

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

Department of Enforcement,

Complainant,

v.

Lek Securities Corporation,
(CRD No. 33135),

Respondent.

Disciplinary Proceeding
No. 20100215956-03

Hearing Officer - MJD

**ORDER ACCEPTING OFFER OF
SETTLEMENT**

Date: February 27, 2018

INTRODUCTION

Disciplinary Proceeding No. 20100215956-03 was filed on November 18, 2016, by the Department of Enforcement of the Financial Industry Regulatory Authority (“FINRA” or “Complainant”). Respondent, Lek Securities Corporation (“LSCI” or the “Respondent”) submitted an Offer of Settlement (“Offer”) to Complainant on January 16, 2018. Pursuant to FINRA Rule 9270(e), the Complainant and the National Adjudicatory Council (“NAC”), a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (“ODA”) have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to FINRA 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 the NAC.

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 FINRA, or to which FINRA 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 FINRA.

BACKGROUND

Respondent has been registered with the United States Securities and Exchange Commission (the "Commission") since March 1990 and is exclusively engaged in executing and clearing orders in equity securities, options and futures on behalf of professional and institutional clients. Respondent has been a FINRA member since April 1996. In addition to being registered with FINRA, Respondent is also registered with multiple registered national securities exchanges. FINRA has jurisdiction over Respondent because it is currently registered as a FINRA member and it committed the misconduct at issue while a FINRA 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 supervisory procedures were deficient.
4. By failing to establish, maintain, and enforce supervisory systems and procedures that were reasonably designed to achieve compliance with FINRA Rules and the federal

securities laws, rules and regulations, LSCI violated NASD Rule 3010 and FINRA Rules 3110 and 2010.

5. Due, in part, to these supervisory failures, LSCI violated FINRA Rules 7230A (Trade Reporting Input), 7450 (Order Data Transmission Requirements), and 2265 (Extended Hours Trading Risk Disclosure).

6. In addition, LSCI violated Rules 611(a)(1) and (2) and 611(c) of Regulation NMS (“Reg NMS”) of the Exchange Act, NASD Rule 3010 and FINRA Rule 2010 in that its supervisory system did not include supervisory procedures, including WSPs, providing for: (1) the identification of the person(s) responsible for supervision with respect to Rules 611(a)(1) and (2) and 611(c) of Reg NMS; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and/or (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented.

Respondent and Jurisdiction

7. LSCI has been registered with the Commission since March 1990 and is exclusively engaged in executing and clearing orders in equity securities, options and futures on behalf of professional and institutional clients. The Firm has been a FINRA member since April 1996. In addition to being registered with FINRA, LSCI is also registered with multiple registered national securities exchanges. FINRA has jurisdiction over LSCI because it is currently registered as a FINRA member and it committed the misconduct at issue while a FINRA member.

Statement of Facts

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

9. Each of the examinations focused on a discrete period that would provide a representative sample of the Respondent’s trade reporting to determine whether the Firm met its trade reporting obligations.

10. In connection with the 2010 Cycle Examination of Respondent, TFCE reviewed Respondent’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 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”).

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.

(Trade Reporting Input - FINRA Rules 7230A and 2010)

14. Pursuant to FINRA Rule 7230A, reporting members are responsible for the complete and accurate submission of information regarding each transaction reported to the FN TRF.

15. Pursuant to FINRA Rule 7230A(d), when reporting a transaction to the FN TRF members must include, among other things, the originating broker-dealer of the transaction, the execution time and the number of shares.

16. In addition, when submitting a non-tape report for the offsetting leg of a riskless principal or agency transaction to a FINRA Facility that is related to a tape report that was not submitted to that same FINRA Facility, FINRA Rule 7230A requires members to use the Related Market Center (“RMC”) indicator to identify the market or facility where the associated tape report was submitted.

2010 Cycle Examination

17. As part of the 2010 Cycle Examination of Respondent, TFCE reviewed 25 trades reported to the FN TRF by Respondent during the 2010 Review Period. In at least 11 instances, Respondent inaccurately reported the RMC indicator for a transaction reported to the TRF.

2013 Cycle Examination

18. As part of the 2013 Cycle Examination of Respondent, TFCE reviewed 110 trades reported to the FN TRF made by Respondent during the 2013 Review Period.

- a. In at least one instance, Respondent reported an inaccurate execution quantity;
and
- b. In at least four instances, Respondent inaccurately reported NASDAQ (“Q”) as the RMC for the transaction.

2014 Cycle Examination

19. As part of the 2014 Cycle Examination of Respondent, TFCE reviewed 88 trades reported to the FN TRF made by Respondent during the 2014 Review Period.

- a. In at least 20 instances, Respondent failed to report the originating broker-dealer of the transaction;
- b. In at least 13 instances, Respondent failed to report the correct execution time on the clearing leg of the transaction;
- c. In at least two instances, Respondent incorrectly combined the non-tape clearing leg for media reported transactions; and
- d. In at least one instance, Respondent failed to report the correct execution time and correct amount of shares for the clearing leg of the transaction.

20. As a result of Respondent's inaccurate reporting of transactions, the FN TRF contained inaccurate information.

2016 Cycle Examination

21. Pursuant to FINRA Rule 7230A(g), the cancellation of trades executed during normal market hours and canceled during normal market hours must be reported as soon as practicable, but no later than 10 seconds after the time of cancellation.

22. In 20 instances during the 2016 Review period, Respondent reported a canceled trade during normal market hours with a canceled timestamp that was in excess of 10 seconds after the canceled timestamp listed on the order record.

23. As a result of the foregoing, Respondent violated FINRA Rule 7230A, with each untimely report constituting a separate and distinct violation.

24. In addition, as a result of the foregoing conduct, Respondent failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

25. As a result of the foregoing, Respondent violated FINRA Rule 7230A, with each incorrect report constituting a separate and distinct violation.

26. In addition, as a result of the foregoing conduct, Respondent failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

(Order Data Transmission Requirements - FINRA Rules 7450 and 2010)

27. Pursuant to FINRA Rule 7450, reporting members are responsible for the complete and accurate transmittal to FINRA's Order Audit Trail System ("OATS") of information related to: (i) the receipt or origination of each order; (ii) the transmission of each order; and (iii) the modification, cancellation, or execution of each order.

28. At all relevant times, Respondent was a "Reporting Member" because it was a FINRA member that received or originated orders. It, therefore, had an obligation to record and report information under the OATS Rules.

2010 Cycle Examination

29. As part of the 2010 Cycle Examination of Respondent, TFCE reviewed 62 orders in securities required to be submitted to OATS by Respondent during the 2010 Review Period.

30. In three instances, Respondent failed to submit an execution or route report to OATS for an order that had been fully executed.

31. In two instances, Respondent failed to submit an OATS report for a customer order.

32. In 48 of the 62 orders reviewed, Respondent failed to submit accurate information to OATS. Specifically,

- a. In 37 instances, Respondent failed to append the "directed" special handling code ("DIR") for a directed customer order;

- b. In seven instances, Respondent incorrectly indicated in its OATS submission that the order was received with “do not display” instructions, while the customer order ticket documented “reserve instructions;”
- c. In three instances, Respondent incorrectly appended a “not held” special handling code to its OATS submission for a customer “held” order; and
- d. In one instance, Respondent incorrectly reported a customer order to OATS with a time in force (“TIF”) code of “DAY” for an order marked with a TIF code of “GTN” (Good Til Night).

2013 Cycle Examination

33. As part of the 2013 Cycle Examination of Respondent, TFCE reviewed 75 orders in securities required to be submitted to OATS by Respondent during the 2013 Review Period.

34. In at least one instance, Respondent failed to submit OATS data for a customer order.

35. In 62 of the 75 orders reviewed, Respondent failed to submit accurate information to OATS. Specifically,

- a. In at least 12 instances, Respondent failed to submit an execution report;
- b. In at least 30 instances, Respondent failed to submit an execution report and submitted an inaccurate Member Type Code;
- c. In at least 15 instances, Respondent failed to append the code signifying reserve size behind the order;
- d. In at least three instances, Respondent failed to submit a cancel report; and
- e. In at least two instances, Respondent submitted an inaccurate TIF code.

2014 Cycle Examination

36. As part of the 2014 Cycle Examination of Respondent, TFCE reviewed 75 orders in securities required to be submitted to OATS by Respondent during the 2014 Review Period.

37. In four instances, Respondent failed to submit accurate information to OATS. Specifically,

- a. In one instance, Respondent incorrectly submitted a special handling code and incorrectly submitted a customer instruction flag to OATS;
- b. In one instance, Respondent incorrectly submitted a special handling code, incorrectly submitted a customer instruction flag to OATS, and failed to submit a cancellation report to OATS;

- c. In one instance, Respondent submitted the same order twice to OATS;
- d. In one instance, Respondent incorrectly included a special handling code and incorrectly submitted a customer instruction flag to OATS.

2016 Cycle Examination

38. As part of the 2016 Cycle Examination of Respondent, TFCE reviewed 50 orders in securities required to be submitted to OATS by Respondent during the 2016 Review Period.

39. In 16 instances, Respondent failed to submit accurate information to OATS.

Specifically,

- a. In seven instances Respondent incorrectly submitted a special handling code of RSV;
- b. In three instances, Respondent incorrectly submitted a special handling code of RSV, incorrectly submitted a customer instruction flag of “Y” to OATS, and failed to submit a cancellation report to OATS;
- c. In three instances, Respondent incorrectly submitted a special handling code of RSV and incorrectly submitted a customer instruction flag of “Y” to OATS;
- d. In two instances, Respondent incorrectly submitted a customer instruction flag of “Y” to OATS; and
- c. In one instance, Respondent failed to submit a cancellation report to OATS.

40. As a result of Respondent’s failure to fully and accurately report information to OATS, OATS contained inaccurate information.

41. As a result of the foregoing, Respondent violated FINRA Rule 7450, with each incorrect report constituting a separate and distinct violation.

42. In addition, as a result of the foregoing conduct, Respondent failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

(Extended Hours Trading Risk Disclosure – FINRA Rules 2265 and 2010)

43. FINRA Rule 2265 states, in relevant part, that “[n]o member shall permit a customer to engage in extended hours trading unless the member has furnished to the customer,

individually, in paper or electronic form, a disclosure statement highlighting the risks specific to extended hours trading.”

44. As part of the 2010 Cycle Examination, TFCE identified 10 customers engaged in extended hours trading during the 2010 Review Period.

45. Respondent failed to provide to each customer identified by TFCE staff a disclosure statement highlighting the risks specific to extended hours trading prior to executing the order in the extended hours.

46. As part of the 2013 Cycle Examination, TFCE identified 9 customers engaged in extended hours trading during the 2013 Review Period.

47. Respondent failed to provide to six of the customers identified by TFCE staff a disclosure statement highlighting the risks specific to extended hours trading prior to executing the order in the extended hours.

48. As a result of the foregoing, Respondent violated FINRA Rule 2265, with each instance constituting a separate and distinct violation.

49. In addition, as a result of the foregoing conduct, Respondent failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

(Supervision – NASD Rule 3010 and FINRA Rules 3110 and 2010)

50. NASD Rule 3010(a) states that “[e]ach member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules.”

51. NASD Rule 3010(b) 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.”

52. Respondent violated NASD Rule 3010(a) and FINRA Rule 2010 in that it failed to establish and maintain a supervisory system reasonably designed to achieve compliance with FINRA Rules 7230A, 7450, and 2265 and Rules 200(g) and 203(b) of Reg SHO.

53. In addition, Respondent violated NASD Rule 3010(b) and FINRA Rule 2010, in that it failed to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

54. At a minimum, written supervisory procedures (“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.

2010 Cycle Examination

57. During the 2010 Review Period, Respondent's WSPs failed to identify the individual responsible for supervision of the following areas:

- a. Order Handling: disclosure of order execution information;
- b. Trade Reporting: accepting trade reporting by another member and trades reported on a member's behalf;
- c. Sales Transactions: Rule 204 of Reg SHO, pre-borrow requirements and Rule 10b-21 of the Exchange Act;
- d. Other Trading Rules: trading halts; and
- e. OATS: OATS route order ID consistency.

58. During the 2010 Review Period, Respondent's WSPs failed to describe the supervisory steps and reviews to be taken regarding the following areas:

- a. Order Handling: disclosure of order execution information and disclosure of order routing information;
- b. Anti-Intimidation Coordination: the prevention and detection of prohibited trading practices;
- c. Trade Reporting: general trade reporting, use of trade reporting modifiers, accepting trade reporting by another member and trades reported on a member's behalf;
- d. Sales Transactions: order marking requirements, locate requirements, Rule 204 of Reg SHO, pre-borrow requirements, Rule 10b-21 of the Exchange Act and short sale reporting;
- e. Other Trading Rules: trading halts, maintaining security of NASDAQ/FINRA systems and FINRA clearly erroneous transactions;
- f. OATS: accuracy of submissions and route order ID consistency; and
- g. Other Trading Rules: books and records and electronic communications.

59. During the 2010 Review Period, Respondent's WSPs failed to set forth the frequency of any supervisory reviews regarding the following areas:

- a. Order Handling: disclosure of order execution information;
- b. Trade Reporting: accepting trade reporting by another member and trades reported on a member's behalf;
- c. Sales Transactions: Rule 204 of Reg SHO, pre-borrow requirements and Rule 10b-21 of the Exchange Act;

- d. Other Trading Rules: trading halts, and FINRA clearly erroneous transactions;
- e. OATS: accuracy of submissions and OATS route order ID consistency; and
- f. Other Trading Rules: books and records and electronic communications.

60. During the 2010 Review Period, Respondent's WSPs failed to describe how supervisory reviews should be documented regarding the following areas:

- a. Order Handling: disclosure of order execution information;
- b. Trade Reporting: accepting trade reporting by another member and trades reported on a member's behalf;
- c. Sales Transactions: Rule 204 of Reg SHO, pre-borrow requirements and Rule 10b-21 of the Exchange Act;
- d. Other Trading Rules: trading halts; and
- e. Other Trading Rules: books and records and electronic communications.

61. As part of its 2010 Cycle Examination of Respondent, TFCE requested Respondent to provide documentary evidence that in June 2010 it performed the supervisory reviews set forth in its WSPs related to:

- a. Supervisory Qualifications: registrations;
- b. Order Handling: disclosure of order routing;
- c. Anti-Intimidation/Coordination: prevention and detection of prohibited trading practices;
- d. Trade Reporting: general trade reporting and the use of trade modifiers;
- e. Sales Transactions: order marking requirements, locate requirements, Rule 204 of Reg SHO and short sale trade reporting;
- f. Other Trading Rules: maintaining security of FINRA systems and FINRA clearly erroneous trades;
- g. OATS: time clock synchronization, accuracy of submissions, rejected data and consistency with TRF data; and
- h. Other Trading Rules: books and records electronic communications.

62. Respondent failed to provide TFCE with documentary evidence that Respondent performed the supervisory reviews set forth in its WSPs related to the areas set forth in paragraph 61.

2013 Cycle Examination

63. During the 2013 Review Period, Respondent's WSPs failed to identify the individual(s) responsible for supervision regarding the following areas:

- a. Best Execution: order executed with special handling conditions, orders handled concurrently, orders handled as agent on an order by order basis and best interdealer market for OTC equity securities;
- b. Order Handling: disclosure of order execution information;
- c. Trade Reporting: timely and accurate reporting to the TRF, proper use of trade modifiers, accepting or matching trades in a timely manner and trade reporting by a third party on behalf of the member;
- d. Sales Transactions: order marking requirements/Rule 200(g) of Reg SHO, locate requirements, monitoring settlements, selling short after a fail, naked short selling, reporting sales to the TRF and prohibition on short sales following a 10% price decrease;
- e. Other Trading Rules: trading halts, unauthorized entry of information, ensuring integrity of transactions, FINRA clearly erroneous transactions and detection of trade reporting errors;
- f. Soft Dollar Accounts and Trading: preparing records pursuant to agreements, monitoring soft dollar trades, operating outside of safe harbor provisions, cost/value of research and monitoring research and services provided;
- g. OATS: OATS route order ID consistency;
- h. Algorithmic Trading: developing and marketing of algorithms, testing and implementation of algorithms, risk management and controls to monitor Respondent's customer and proprietary algorithms, identification of issue/source to minimize market impact, customer complaints involving firm provided algorithms and excessive market volatility; and
- i. Other Rules: sub-penny priced \$1.00 or higher and sub-penny priced under \$1.00.

64. During the 2013 Review Period, Respondent's WSPs failed to identify the supervisory steps and reviews to be taken regarding the following areas:

- a. Supervisory System, Procedures & Qualifications: designation of principals and office of supervisory jurisdiction ("OSJ") office designation;
- b. Best Execution: order executed with special handling conditions, orders handled concurrently, orders handled as agent on an order by order basis and best interdealer market for OTC equity securities;
- c. Order Handling: disclosure of order execution information;
- d. Trade Reporting: timely and accurate reporting to the TRF, proper use of trade modifiers, accepting or matching trades in a timely manner and trade reporting by a third party on behalf of the member;
- e. Sales Transactions: order marking requirements/Rule 200(g) of Reg SHO, locate requirements, monitoring settlements, selling short after a fail, naked short selling, reporting sales to the TRF and prohibition on short sales following a 10% price decrease;
- f. Other Trading Rules: trading halts, unauthorized entry of information, ensuring integrity of transactions, FINRA clearly erroneous transactions and detection of trade reporting errors;

- g. Soft Dollar Accounts and Trading: preparing records pursuant to agreements, monitoring soft dollar trades, operating outside of safe harbor provisions, cost/value of research and monitoring research and services provided;
- h. OATS: clock synchronization, accurate and timely reporting of OATS, OATS data rejection, consistency with TRF data and OATS order ID consistency;
- i. Algorithmic Trading: developing and marketing of algorithms, testing and implementation of algorithms, risk management and controls to monitor Respondent's customer and proprietary algorithms, identification of issue/source to minimize market impact, customer complaints involving Firm provided algorithms and excessive market volatility; and
- j. Other Rules: Chinese Walls/information barriers, information barrier breaches, books and records, sub-penny priced \$1.00 or higher and sub-penny priced under \$1.00.

65. During the 2013 Review Period, Respondent's WSPs failed to state the frequency of supervisory reviews regarding the following areas:

- a. Supervisory System, Procedures & Qualifications: qualified supervisory personnel;
- b. Best Execution: order executed with special handling conditions, orders handled concurrently, orders handled as agent on an order by order basis and best interdealer market for OTC equity securities;
- c. Order Handling: disclosure of order execution information;
- d. Trade Reporting: timely and accurate reporting to the TRF, proper use of trade modifiers, accepting or matching trades in a timely manner and trade reporting by a third party on behalf of the member;
- e. Sales Transactions: order marking requirements/Rule 200(g) of Reg SHO, locate requirements, monitoring settlements, selling short after a fail, naked short selling, reporting sales to the TRF and prohibition on short sales following a 10% price decrease;
- f. Other Trading Rules: trading halts, unauthorized entry of information, ensuring integrity of transactions, FINRA clearly erroneous transactions and detection of trade reporting errors;
- g. Soft Dollar Accounts and Trading: preparing records pursuant to agreements, monitoring soft dollar trades, operating outside of safe harbor provisions, cost/value of research and monitoring research and services provided;
- h. OATS: clock synchronization, accurate and timely reporting of OATS, OATS data rejection, consistency with TRF data and OATS routed order ID consistency;
- i. Algorithmic Trading: developing and marketing of algorithms, testing and implementation of algorithms, risk management and controls to monitor Respondent's customer and proprietary algorithms, identification of issue/source to minimize market impact, customer complaints involving Firm provided algorithms and excessive market volatility; and

- j. Other Rules: Chinese Walls/information barriers, books and records, sub-penny priced \$1.00 or higher and sub-penny priced under \$1.00.

66. During the 2013 Review Period, Respondent's WSPs failed to state how supervisory reviews regarding the following areas are to be documented:

- a. Supervisory System, Procedures & Qualifications: qualified supervisory personnel;
- b. Best Execution: order executed with special handling conditions, orders handled concurrently, orders handled as agent on an order by order basis and best interdealer market for OTC equity securities;
- c. Order Handling: disclosure of order execution information;
- d. Trade Reporting: timely and accurate reporting to the TRF, proper use of trade modifiers, accepting or matching trades in a timely manner and trade reporting by a third party on behalf of the member;
- e. Sales Transactions: order marking requirements/Rule 200(g) of Reg SHO, locate requirements, monitoring settlements, selling short after a fail, naked short selling, reporting sales to the TRF and prohibition on short sales following a 10% price decrease;
- f. Other Trading Rules: trading halts, unauthorized entry of information, ensuring integrity of transactions, FINRA clearly erroneous transactions and detection of trade reporting errors;
- g. Soft Dollar Accounts and Trading: preparing records pursuant to agreements, monitoring soft dollar trades, operating outside of safe harbor provisions, cost/value of research and monitoring research and services provided;
- h. OATS: clock synchronization, accurate and timely reporting of OATS, OATS data rejection, consistency with TRF data and routed order ID consistency;
- i. Algorithmic Trading: developing and marketing of algorithms, testing and implementation of algorithms, risk management and controls to monitor Respondent's customer and proprietary algorithms, identification of issue/source to minimize market impact, customer complaints involving Firm provided algorithms and excessive market volatility; and
- j. Other Rules: Chinese Walls/information barriers, information breaches, books and records, sub-penny priced \$1.00 or higher, sub-penny priced under \$1.00 and electronic communications review.

67. As part of its 2013 Cycle Examination of Respondent, TFCE requested Respondent to provide documentary evidence that in June 2013 it performed the supervisory reviews set forth in its WSPs related to:

- a. Supervisory System, Procedures & Qualifications: qualified supervisory personnel, designation of principals and OSJ office designation;

- b. Anti-Intimidation/Coordination: procedures to detect/prevent coordination/collaboration, procedures to detect/prevent threats/coercion and intimidation, educating personnel as to what constitutes improper conduct;
- c. OATS: clock synchronization, accurate and timely reporting of OATS, OATS data rejection, consistency with TRF data and routed order ID consistency; and
- d. Other Rules: Chinese Walls/information barriers, information barrier breaches, books and records and electronic communications review.

68. Respondent failed to provide TFCE with documentary evidence that Respondent performed the supervisory reviews set forth in its WSPs related to the areas set forth in paragraph 67.

2014 Cycle Examination

69. During the 2014 Review Period, Respondent's WSPs failed to identify the individual(s) responsible for the following areas:

- a. Best Execution: orders handled concurrently, orders executed as agent, on an order by order basis, Best interdealer market for OTC equity securities;
- b. Order Handling: disclosure of order routing information and order protection;
- c. Sale Transactions: monitoring settlement, selling short after a fail, naked short selling, prohibition on short sales following 10% price decrease;
- d. Other Trading Rules: trading/quoting during a halt, unauthorized entry of information, FINRA clearly erroneous filings, review and detection of trade reporting errors;
- e. Soft Dollar Accounts and Trading;
- f. Algorithmic Trading;
- g. Other Rules: outside accounts and confirmations, sub-penny priced \$1.00 or higher, sub-penny priced under \$1.00; and
- h. Extraordinary Market Volatility (Limit Up/Limit Down): the execution of trades at prices that are below the lower price band or above the upper price band and the execution of trades in an NMS stock during a trading pause.

70. During the 2014 Review Period, Respondent's WSPs failed to set forth the supervisory steps and reviews to be taken regarding the following areas are to be documented:

- a. Best Execution: order executed with special handling conditions, orders handled concurrently, orders executed as agent, on an order by order basis and best interdealer market for OTC equity securities;
- b. Trade Reporting: timely and accurate reporting to the TRF, proper use of trade modifiers and accepting or matching trades in a timely manner;

- c. Sale Transactions: review of order marking/SEC Rule 200(g), review of locates, monitoring settlement, selling short after a fail, naked short selling, reporting sales to a TRF and prohibition on short sales following 10% price decrease;
- d. Other Trading Rules: trading/quoting during a halt, unauthorized entry of information, ensuring integrity of transactions, FINRA clearly erroneous filings and review and detection of trade reporting errors;
- e. Soft Dollar Accounts and Trading;
- f. OATS: clock synchronization, accurate and timely reporting of OATS data, data rejections, review to ensure that reported OATS data is consistent with information submitted to the TRF and OATS routed order identification number consistency;
- g. Algorithmic Trading;
- h. Other Rules: Chinese walls/information barriers, information barrier breaches, outside accounts and confirmations, accurate books and records, sub-penny priced \$1.00 or higher and sub-penny priced under \$1.00; and
- i. Extraordinary Market Volatility (Limit Up/Limit Down): the execution of trades at prices that are below the lower price band or above the upper price band and the execution of trades in an NMS stock during a trading pause.

71. During the 2014 Review Period, Respondent's WSPs failed to set forth the frequency of supervisory reviews regarding the following areas:

- a. Order Handling: disclosure of order routing information;
- b. Best Execution: order executed with special handling conditions, orders handled concurrently, orders executed as agent, on an order by order basis, and best interdealer market for OTC equity securities;
- c. Trade Reporting: trade reporting by a third party on behalf of the member;
- d. Sale Transactions: monitoring settlement, selling short after a fail, naked short selling and prohibition on short sales following 10% price decrease;
- e. Other Trading Rules: trading/quoting during a halt, unauthorized entry of information, FINRA clearly erroneous filings and review and detection of trade reporting errors;
- f. Soft Dollar Accounts and Trading;
- g. OATS: accurate and timely reporting of OATS data, OATS data rejections, review to ensure that reported OATS data is consistent with information submitted to the TRF and OATS routed order identification number consistency;
- h. Algorithmic Trading;
- i. Other Rules: Chinese walls/information barriers, information barrier breaches, outside accounts and confirmations, accurate books and records and sub-penny priced \$1.00 or higher; and
- j. Extraordinary Market Volatility (Limit Up/Limit Down): the execution of trades at prices that are below the lower price band or above the upper price band and the execution of trades in an NMS stock during a trading pause.

72. During the 2014 Review Period, Respondent's WSPs failed to set forth how the supervisory reviews regarding the following areas are to be documented:

- a. Best Execution: order executed with special handling conditions, orders handled concurrently, orders executed as agent, on an order by order basis, and best interdealer market for OTC equity securities;
- b. Sale Transactions: review of order marking/SEC Rule 200(g), Review of locates, monitoring settlement, selling short after a fail, naked short selling, reporting sales to a TRF and prohibition on short sales following 10% price decrease;
- c. Other Trading Rules: trading/quoting during a halt, unauthorized entry of information, ensuring integrity of transactions, FINRA clearly erroneous filings and review and detection of trade reporting errors;
- d. Soft Dollar Accounts and Trading;
- e. OATS: accurate and timely reporting of OATS data;
- f. Algorithmic Trading;
- g. Other Rules: outside accounts and confirmations, accurate books and records, sub-penny priced \$1.00 or higher, sub-penny priced under \$1.00 and electronic communications review; and
- h. Extraordinary Market Volatility (Limit Up/Limit Down): the execution of trades at prices that are below the lower price band or above the upper price band and the execution of trades in an NMS stock during a trading pause.

73. As part of its 2014 Cycle Examination of Respondent, TFCE requested Respondent to provide documentary evidence that in June 2014 it performed the supervisory reviews set forth in its WSPs related to:

- a. Supervisory System, Procedures & Qualifications: qualified supervisory personnel;
- b. Order Handling: disclosure of order execution information and order protection;
- c. Anti-Intimidation/Coordination: procedures to detect/prevent coordination/collaboration, procedures to detect/prevent threats/coercion and intimidation, educating personnel as to what constitutes improper conduct;
- d. Trade Reporting: timely and accurate reporting to the TRF, proper use of trade modifiers, accepting or matching trades in a timely manner and trade reporting by a third party on behalf of the member;
- e. Sales Transactions: reporting sales to the TRF;
- f. Other Trading Rules: unauthorized entry of information;
- g. OATS: clock synchronization, accurate and timely reporting of OATS, OATS data rejection, consistency with TRF data and order ID consistency; and
- h. Other Rules: Chinese Walls/information barriers, information barrier breaches and outside accounts and confirmations.

74. Respondent failed to provide TFCE with documentary evidence that Respondent performed the supervisory reviews set forth in its WSPs related to the areas set forth in paragraph 73.

75. As a result of the foregoing, Respondent violated NASD Rule 3010.

76. In addition, as a result of the foregoing conduct, Respondent failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

2016 Cycle Examination

77. FINRA Rule 3110(a) states that “[e]ach member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”²

78. FINRA Rule 3110(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 the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.”

79. During the 2016 Review Period, Respondent’s WSPs failed to identify the individual(s) responsible for the following areas:

- a. Sales Transactions: Order Marking Review; Delivery of Securities by Settlement Date; Selling Short After a Fail, Naked Short Selling Antifraud Rule, Prohibition on short sale orders in NMS securities following a 10% price decrease;
- b. Other Trading Rules: Unauthorized entry of information into a SRO or Exchange system;
- c. Algorithmic Trading: Technological Controls and Supervisory Processes to ensure algorithms offered are appropriately developed and marketed to firm clients, Technological Controls and Supervisory Processes related to the

² FINRA Rule 3110 replaced NASD Rule 3010 on December 1, 2014.

testing of the algorithms, Controls to ensure algorithms are functioning properly, if there is a malfunction, how it is handled, Controls to ensure algorithms are functioning properly during periods of excessive market volatility; and

- d. Other Rules: Display, Rank or Acceptance of Quotations, Orders or Indications of Interest in NMS stock or OTC Equity Securities priced at increments smaller than \$.01 if the quotation, order, or indication of interest is priced less than \$1.00 per share; and for such securities priced at increments smaller than \$.0001 if the quotation, order, or indication of interest is priced less than \$1.00 per share.

80. During the 2016 Review Period, Respondent's WSPs failed to set forth the supervisory steps and reviews to be taken regarding the following areas are to be documented:

- a. Order Handling: Disclosure of Order Routing Information Rule;
- b. Sales Transactions: Order Marking Review, Review of Security Locates, Delivery of Securities by Settlement Date, Selling Short After a Fail, Naked Short Selling Antifraud Rule, Prohibition on short sale orders in NMS securities following a 10% price decrease;
- c. Other Trading Rules: Unauthorized entry of information into a SRO or Exchange system, Technological and Supervisory Controls to ensure the accuracy of transactions entered into a TRF, Filing accuracy of Clearly Erroneous Transactions with FINRA, Review and detection of trade reporting errors, Certifications to FINRA related to transactions reported outside the Limit Up/Limit Down price bands;
- d. OATS: Data Accuracy and Timeliness of Order Data Reported to OATS, Resubmission of Data Rejected by OATS, Review to ensure that reported OATS data is consistent with information submitted to the TRF, Consistency of Routed Order Identification Numbers Received from the Sending Firm or Sent to the Receiving Firm;
- e. Algorithmic Trading: Technological Controls and Supervisory Processes to ensure algorithms offered are appropriately developed and marketed to firm clients, Technological Controls and Supervisory Processes related to the testing of the algorithms, Controls to ensure algorithms are functioning properly, if there is a malfunction, how it is handled, Controls to ensure algorithms are functioning properly during periods of excessive market volatility; and
- f. Other Rules: Books and Records: Controls and Supervisory Processes for electronic retention, the firm's audit system, and how the audit system is tested, Display, Rank or Acceptance of Quotations, Orders or Indications of Interest in NMS stock or OTC Equity Securities priced at increments smaller than \$.01 if the quotation, order, or indication of interest is priced less than \$1.00 per share; and for such securities priced at increments smaller than \$.0001 if the quotation, order, or indication of interest is priced less than \$1.00 per share.

81. During the 2016 Review Period, Respondent's WSPs failed to set forth the frequency of supervisory reviews regarding the following areas:

- a. Trade Reporting: Timely and accurate reporting to the TRF [(c)]; Proper Use of Trade Modifiers, Accepting or Matching Trades in a timely manner;
- b. Sales Transactions: Order Marking Review, Delivery of Securities by Settlement Date, Selling Short After a Fail, Naked Short Selling Antifraud Rule, Prohibition on short sale orders in NMS securities following a 10% price decrease;
- c. Other Trading Rules: Unauthorized entry of information into a SRO or Exchange system, Technological and Supervisory Controls to ensure the accuracy of transactions entered into a TRF, Filing accuracy of Clearly Erroneous Transactions with FINRA, Review and detection of trade reporting errors, Certifications to FINRA related to transactions reported outside the Limit Up/Limit Down price bands;
- d. Algorithmic Trading: Technological Controls and Supervisory Processes to ensure algorithms offered are appropriately developed and marketed to firm clients, Technological Controls and Supervisory Processes related to the testing of the algorithms, Controls to ensure algorithms are functioning properly, if there is a malfunction, how it is handled, Controls to ensure algorithms are functioning properly during periods of excessive market volatility; and
- e. Other Rules: Display, Rank or Acceptance of Quotations, Orders or Indications of Interest in NMS stock or OTC Equity Securities priced at increments smaller than \$.01 if the quotation, order, or indication of interest is priced less than \$1.00 per share; and for such securities priced at increments smaller than \$.0001 if the quotation, order, or indication of interest is priced less than \$1.00 per share.

82. During the 2016 Review Period, Respondent's WSPs failed to set forth how the supervisory reviews regarding the following areas are to be documented:

- a. Order Handling: Disclosure of Order Routing Information Rule;
- b. Sales Transactions: Order Marking Review, Review of Security Locates, Delivery of Securities by Settlement Date, Selling Short After a Fail, Naked Short Selling Antifraud Rule, Prohibition on short sale orders in NMS securities following a 10% price decrease;
- c. Other Trading Rules: Unauthorized entry of information into a SRO or Exchange system, Technological and Supervisory Controls to ensure the accuracy of transactions entered into a TRF, Filing accuracy of Clearly Erroneous Transactions with FINRA, Review and detection of trade reporting errors, Certifications to FINRA related to transactions reported outside the Limit Up/Limit Down price bands;

- d. Algorithmic Trading: Technological Controls and Supervisory Processes to ensure algorithms offered are appropriately developed and marketed to firm clients, Technological Controls and Supervisory Processes related to the testing of the algorithms, Controls to ensure algorithms are functioning properly, if there is a malfunction, how it is handled, Controls to ensure algorithms are functioning properly during periods of excessive market volatility; and
- c. Other Rules: Books and Records: Controls and Supervisory Processes for electronic retention, the firm's audit system, and how the audit system is tested, Display, Rank or Acceptance of Quotations, Orders or Indications of Interest in NMS stock or OTC Equity Securities priced at increments smaller than \$.01 if the quotation, order, or indication of interest is priced less than \$1.00 per share; and for such securities priced at increments smaller than \$.0001 if the quotation, order, or indication of interest is priced less than \$1.00 per share.

83. As part of its 2016 Cycle Examination of Respondent, TFCE requested Respondent to provide documentary evidence that in February 2016 it performed the supervisory reviews set forth in its WSPs related to:

- a. Order Handling: Payment of Order Flow;
- b. Best Execution: Handling Multiple Orders while meeting best execution obligations; Trader Determination of the best inter-dealer market for a security;
- c. Anti-Intimidation/Coordination: Supervisory review of trading desks for anti-competitive activities; (Activities to prevent the occurrence of conduct to threaten, coerce, intimidate or improperly influence another person or firm; Educating personnel as to what constitutes proper conduct;
- d. Trade Reporting: Timely and accurate reporting to the TRF, Proper Use of Trade Modifiers, Accepting or Matching Trades in a timely manner;
- e. Sales Transactions: Review of Security Locates;
- f. Other Trading Rules: Unauthorized entry of information into a SRO or Exchange system;
- g. OATS: Clock Synchronization, Data Accuracy and Timeliness of Order Data Reported to OATS, Resubmission of Data Rejected by OATS, Review to ensure that reported OATS data is consistent with information submitted to the TRF, Consistency of Routed Order Identification Numbers Received from the Sending Firm or Sent to the Receiving Firm; and
- h. Other Rules: Information Barriers: Supervisory review of trading desks to prevent sharing of material non-public information, Monitoring for breaches within information barriers, Books and Records: Maintenance of accurate trading books and records.

84. Respondent failed to provide TFCE with documentary evidence that Respondent performed the supervisory reviews set forth in its WSPs related to the areas set forth in paragraph 83.

85. As a result of the foregoing, Respondent violated FINRA Rule 3110.

86. In addition, as a result of the foregoing conduct, Respondent failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

(Order Protection Rule – Rule 611 of Reg NMS, NASD Rule 3010 and FINRA Rule 2010)

87. Rule 611(a)(1) of Reg NMS states, in relevant part, that “[a] trading center³ shall establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks”

88. In addition Rule 611(a)(2) of Reg NMS states that “[a] trading center shall regularly surveil to ascertain the effectiveness of the policies and procedures required by paragraph (a)(1) of this section and shall take prompt action to remedy deficiencies in such policies and procedures.

89. Pursuant to Rule 611(c) of Reg NMS, “[t]he trading center, broker, or dealer responsible for the routing of an intermarket sweep order shall take reasonable steps to establish that such order meets the requirements set forth in [Rule 600(b)(3) of Reg NMS].”

90. The “Order Protection” requirements of Rule 611 provide intermarket protection against trade-throughs for all NMS stocks. A trade-through occurs when one trading center executes an order at a price that is inferior to the price of a protected quotation, often representing an investor limit order, displayed by another trading center. The Commission

³ “Trading Center” means, among other things, “any other broker or dealer that executes orders internally by trading as principal or crossing orders as agent.” 17 C.F.R. § 240.600(b)(78).

adopted Rule 611 to strengthen protection of displayed limit orders and thereby help reward market participants for displaying their trading interest and promote fairer and more vigorous competition among orders seeking to supply liquidity. The Commission also noted in adopting the rule that strong intermarket price protection offers greater assurance, on an order-by-order basis, that investors who submit market orders will receive the best readily available prices for their trades.

91. During the 2010, 2013 and 2014 Review Periods, Respondent's supervisory systems did not provide for supervision reasonably designed to achieve compliance with respect to Rules 611(a)(1) and (2) and 611(c) of Reg NMS. More specifically, Respondent's supervisory systems did not include supervisory procedures, including WSPs, providing for, among other things: (1) the identification of the person(s) responsible for supervision with respect to Rules 611(a)(1) and (2) and 611(c) of Reg NMS; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and/or (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented.

92. As a result of the foregoing, Respondent violated Rules 611(a)(1) and (2) and 611(c) of Reg NMS, and violated NASD Rule 3010(a) and (b) and FINRA Rule 2010.

93. In addition, as a result of the foregoing conduct, Respondent failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010.

Based upon the foregoing, Respondent violated NASD Rule 3010, FINRA Rules 7230A, 7450, 2265, 3110 and 2010, and violated Rules 611(a)(1), 611(a)(2), and 611(c) of Regulation NMS 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 FINRA, of its regulatory responsibility under the Securities Exchange Act of 1934.

SANCTIONS

It is ordered that Respondent be censured, a fined in the amount of \$175,000,⁴ and that the following undertaking be imposed:

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

⁴ The entire fine to be paid to The NASDAQ Stock Market LLC, 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.

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;

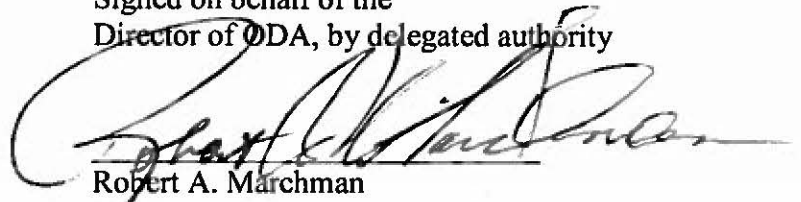
- 5) At the conclusion of the review, which shall be no more than 150 days after the date of the Notice of Acceptance of this Offer, require the Independent Consultant to submit to Respondent and FINRA staff a Written Report. The Written Report shall address, at a minimum, (i) the adequacy of Respondent's 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 on a date set by FINRA staff.

SO ORDERED.

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



Robert A. Marchman
Executive Vice President
Department of Enforcement