

**BATS EDGX EXCHANGE, INC.  
OFFICE OF HEARING OFFICERS**

Department of Market Regulation, on behalf  
of Bats EDGX Exchange, Inc.,

Complainant,

v.

Lek Securities Corporation (CRD No.  
33135),

Respondent.

Disciplinary Proceeding  
No. 20100215956-07

**STATEMENT OF CHARGES**

The Department of Market Regulation of the Financial Industry Regulatory Authority (“FINRA”), on behalf of Bats EDGX Exchange, Inc. (“EDGX” or the “Exchange”), alleges that:

**Summary**

1. This matter involves systemic supervisory violations committed by Lek Securities Corporation (“LSCI” or the “Firm”).
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 EDGX rules and federal securities laws, rules and regulations, LSCI violated EDGX Rules 5.1 and 3.1.

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), Rule 203(b)(1) of Reg SHO (Borrowing and Delivery Requirements); Section 17(a) of the Exchange Act and Rule 17a-4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers), thereunder; and EDGX Rules 11.15 (Order Entry) and 4.1 (Books and Records Requirements).

6. In addition, LSCI violated EDGX Rules 5.1, 5.5 and 3.1, in that it failed to establish, maintain and enforce written procedures reasonably designed to prevent the misuse of material, non-public by the Firm or persons associated with the Firm.

### **Respondent and Jurisdiction**

7. LSCI has been registered with the United States Securities and Exchange Commission (the “Commission”) since March 1990. LSCI has been an EDGX member since May 2010. LSCI operates as an independent order-execution and clearing firm providing customers direct market access to numerous exchanges, including EDGX. EDGX has jurisdiction over LSCI because it is currently registered an EDGX member and it committed the misconduct at issue while an EDGX member.

### **Statement of Facts**

8. This matter stems from the 2013 and 2014 Cycle Examinations of LSCI by Market Regulation’s Trading and Financial Compliance Examinations (“TFCE”) group, formerly known as Trading and Market Making Surveillance (“TMMS”), on behalf of EDGX and various other exchanges.

9. 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 other exchanges, including EDGX. 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 EDGX.

10. 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.

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").

#### **First Cause of Action**

*(Definition of "Short Sale" and Marking Requirements – Rule 200(g) of Reg SHO and EDGX Rule 3.1)*

13. Market Regulation re-alleges and incorporates by reference each preceding paragraph.

14. 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.'"

15. 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.”

16. 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.

17. As part of the 2014 Cycle Examination of LSCI, TFCE reviewed 770 customer orders, of which 105 were entered into the EDGX System,<sup>1</sup> to determine if such orders were marked consistent with Rule 200(g) of Reg SHO.

18. Of the orders entered into the EDGX System, LSCI, on at least nine occasions (set forth on the attached Exhibit A), marked a sale order “short” when the customer’s position was long.

19. Of the orders entered into the EDGX System, LSCI, on at least one occasion (set forth on the attached Exhibit A), marked a sale order “long” when the customer’s position was short.

20. As a result of the foregoing, LSCI willfully violated Rule 200(g) 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 EDGX Rule 3.1.

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<sup>1</sup> Pursuant EDGX Rule 1.5(c)(c), “[t]he term ‘System’ shall mean the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.”

**Second Cause of Action**

*(Order Marking Requirements – EDGX Rules 11.15 and 3.1)*

22. Market Regulation re-alleges and incorporates by reference each preceding paragraph.

23. Pursuant to EDGX Rule 11.15, all short sale orders shall be identified as “short” or “short exempt” when entered into the EDGX System.

24. As noted above, LSCI, on at least nine occasions (set forth in the attached Exhibit A), identified a sell order entered into the EDGX System as “short” when the customer’s position was long.

25. As noted above, LSCI, on at least one occasion (set forth in the attached Exhibit A), identified a sell order entered into the EDGX System as “long” when the customer’s position was short.

26. As a result of the foregoing, LSCI violated EDGX Rule 11.15, with each instance constituting a separate and distinct violation.

27. 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 EDGX Rule 3.1.

**Third Cause of Action**

*(Reg SHO Borrowing and Delivery Requirements – Rule 203(b)(1) of Reg SHO and EDGX Rule 3.1)*

28. Market Regulation re-alleges and incorporates by reference each preceding paragraph.

29. 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).”

30. 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.

31. As part of the 2013 Cycle Examination of LSCI, TFCE sampled 20 short sale orders entered into the EDGX Systems for compliance with the Rule 203(b)(1) security location requirement.

32. On at least one occasion during the 2013 Review Period, 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 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.

33. Specifically, on June 20, 2013, LSCI accepted an order to sell short 100 shares of Proshares Ultra VIX Short Term Futures (symbol: UVXY) from its customer. LSCI had no documentation or other evidence that it had borrowed sufficient shares of UVXY, entered into a bona fide arrangement to borrow sufficient shares of UVXY, or that it had reasonable grounds to believe that it could borrow sufficient shares of UVXY so that it could be delivered on the delivery date.

34. As part of the 2014 Cycle Examination of LSCI, TFCE sampled 588 short sales, of which 89 were entered into the EDGX System for compliance with the Rule 203(b)(1) security location requirement.

35. On at least two occasions during the 2014 Review Period, LSCI accepted a short sale order on behalf of a customer and entered it into the EDGX System 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.

36. Specifically, on June 12, 2014, LSCI accepted an order to sell short 300 shares of DineEquity, Inc. (symbol: DIN) from its customer. LSCI had no documentation or other evidence that it had borrowed sufficient shares of DIN, entered into a bona fide arrangement to borrow sufficient shares of DIN, or that it had reasonable grounds to believe that sufficient shares of DIN could be borrowed so that it could be delivered on the delivery date.

37. In addition, on June 12, 2014, LSCI accepted an order to sell short 500 shares of EBIX, Inc. (symbol: EBIX) from its customer. LSCI had no documentation or other evidence that it had borrowed sufficient shares of EBIX, entered into a bona fide arrangement to borrow sufficient shares of EBIX, or that it had reasonable grounds to believe that sufficient shares of EBIX could be borrowed so that it could be delivered on the delivery date.

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

39. 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 EDGX Rule 3.1.

#### **Fourth Cause of Action**

*(Books and Records – Section 17(a) of the Exchange Act, Rule 17a-4, thereunder, and EDGX Rules 4.1, 5.5 and 3.1)*

40. Market Regulation re-alleges and incorporates by reference each preceding paragraph.

41. Rule 17a-4(b)(4) of the Exchange Act requires broker dealers to preserve, “for a period of not less than three years, the first two years in an accessible place . . . [o]riginals of all communications received. . . by the member, broker or dealer relating to its business as such. . .”

42. Pursuant to EDGA Rule 4.1, “Each Member shall make and keep books, accounts, records, memoranda and correspondence in conformity with Section 17 of the [Exchange] Act and the rules thereunder, with all other applicable laws and the rules, regulations and statements of policy promulgated thereunder, and with Exchange Rules.”

43. Pursuant to EDGX Rule 4.1, “Each Member shall make and keep books, accounts, records, memoranda and correspondence in conformity with Section 17 of the [Exchange] Act and the rules thereunder, with all other applicable laws and the rules, regulations and statements of policy promulgated thereunder, and with Exchange Rules.”

44. EDGX Rule 5.5(c)(3) states, in relevant part, that “[e]ach Member must receive and retain copies of trade confirmations and monthly account statements for each brokerage account in which an associated person has a direct or indirect financial interest or makes investment decisions.”

45. The policy underlying the record-keeping provisions is to ensure that regulators have access to certain basic information to allow it to adequately police the securities markets. The recordkeeping requirements are therefore fundamental requirements imposed on those who wish to engage in the securities business.



46. As part of the 2014 Cycle Examination of LSCI, TFCE conducted an Outside Brokerage Account Review, in which it requested LSCI to provide an account statement for its CEO and an account statement for the wife of its registered employee PAP.

47. LSCI failed to maintain either.

48. As a result of the foregoing, LSCI willfully violated Section 17(a) of the Exchange Act and Rule 17a-4, thereunder, and violated EDGX Rules 4.1 and 5.5(c)(3), with each instance constituting a separate and distinct violation.

49. Furthermore, 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 EDGX Rule 3.1.

**Fifth Cause of Action**  
*(Supervision – EDGX Rules 5.1 and 3.1)*

50. Market Regulation re-alleges and incorporates by reference each preceding paragraph.

51. EDGX Rule 5.1 states that “each Member shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of associated persons of the Member and to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with Exchange Rules.”

52. LSCI violated EDGX Rules 5.1 and 3.1 in that it failed to establish, maintain and enforce written procedures to assure compliance with Section 17(a) of the Exchange Act and Rule 17a-4, thereunder, Rules 203(b)(1) and 200(g) of Reg SHO, and EDGX Rules 4.1, 11.15 and 5.5.

53. In addition, LSCI violated EDGX Rules 5.1 and 3.1 in that it failed to establish and maintain written procedures to assure compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with EDGX Rules.

54. 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.

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

56. 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.

57. During the 2013 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. Supervisory System, Procedures & Qualifications: authorized traders;
- b. Anti-intimidation/Coordination: detecting prohibited trading practices;

- c. Trade Reporting: order capacity; and
- d. Other trading rules: controls to ensure the accuracy of orders entered into the EDGX system, review and detection of potential EDGX order entry errors and accurately identifying short sale orders when entered into Direct Edge systems.

58. During the 2014 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. Supervisory Systems, Procedures & Qualifications: authorized traders;
- b. Trade Reporting: order capacity; and
- c. Other Trading Rules: controls to ensure the accuracy of orders entered into EDGX systems, EDGX clearly erroneous filings, review and detection of potential EDGX order entry errors and accurately identifying short sale orders when entered into EDGX systems.

59. In or about December 2014, LSCI revised its WSPs. However, the revised WSPs failed to adequately address the deficiencies set forth in paragraph 58.

60. During the 2014 Examination, LSCI failed to provide documentary evidence that it performed the supervisory reviews set forth in the WSPs concerning: (i) EDGX trading practice rules; (ii) information barriers; (iii) advising associated persons against the misuse of inside information; and (iv) outside brokerage accounts and confirmations.

61. As a result of the foregoing, LSCI violated EDGX Rule 5.1.

62. 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 EDGX Rule 3.1.

**Sixth Cause of Action**

*(Prevention of the Misuse of Material, Non-Public Information – EDGX Rules 5.1, 5.5 and 3.1)*

63. Market Regulation re-alleges and incorporates by reference each preceding paragraph.

64. EDGX Rule 5.5(a) states, in relevant part, that “each Member must establish, maintain and enforce written procedures reasonably designed, taking into consideration the nature of such Member’s business, to prevent the misuse of material, non-public information by such Member or persons associated with such Member.”

65. EDGX Rule 5.5(b) provides that, at a minimum, each Member establish, maintain, and enforce the following policies and procedures:

- a. All associated persons of the Member must be advised in writing of the prohibition against the misuse of material, non-public information; and
- b. All associated persons of the Member must sign attestations affirming their awareness of, and agreement to abide by the aforementioned prohibitions. These signed attestations must be maintained for at least three years, the first two years in an easily accessible place; and
- c. Each Member must receive and retain copies of trade confirmations and monthly account statements for each account in which an associated person: has a direct or indirect financial interest or makes investment decisions. The activity in such brokerage accounts should be reviewed at

least quarterly by the Member for the purpose of detecting the possible misuse of material, non-public information; and

- d. All associated persons must disclose to the Member whether they, or any person in whose account they have a direct or indirect financial interest, or make investment decisions, are an officer, director or 10% shareholder in a company whose shares are publicly traded. Any transaction in the stock (or option thereon) of such company shall be reviewed to determine whether the transaction may have involved a misuse of material non-public information.

66. During the 2013 Examination, 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. advising associated persons in writing against the misuse of inside information;
- b. signed attestations regarding misuse of inside information; and
- c. disclosure of ownership/control of publicly-traded companies.

67. During the 2014 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. signed attestation regarding misuse of inside information; and
- b. disclosure of ownership and control of publicly traded companies.

68. In or about December 2014, LSCI revised its WSPs; however, the revised WSPs failed to adequately address the deficiencies set forth in paragraph 67.

69. During the 2014 Examination LSCI, failed to provide TFCE with:
- a. written statements outlining the employee trading policies as evidence for this item;
  - b. evidence of its outside account request process; and
  - c. evidence of reviewed activity (initialed order records and statements) from an approved outside employee account.

70. In addition, LSCI failed to provide documentary evidence that it provided supervisory reviews concerning information barriers, advising associated persons in writing against the misuse of inside information and outside brokerage accounts and confirmations.

71. As a result of the foregoing, LSCI violated EDGX Rules 5.1 and 5.5.

72. 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 EDGX Rule 3.1.

### **RELIEF REQUESTED**

WHEREFORE, the Department of Market Regulation, on behalf of EDGX, respectfully requests that the Panel:

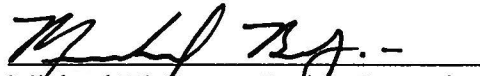
- A. make findings of fact and conclusions of law that Respondent committed the violations charged and alleged herein;
- B. order that one or more of the sanctions provided under EDGX Rule 8.1(a), including expulsion, suspension, disgorgement, and monetary sanctions, be imposed;
- C. order that Respondent bears such costs of the proceeding as are deemed fair and appropriate under the circumstances in accordance with EDGX Rule 8.13;

- D. make specific findings that LSCI willfully violated Section 17(a) of the Exchange Act and Rule 17a-4, thereunder, and Rules 200(g) and 203(b)(1) of Reg SHO; and
- E. grant all further relief, legal or equitable, that is warranted under the circumstances.

Dated: November 18, 2016  
New York, New York

Respectfully submitted,

**FINRA Department of Market Regulation**



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## EXHIBIT A

Trade Date	Order Time	Symbol	# of Shares
<b>Long Sale Marked "Short"</b>			
6/10/2014	9:35:47	AKAM	100
6/10/2014	9:35:49	AKAM	100
6/10/2014	9:35:51	AKAM	100
6/10/2014	9:35:53	AKAM	100
6/10/2014	9:35:56	AKAM	100
6/10/2014	9:36:03	AKAM	100
6/10/2014	9:36:05	AKAM	100
6/11/2014	10:05:17	CLDX	10,000
6/12/2014	10:47:54	CEB	100
<b>Short Sale Marked "Long"</b>			
6/12/2014	11:04:01	DIN	300



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**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of November 2016, copies of the foregoing Notice of Statement of Charges, Statement of Charges, and this Certificate of Service were served on Respondent via certified mail, return receipt requested, at the address listed below:

Lek Securities Corporation  
One Liberty Plaza  
165 Broadway  
52<sup>nd</sup> Floor  
New York, NY 10006

  
Michael W. Bautz  
Senior Counsel

**Statement of the Exchange Regarding Allegations  
In a Disciplinary Complaint Pursuant to Exchange Rule 8.18(b)(1)**

This statement of charges is a disciplinary complaint under Exchange Rules. A disciplinary complaint represents the initiation of a formal proceeding by the Exchange in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint.