

**CBOE EDGA EXCHANGE, INC.  
OFFICE OF HEARING OFFICERS**

Department of Enforcement,

Complainant,

v.

Lek Securities Corporation,  
(CRD No. 33135),

Respondent.

Disciplinary Proceeding No.  
20100215956-06

Hearing Officer - MC

**DECISION ACCEPTING OFFER OF  
SETTLEMENT**

Disciplinary Proceeding No. 20100215956-06 was filed on November 18, 2016 by the Department of Enforcement of the Financial Industry Regulatory Authority on behalf of Cboe EDGA Exchange, Inc. ("EDGA" or "Complainant"). Respondent Lek Securities Corporation ("LSCI" or "Respondent") submitted an Offer of Settlement ("Offer") to Complainant on January 24, 2018. Pursuant to EDGA Rule 8.8(a), Complainant and EDGA's Chief Regulatory Officer have accepted the Offer.

Accordingly, this Decision is being issued pursuant to EDGA Rule 8.8(a). The findings, conclusions and sanctions set forth in this Decision are those stated in the Offer as accepted by Complainant and the Chief Regulatory Officer of EDGA.

Under the terms of the Offer, Respondent has consented, without admitting or denying the allegations of the Statement of Charges, as modified by the Offer, and solely for the purposes of this proceeding and any proceeding brought by or on behalf of EDGA, or to which EDGA is a party, to the entry of findings and violations consistent with the allegations of the Statement of Charges, as amended by the Offer, and to the imposition of the sanction set forth below, and

fully understands that this Decision will become part of Respondent's permanent disciplinary record and may be considered in any further actions brought by EDGA.

Further, under the terms of the Offer, Respondent specifically and voluntarily waived the following rights granted under EDGA Rules:

1. To defend against the allegations in a disciplinary hearing before a Hearing Panel, to have a written record of the hearing made and to have a written decision issued;
2. To appeal any such decision to the Appeals Committee of the EDGA Board of Directors and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals;
3. Any right to claim bias or prejudgment of the Chief Regulatory Officer of EDGA in connection with his or her participation in discussions regarding the terms and conditions of Offers, or other consideration of the Offer, including acceptance or rejection of the Offer; and
4. Any right to claim that a person violated the ex parte prohibitions of EDGA Rule 8.16 in connection with such person's or body's participation in discussions regarding the terms and conditions of this Offer, or other consideration of this Offer, including its acceptance or rejection.

By accepting the Offer, EDGA agrees that it shall not institute or entertain, at any time, any further proceeding as to Respondent based upon the allegations of the Statement of Charges.

### **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 an EDGA member since December 1993.

LSCI operates as an independent order-execution and clearing firm providing customers direct market access to numerous exchanges, including EDGA. The NYSE has jurisdiction over LSCI because it is currently registered as an EDGA member firm and it committed the misconduct at issue while an EDGA 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 EDGA rules and federal securities laws, rules and regulations, LSCI violated EDGA 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); and EDGA Rule 11.15 (Order Entry).
6. In addition, LSCI violated EDGA 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 information by the Firm or persons associated with the Firm.

### **Respondent and Jurisdiction**

7. LSCI has been registered with the Commission since March 1990. LSCI has been an EDGA member since May 2010. LSCI operates as an independent order-execution and clearing firm providing customers direct market access to numerous exchanges, including EDGA. EDGA has jurisdiction over LSCI because it is currently registered as a member firm of EDGA and it committed the misconduct at issue while a member of EDGA.

### **Statement of Facts**

8. This matter stems from the 2013, 2014 and 2016 Cycle Examinations of Respondent by Market Regulation's Trading and Financial Examination ("TFCE") group.

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 exchanges, including EDGA. 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 EDGA.

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 Respondent, TFCE reviewed Respondent'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 Respondent, TFCE reviewed Respondent'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").

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

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 111 were entered into the EDGA 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 EDGA System, LSCI, on more than one occasion, marked a sale order “short” when the customer’s position was long.

19. Of the orders entered into the EDGA System, LSCI, on more than one occasion, marked a sale “long” when the customer’s position was short.

20. 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, 46 of which were entered into the EDGA 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.

21. Of these orders entered in the EDGA System, LSCI, on 31 occasions, marked a long sale “short” when the customer’s position was long.

22. Of these orders entered in the EDGA System, LSCI, on 15 occasions, marked a short sale “long” when the customer’s position was short.

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

24. 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 EDGA Rule 3.1.

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<sup>1</sup> Pursuant to EDGA 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.”

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

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

26. As noted above, LSCI, on at least 31 occasions, identified a sell order entered into the EDGA System as “short” when the customer’s position was long.

27. As also noted above, LSCI, on at least 15 occasions, identified a sell order entered into the EDGA System as “long” when the customer’s position was short.

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

29. 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 EDGA Rule 3.1.

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

30. 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).”

31. 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.

32. As part of the 2014 Cycle Examination of LSCI, TFCE sampled 588 short sales, of which 111 were entered in the EDGA System, for compliance with the Rule 203(b)(1) security location requirement.

33. Of the short sales entered in the EDGA System, LSCI, on more than 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.

34. 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.

35. TFCE's review disclosed 15 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.

36. As a result of the foregoing, LSCI violated Rule 203(b)(1) of Reg SHO.

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 EDGA Rule 3.1.

*(Supervision – EDGA Rules 5.1 and 3.1)*

38. EDGA 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 their 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.”

39. LSCI violated EDGA Rules 5.1 and 3.1 in that it failed to establish, maintain and enforce written procedures to assure compliance with Rules 203(b)(1) and 200(g) of Reg SHO, and EDGA Rules 11.15 and 5.5.

40. In addition, LSCI violated EDGA 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 EDGA Rules.

41. 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.

42. 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.

43. 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.

44. 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 EDGA System, review and detection of potential EDGA order entry errors and accurately identifying short sale orders when entered into EDGA Systems.

45. 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 EDGA systems, EDGA clearly erroneous filings, review and detection of potential EDGA order entry errors and accurately identifying short sale orders when entered into EDGA Systems.

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

47. 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.

48. 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 EDGA, EDGA clearly erroneous filings, review and detection of potential EDGA order entry errors.

49. 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 EDGA trading practice rules in the following areas:

- a. Trading Practice Rules: prohibited trading practices;
- b. Trade Reporting: entering accurate capacity information into the exchanges system;

- c. Other trading rules: ensuring the accuracy and integrity of orders entered and routed to the exchange systems, 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.

50. LSCI failed to provide TFCE with documentary evidence that LSCI performed the supervisory reviews set forth in its WSPs related to the EDGA trading practice rules described in Paragraph 49.

51. As a result of the foregoing, LSCI violated EDGA Rule 5.1.

52. 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 EDGA Rule 3.1.

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

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

54. EDGA 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.

55. 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.

56. 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.

57. 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.

58. 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.

59. As a result of the foregoing, LSCI violated EDGA Rules 5.1 and 5.5.

60. 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 EDGA Rule 3.1.

Based upon the foregoing, Respondent violated EDGA Rules 3.1, 5.1, 5.5 and 11.15, and violated Rules 200(g) and 203(b)(1) of Reg SHO of the Exchange Act.

Based upon 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 EDGA of its regulatory responsibility under the Securities Exchange Act of 1934.

### SANCTION

It is ordered that Respondent be censured, fined in the total amount of **\$175,000** (to be paid collectively to NYSE Arca Equities, Inc., The NASDAQ Stock Market LLC; Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., EDGA, Cboe EDGX Exchange, Inc., The New York Stock Exchange LLC, and NYSE American LLC), of which **\$24,750** shall be paid to EDGA, and required to comply with the following undertaking:

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 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.



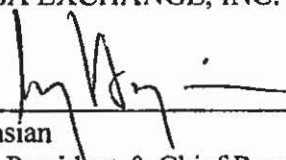
- 1) Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), Respondent shall provide FINRA staff with a written implementation report, certified by an officer of Respondent, attesting to, containing 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 20 business days from the entry of this Decision pursuant to EDGA Rule 8.8(a). Respondent may not seek review of this Decision after it becomes final pursuant to EDGA Rule 8.8(a).

SO ORDERED.

2/26/2018  
Date

CBOE EDGA EXCHANGE, INC.

By   
Greg Hoogasian  
Senior Vice President & Chief Regulatory Officer