCE reviewed 6,689 sell orders entered by LSCI to determine if such orders were marked consistent with Rule 200(g) of Reg SHO. TFCE’s review disclosed 674 orders, 150 of which were entered into the Nasdaq System, in which LSCI either marked a long sale “short” when the customer’s position was long or marked a short sale “long” when the customer’s position was short.

29. Of these orders entered in the Nasdaq System, LSCI, on 131 occasions, marked a long sale “short” when the customer’s position was long.

30. Of these orders entered in the Nasdaq System, LSCI, on 19 occasions, marked a short sale “long” when the customer’s position was short.

31. As a result of the foregoing, LSCI violated Rule 200(g) of Reg SHO, with each instance constituting a separate and distinct violation.

32. In addition, as a result of the foregoing conduct, LSCI failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of Nasdaq Rule 2010A.

(Order Marking Requirements – Nasdaq Rules 4755, 4702 and 2010A)

33. Pursuant to Nasdaq Rules 4755(1)(a), (for conduct during the 2014 Review Period) and 4702 (for conduct during the 2016 Review Period), an order entered into the Nasdaq System for display and/or execution must indicate, among other things, whether they are a buy, short sale, or long sale.

34. As noted above, LSCI, on at least 134 occasions, identified a sell order entered into the Nasdaq System as “short” when the customer’s position was long.

35. As noted above, LSCI, on at least 20 occasions, identified a sell order entered into the Nasdaq System as “long” when the customer’s position was short.

36. As a result of the foregoing, LSCI violated Nasdaq Rules 4755 (for conduct during the 2014 Review Period) and 4702 (for conduct during the 2016 Review Period, with each instance constituting a separate and distinct violation.

37. In addition, as a result of the foregoing conduct, LSCI failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of Nasdaq Rule 2010A.

(Supervision – Nasdaq Rules 3010, 2110 and 2010A)

38. Pursuant to Nasdaq Rule 3010, “[e]ach member shall establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules.”

39. In addition, pursuant to Nasdaq Rule 3010(a), “Nasdaq members shall comply with NASD Rule 3010 as if such Rule were part of Nasdaq’s Rules.”

40. NASD Rule 3010(b)(1) states that “[e]ach member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD.”

41. LSCI violated Nasdaq Rules 3010 and 2010A in that it failed to reasonably supervise and implement adequate controls and supervisory procedures, including a separate system of follow up and review and written supervisory procedures, reasonably designed to

achieve compliance with, among other things, Rules 200(g) and 203(b)(1) of Reg SHO, and Nasdaq Rules 4755 and 4702.

42. In addition, LSCI violated Nasdaq Rules 3010, 2110 (for conduct occurring prior to November 21, 2012) and 2010A (for conduct on or after November 21, 2012), in that it failed to establish, maintain, and enforce written procedures reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of Nasdaq.

43. At a minimum, WSPs should describe:

- a. Specific identification of the individual(s) responsible for supervision;
- b. The supervisory steps and reviews to be taken by the appropriate supervisor;
- c. The frequency of such reviews; and
- d. How such reviews shall be documented.

44. Without adequate WSPs on a particular topic, Firm supervisory personnel lack sufficient written direction on how to conduct supervisory reviews so as to reasonably ensure compliance with applicable securities laws and regulations.

45. Creating documentary evidence of supervisory reviews allows broker-dealers to verify that their supervisory personnel are discharging their supervisory obligations and those of the broker-dealer. Absent documentary evidence of review, neither the broker-dealer nor its regulators can adequately review to ensure that the broker-dealer has, in fact, conducted required supervision.

46. During the 2010 Review Period, for the following areas, LSCI's WSPs failed to identify the individual(s) responsible for supervision, the supervisory steps and reviews to be taken, the frequency of such reviews and how such reviews are to be documented:

- a. Trade Reporting: Nasdaq capacity requirements; and
- b. Other Trading Rules: Nasdaq clearly erroneous trades and Nasdaq short sale indicator.

47. During the 2013 Review Period, for the following areas, LSCI's WSPs failed to identify the individual(s) for supervision, the supervisory steps and reviews to be taken, the frequency of such reviews and how such reviews are to be documented:

- a. Trade Reporting: Nasdaq capacity requirements; and
- b. Other Trading Rules: ensuring integrity of orders, Nasdaq clearly erroneous trades and Nasdaq short sale indicator.

48. During the 2014 Review Period, for the following areas, LSCI's WSPs failed to identify the individual(s) for supervision, the supervisory steps and reviews to be taken, the frequency of such reviews and how such reviews are to be documented:

- a. Trade Reporting: Nasdaq capacity requirements; and
- b. Other Trading Rules: ensuring integrity of orders, Nasdaq clearly erroneous trades, review and detection of order entry errors and Nasdaq short sale indicator.

49. During the 2016 Review Period, for the following areas LSCI's WSPs failed to identify the individual(s) responsible for supervision, the supervisory steps and review to be taken, the frequency of such reviews and how such reviews are to be documented:

- a. Other Trading Rules: order marking accuracy; and

- b. **Other Rules:** information barriers, disclosures by associated persons of accounts and/or other activities in which they have a direct or indirect financial interest, or make investment decisions, are an officer, director or 10% shareholder in a company.

50. During the 2016 Review Period, for the following areas LSCI's WSPs failed to identify the supervisory steps and review to be taken, the frequency of such reviews and how such reviews are to be documented:

- a. Trade Reporting: order capacity; and
- b. Other Trading Rules: controls to ensure the integrity and accuracy of orders entered into Nasdaq systems, Nasdaq clearly erroneous filings, review and detection of potential Nasdaq order entry errors.

51. As part of its 2016 Cycle Examination of LSCI, TFCE requested LSCI to provide documentary evidence that in February 2016 it performed the supervisory reviews set forth in its WSPs related to Nasdaq trading practice rules in the following areas:

- a. **Trading Practice Rules:** prohibited trading practices;
- b. **Trade Reporting:** entering accurate capacity information into the Nasdaq system;
- c. **Other trading rules:** ensuring the accuracy and integrity of orders entered and routed to the Nasdaq system, filing accuracy of clearly erroneous transactions, review and detection of potential order entry errors; and
- d. **Other Rules:** information barriers, advising associated persons in writing against misuse of inside information, signed attestations regarding misuse of inside information.

52. LSCI failed to provide TFCE with documentary evidence that LSCI performed the supervisory reviews set forth in its WSPs related to the Nasdaq trading practice rules described in Paragraph 51.

53. As a result of the foregoing, LSCI violated Nasdaq Rule 3010.

54. In addition, as a result of the foregoing conduct, LSCI failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of Nasdaq Rules 2110 (for conduct occurring prior to November 21, 2012) and 2010A (for conduct on or after November 21, 2012).

IV.

Pursuant to the conditions set forth herein, Respondent consents to the issuance of an Order Accepting Offer of Settlement (Order) and disposing of this proceeding in the following manner:

A. Without admitting or denying the allegations, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of Nasdaq, or to which Nasdaq is a party, to the entry of findings of facts and violations by Respondent as set forth above in Section III; and,

B. Imposing sanctions of a Censure, a fine in the amount of \$175,000, of which \$37,250 shall be paid to Nasdaq, and the following undertaking:²

a. Respondent shall:

- 1) Retain, within 30 days of the date of the Notice of Acceptance of this Offer, an Independent Consultant, not unacceptable to FINRA staff to conduct a comprehensive review of the adequacy of Respondent's policies, systems and procedures (written and otherwise) and training relating to the violations identified in this Offer.

² The remainder of the fine is to be paid to Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., The New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc.

- 2) The Independent Consultant, any firm with which the Independent Consultant is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties, shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the date of the Notice of Acceptance of this Offer;
- 3) Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant;
- 4) Cooperate with the Independent Consultant in all respects, including by providing staff support. Respondent shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and Respondent and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, Respondent shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval; Respondent shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA;
- 5) At the conclusion of the review, which shall be no more than 150 days after the date of the Notice of Acceptance of this Offer, require the Independent Consultant to submit to Respondent and FINRA staff a Written Report. The Written Report shall address, at a minimum, (i) the adequacy of Respondent's policies, systems, procedures, and training relating to the violations identified in this Offer; (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's recommendations for modifications and additions to Respondent's policies, systems, procedures and training; and
- 6) Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client auditing or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performing his or her duties pursuant to this Offer, shall not, without prior written consent of FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Respondent or any of its present or former affiliates,

directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

- b. Within 90 days after delivery of the Written Report, Respondent shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. Respondent shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide Respondent with a written decision reflecting his or her determination. Respondent will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.
 - 1) Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), Respondent shall provide FINRA staff with a written implementation report, certified by an officer of Respondent, attesting to, containing documentation of, and setting forth the details of Respondent's implementation of the Independent Consultant's recommendations.
 - 2) Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

The sanctions herein shall be effective on a date set by FINRA staff.

Acceptance of this Offer is conditioned upon acceptance of similar settlement agreements in related matters between Respondent and each of the following self-regulatory organizations: FINRA, Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., The New York Stock Exchange LLC, NYSE American LLC, and NYSE Arca, Inc.

V.

In connection with the submission of this Offer, and subject to the provisions herein, Respondent specifically waives the following rights provided by Nasdaq's Code of Procedure:

A. Any right to a hearing before an Adjudicator (as defined in Nasdaq Rule 9120(a)), and any right of appeal to the Nasdaq Review Council, the U.S. Securities and Exchange Commission, or the U.S. Court of Appeals, or any right otherwise to challenge or contest the validity of the Order issued, if the Offer and the Order are accepted;

B. Any right to claim bias or prejudgment by the Chief Hearing Officer, Hearing Officer, a hearing panel or, if applicable, an extended hearing panel, a panelist on a hearing panel, or, if applicable, an extended hearing panel, the Chief Regulatory Officer, the Nasdaq Review Council, any member of the Nasdaq Review Council, or its Counsel in connection with such person's or body's participation in discussions regarding the terms and conditions of this Offer, including acceptance or rejection of this Offer; and

C. Any right to claim a violation by any person or body of the ex parte prohibitions of Nasdaq Rule 9143, or the separation of functions prohibitions of Nasdaq Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the Offer and the Order or other consideration of the Offer and Order, including acceptance or rejection of such Offer and Order.

VI.

Respondent understands that:

A. The Order will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by Nasdaq or any other regulator against Respondent;

B. Nasdaq may release this Order or make a public announcement concerning this Order and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; and

D. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in the Complaint, as amended herein, or create the impression that the Complaint, as amended herein, is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of Nasdaq, or to which Nasdaq is a party, that is inconsistent with any allegation in the Complaint, as amended herein. Nothing in this provision affects Respondent's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings to which Nasdaq is not a party.

The undersigned, on behalf of the Respondent, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this Offer and has been given a full opportunity to ask questions about it; that Respondent has agreed to its provisions voluntarily; and that no offer, threat, inducement or promise of any kind or nature, other than the terms set forth herein, has been made to induce Respondent to submit it.

January 16, 2018

Respondent
Lek Securities Corporation

By: 

Samuel F. Lek
Chief Executive Officer

**THE NASDAQ STOCK MARKET LLC
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Lek Securities Corporation,
(CRD No. 33135),

Respondent.


Disciplinary Proceeding
No. 20100215956-02

Hearing Officer - LOM

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of February 2018, copies of the foregoing *Order Accepting Offer of Settlement, Offer of Settlement*, and this Certificate of Service were served on Respondent via electronic mail at the address listed below:

Samuel F. Lek
Corporate Designee
Lek Securities Corporation
One Liberty Plaza
165 Broadway
52nd Floor
New York, NY 10006
saml@leksecurities.com


Michael W. Bautz
Senior Counsel