THE NEW YORK STOCK EXCHANGE LLC
OFFICE OF HEARING OFFICERS

Department of Enforcement, Complainant, v. Lek Securities Corporation (CRD No. 33135), and Samuel Frederik Lek (CRD No. 1642936), Respondents.	Disciplinary Proceeding No. 20110297130-07 Hearing Officer - MC **ORDER ACCEPTING OFFER OF SETTLEMENT** October 28, 2019

INTRODUCTION

Disciplinary Proceeding No. 20110297130-07 was filed on March 27, 2017, by the Financial Industry Regulatory Authority's ("FINRA") Department of Enforcement, on behalf of The New York Stock Exchange LLC ("NYSE" or "Complainant").[1] Respondents Lek Securities Corporation ("LSCI" or the "Firm") and Samuel Frederik Lek ("Lek", and together with LSCI, "Respondents") submitted an Offer of Settlement ("Offer") to the Complainant on October 23, 2019. Pursuant to NYSE Rule 9270(f), NYSE's Chief Regulatory Officer has accepted the uncontested Offer.

[1] The Department of Enforcement at FINRA is handling this matter on behalf of NYSE Regulation pursuant to a Regulatory Services Agreement among NYSE Group, Inc., NYSE, NYSE Arca, Inc., NYSE American, NYSE Regulation and FINRA, which became effective January 1, 2016.

Accordingly, this Order now is issued pursuant to NYSE Rule 9270(f)(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 Chief Regulatory Officer of NYSE.

Under the terms of the Offer, Respondents have consented, without admitting or denying the allegations of the Complaint, as amended by the Offer, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NYSE, or to which NYSE is a party, to the entry of findings and violations consistent with the allegations of the Complaint, as amended by the Offer, and to the imposition of the sanctions set forth below, and fully understand that this Order will become part of Respondents' permanent disciplinary records and may be considered in any future actions brought by NYSE.

FINDINGS AND CONCLUSIONS

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

Summary

1. Between October 1, 2010 and June 30, 2015 (the "relevant period"), Respondents, aided and abetted manipulative trading ("layering") by "Avalon," a customer of the Firm whose master-sub account was known as "the Avalon account." LSCI also aided and abetted Avalon in the operation of an unregistered broker-dealer through the Avalon account. In addition, LSCI committed, and Lek caused, Market Access Rule violations; LSCI and Lek committed supervisory violations; and LSCI committed numerous ancillary violations concerning know-your-customer rules, failure to retain electronic communications, failure to retain complete and accurate Central Registration Depository ("CRD") records, improperly paying transaction-based compensation to an unregistered person, and supervisory violations related to review of electronic communications, ensuring the accuracy of CRD information and enforcing procedures

regarding outside business activities. LSCI also failed to comply fully and timely with information requests, and both LSCI and Lek failed to observe high standards of commercial honor and just and equitable principles of trade. The violations occurred on numerous exchanges, including NYSE.

2. Taken together, the various violations demonstrate that LSCI and Lek knowingly or with extreme recklessness aided and abetted the misconduct occurring in the Avalon account throughout the relevant period simply because the Avalon account brought in sufficient business to the Firm to make it profitable, notwithstanding numerous red flags and ongoing investigations into the activity by FINRA, the Securities and Exchange Commission ("SEC"), NYSE, and other exchanges.

Respondents and Jurisdiction

3. LSCI is a Delaware corporation headquartered in New York, New York, and has been registered with FINRA since April 1, 1996. LSCI operates as an independent order-execution and clearing firm providing customers direct market access to numerous exchanges, including NYSE. LSCI is a member of NYSE, FINRA, and the following exchanges that are relevant to this Complaint: NYSE Arca, Inc. ("NYSE Arca"); NYSE American LLC, formerly NYSE MKT LLC and AMEX LLC ("NYSE American"); The NASDAQ Stock Market LLC ("Nasdaq"); NASDAQ BX, Inc. ("BX"); NASDAQ PHLX LLC ("PHLX"); Cboe Exchange, Inc. ("Cboe"); Cboe BZX Exchange, Inc. ("BZX"); Cboe BYX Exchange, Inc. ("BYX"); Cboe EDGA Exchange, Inc. ("EDGA"); Cboe EDGX Exchange, Inc. ("EDGX"); and NASDAQ ISE, LLC, formerly the International Securities Exchange, LLC ("ISE"). NYSE has jurisdiction over LSCI because it is currently registered as a member firm of NYSE, and it committed the misconduct at issue while a member.

4. Lek has been employed in the securities industry since August 1986, and founded the Firm in January 1990. At all times during the relevant period, Lek was the owner, CEO, and Chief Compliance Officer ("CCO") of LSCI. NYSE has jurisdiction over Lek because he was registered at NYSE with LSCI until October 7, 2019, when LSCI filed a Form U5 terminating Lek's registration with NYSE. Although Lek is no longer registered or employed with an NYSE member firm, he remains subject to NYSE jurisdiction for purposes of this proceeding pursuant to NYSE Rule 8130, because (1) the Complaint was filed prior to the effective date of termination of Lek's registration with NYSE, and (2) the Complaint charges him with misconduct committed while he was registered with NYSE.[2]

STATEMENT OF FACTS

Master-Sub Account Structure

5. In the master-sub account trading model, a top-level customer typically opens an account with a registered broker-dealer (the "master account") that permits the customer to have subordinate accounts for different trading activities (the "sub-accounts"). The master account is usually divided into sub-accounts for the use of individual traders or groups. In some instances, the sub-accounts are further divided to such an extent that the master account customer and the registered broker-dealer with which the master account is opened may not know the actual identity of the underlying traders.[3]

6. Although master-sub account arrangements may be used for legitimate business purposes, some customers who seek to use master-sub account relationships structure their

[2] This language deviates from the Offer to reflect Lek's recent termination from LSCI.

[3] SEC Office of Compliance Inspections and Examinations ("OCIE") National Exam Risk Alert, Vol. 1, No. 1, pp. 1-2 (Sept. 29, 2011).

account with a broker-dealer in this fashion in an attempt to avoid or minimize regulatory obligations and oversight.[4]

7. A sub-account trader may, for example, open multiple accounts under a single master account and proceed to effect trades on both sides of the market to manipulate a stock price by entering orders to drive the price up, mark the close, or engage in other manipulative activity. Such conduct may create the false appearance of activity or volume and, as a result, may fraudulently influence the price of a security.[5]

Layering

8. Layering is a form of market manipulation that typically includes placement of multiple limit orders on one side of the market at various price levels at or away from the National Best Bid and Offer ("NBBO") that are intended to create the appearance of a change in the levels of supply and demand. In some instances, layering involves placing multiple limit orders at the same or varying prices across multiple exchanges or other trading venues. An order is then executed on the opposite side of the market and most, if not all, of the multiple limit orders are immediately cancelled. The purpose of the multiple limit orders that are subsequently cancelled is to induce, or trick, other market participants to enter orders due to the appearance of interest created by the orders such that the trader is able to receive a more favorable execution on the opposite side of the market.[6]

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[4] *Id*.

[5] *Id*., pp. 6-7.

[6] *See, e.g.*, FINRA Press Release (Sept. 25, 2012) ("FINRA Joins Exchanges and the SEC in Fining Hold Brothers More Than $5.9 Million for Manipulative Trading, Anti-Money Laundering, and Other Violations") (re: *In the Matter of Hold Brothers On-Line Inv. Svcs., LLC*, Admin. Proc. No. 3-15046 (Sept. 25, 2012)). Two years prior to the *Hold Brothers* press release, FINRA issued a press release announcing fines and sanctions against Trillium Brokerage Services and others. *See* FINRA Press Release (Sept. 13, 2010) ("FINRA Sanctions Trillium Brokerage Services, LLC, Director of Trading, Chief Compliance Officer, and Nine Traders $2.26 Million for Illicit Equities Trading Strategy") (re: *Trillium Brokerage Services, LLC*, FINRA STAR No. 20070076782-01 (Aug. 5, 2010). In doing so, the *Trillium* press release stated that the firm "entered numerous layered, non-bona fide market moving

9. The multiple orders that are cancelled are termed "non-bona fide" herein, while the executed orders are termed "bona fide." Non-bona fide orders refers to orders that a trader does not intend to have executed; rather, they are intended to inject false information into the marketplace about supply and demand for the security at issue and thereby induce other market participants to execute against the bona fide orders (*i.e.,* orders that the trader intends to have executed) for the same security on the opposite side of the market.

10. The false appearance of supply and demand typically pushes the price in a direction favorable to the trader, and permits the trader to obtain better prices on the bona fide orders, or better prices for that quantity and at that point in time, than would otherwise be available.

11. When both the non-bona fide cancellations and bona fide executions constituting an instance of layering occur through the same Market Participant Identifier ("MPID"), it is termed a "single-participant" instance. When the non-bona fide cancellations occur through a different MPID than the MPID used for the bona fide executions, it is termed a "pair-participant" instance.

Origins of the Avalon Account at LSCI

12. Genesis Securities, LLC ("Genesis") was previously a broker-dealer and a member of FINRA, NYSE, and other exchanges. Sergey Pustelnik a/k/a Serge Pustelnik ("Pustelnik") was previously a registered representative at Genesis.

13. Pustelnik handled the Regency Capital ("Regency") account at Genesis, which was a focus of a FINRA investigation into the operation of unregistered broker-dealers through

orders to generate selling or buying interest in specific stocks. By entering the non-bona fide orders, often in substantial size relative to a stock's overall legitimate pending order volume, Trillium traders created a false appearance of buy- or sell-side pressure." *Id.*

master-sub accounts. The Regency account was a master-sub account that provided market access to foreign traders. One of its sub-accounts was called "Avalon."

14. The Avalon sub-account, in turn, was a master-sub account with sub-accounts in which Russian and Ukrainian individuals traded. The Avalon group of traders was originally brought to the Regency account by "NF," who was a close friend of Pustelnik, and "AL," who was Pustelnik's brother-in-law.

15. While at Genesis, Pustelnik had an assistant, "SVP," who received paychecks from Avalon.

16. On September 8, 2010, in the midst of ongoing investigations by FINRA, the SEC, and other exchanges, Pustelnik's registration with Genesis was terminated.

17. On September 16, 2010, Genesis closed the Regency account, including the Avalon sub-account.

18. NF, who was not registered, became the manager of a newly-incorporated and purportedly foreign entity called Avalon FA, Ltd.

19. In October 2010, Pustelnik brought the Avalon traders to LSCI, followed by AL and SVP, who were hired by LSCI in December 2010 and January 2011, respectively. The Avalon account at LSCI was opened under the name Avalon FA, Ltd.

20. SVP was hired to be Pustelnik's assistant, and AL was hired to be the registered representative on the Avalon account.

21. In migrating the Avalon account to LSCI, Pustelnik was paid as a putative "foreign finder" for LSCI, although he was a U.S. citizen.

22. On March 11, 2011, Pustelnik became a registered representative with LSCI.

23. Thus, Avalon, as referred to herein, is both a legal entity[7] and a group of traders trading through Avalon's account at LSCI.

24. Following the departure of Avalon from Genesis, Genesis withdrew its application for membership with NYSE on January 20, 2011; was terminated from Nasdaq and BX on August 8, 2011; expelled from BZX and BYX on May 14, 2012; and its membership revoked from EDGA and EDGX on May 16, 2012 for various supervisory violations. The violations included failing to conduct adequate reviews for potentially manipulative trading activity; failing to subject to heightened review accounts that posed increased risk, either because of the accountholder's regulatory history, country of origin, employment status, or because of trading in the account that was the subject of regulatory inquiries; and for failing to supervise and establish adequate Written Supervisory Procedures ("WSPs") to address, *inter alia,* master sub-account arrangements, the use of foreign finders, and review of transactions for suspicious activity.

25. On May 21, 2012, Genesis was expelled from FINRA for, *inter alia,* willful violations of Section 15(A)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), aiding and abetting such violations, willful violations of SEC Rule 17a-4, and supervisory violations based upon findings that the firm and its CEO operated two unregistered broker-dealers through master and sub-account arrangements at the firm, even though the firm and its CEO were aware that the sub-accounts had different beneficial owners, that the master accounts charged the sub-accounts transaction-based compensation, and that the master account profited by charging commission rates that were higher than the rates they paid to the firm.

[7] Avalon actually uses two legal entities as alter egos: Avalon FA, Ltd., a purported foreign corporation, and Avalon Fund Aktiv, a U.S. corporation.

26. On January 21, 2015, Pustelnik was barred from the industry by FINRA for violating FINRA Rule 8210 when he refused to provide a copy of his non-firm Gmail account—an account he used for business purposes at LSCI—in response to a FINRA Market Regulation request in this matter.

27. On June 12, 2015, AL was barred from the industry by FINRA for refusing to testify in this matter after asserting his Fifth Amendment privilege against self-incrimination.

Manipulative Trading in the Avalon Account

28. From November 2010 through June 2015, Market Regulation's layering surveillance patterns detected more than 1.7 million instances of layering at LSCI.

29. Specifically, between November 2010 and July 2012, Market Regulation's exchange-specific surveillance patterns detected 5,538 instances of "single-participant" instances of layering; *i.e.*, an execution on one side of the market (a bona fide order) that was quickly followed by a number of cancelled orders on the other side of the market (non-bona fide orders), where *both the execution and cancellations* occurred through the same LSCI MPID.[8]

30. After implementing a cross-market surveillance pattern beginning in August 2012 (that is, surveilling for an instance of layering where the execution and cancelled orders occurred on more than one exchange),[9] Market Regulation detected, through the end of June 2015, an additional 1,213,658 instances of single-participant layering at LSCI. *See* Exhibit 1 to the Complaint for exchange-by-exchange and aggregate data.

[8] The surveillance patterns count each layering bona fide execution as an instance of layering, regardless of the number of non-bona fide cancellations. Only instances that meet alert criteria, however, are counted.

[9] The cross-market surveillance period began in August 2012 for some exchanges but as late as October 2014 for others.

31. The cross-market surveillance pattern also detected 485,011 "paired-participant" instances of layering during the same period, *i.e.*, an execution on one side of the market that was quickly followed by a number of cancelled orders on the other side of the market, *where the execution but not the cancellations* occurred through an LSCI MPID. *See* Exhibit 2 to the Complaint for exchange-by-exchange and aggregate data.

32. As part of its investigation, FINRA requested trading data from LSCI in 224 stock symbols involved in the reported layering. Reviews of the trading data confirmed that each instance reflected *actual* layering activity (except where the trading data provided by LSCI was insufficient to make that determination), *i.e.*, multiple orders were placed on one side of the market at various price levels at or away from the NBBO, creating the appearance of a change in the levels of supply and demand, and triggering the price of the security to move. An order was then executed on the opposite side of the market at the artificially created price and most, if not all, of the remaining orders were immediately cancelled. While both the bona fide executions and non-bona fide cancellations occurred in LSCI accounts, transactions were often routed to multiple exchanges, *i.e.*, cross-market. In total, actual layering activity was confirmed in 217 of the 224 symbols. *See* Exhibit 3 to the Complaint.

33. The trading data for the 224 symbols also reveals the prominent role the Avalon account played in the layering activity at LSCI with respect to the selected symbols. Avalon was involved to some extent in almost all layering activity (in 215 of the 217 symbols) and dominated it in most instances (in 148 of the 215 symbols, at least 95% of all transactions, *i.e.*, cancellations or executions, involved Avalon; in 198 of the 215 symbols, at least 50% of all transactions involved Avalon).

34. Indeed, Avalon blotter data, mapped into the cross-market data, confirms the role of the Avalon account in the layering activity at LSCI. In the aggregate, Avalon was involved in 526,052 instances of single-participant layering and 95,515 instances of paired-participant layering across multiple exchanges during the cross-market surveillance period. *See* Exhibits 4 and 5 to the Complaint for exchange-by-exchange and aggregate data.

35. Thus, the Avalon account was involved in approximately 43% of all single-participant layering instances and in approximately 20% of all paired-participant layering instances where the executions occurred at LSCI. The Avalon account was also used in approximately 81% of all single-participant cancellations and 72% of all paired-participant cancellations detected at LSCI. *See* Exhibits 6 and 7 to the Complaint.

36. Significantly, LSCI was responsible for just 0.07% of cross-market order flow volume among all market participants during the cross-market surveillance period, but for 14.79% of all non-bona fide cancellations. Further, during the same period, *one out of every 13 orders* at LSCI was non-bona fide; for all other market participants, the ratio was *one out of every 3,143 orders*.[10] *See* Exhibit 8 to the Complaint.

37. LSCI and Lek profited from the layering scheme through receipt of commissions, fees, and rebates from Avalon's trading.

38. Below are examples of layering activity in the Avalon account during the relevant period.

[10] These numbers consider all instances of layering, not just those meeting alert criteria.

Trading in "AAA"[11] on November 30, 2012

39. On November 30, 2012, the NBBO for AAA was $6.77 (50,000 shares) x $6.78 (12,000 shares).

40. From 12:26:58.000 to 12:27:40.000, Avalon placed 60 orders through its account at LSCI to sell short a total of 600,000 shares of AAA at share prices ranging from $6.79 to $6.77. These orders were routed for execution to various exchanges, including BZX, EDGA, EDGX, NYSE, NYSE Arca, and Nasdaq.

41. A fraction of a second later, at 12:27:40.248, the NBBO for AAA decreased to $6.75 (12,700 shares) x $6.76 (24,400 shares).

42. At 12:28:03.000, Avalon placed an order to buy 99,600 shares of AAA, which resulted in Avalon buying 58,800 shares of AAA at the lower price of $6.75 per share. The buy orders were fully displayed.

43. Next, from 12:28:21.000 to 12:29:52.000, Avalon placed orders to buy that resulted in Avalon buying an additional 50,200 shares of AAA at $6.76 per share.

44. In sum, in less than three minutes Avalon bought a total of 109,000 shares of AAA at prices 1-2 cents lower than the NBBO price prior to this activity.

45. A fraction of a second later, at 12:29:57.697, the NBBO for AAA became $6.76 (22,000 shares) x $6.77 (18,500 shares).

46. At 12:29:57.000, Avalon canceled 15 of its 60 orders to sell AAA short that were priced at $6.77 per share, leaving open the 45 orders priced at $6.78 and $6.79 per share.

[11] The actual trading symbols are anonymized herein but set forth in the Notice of Aliases that was filed with the Complaint.

47. From 12:30:08.000 to 12:30:16.000, Avalon purchased an additional 4,200 shares of AAA at prices ranging from $6.765 to $6.77 per share.

48. Finally, from 12:30:18.000 to 12:30:19.000, Avalon canceled its remaining 45 orders to sell AAA short at prices ranging from $6.79 to $6.78. Thus, in less than four minutes, Avalon placed a total of 370 orders, cancelled all 60 of its sell short orders, leaving only buy orders that resulted in the purchase of a total of 113,200 shares of AAA at prices ranging from $6.75 to $6.77 per share, which was .01 to .02 lower than it would have received in the absence of such layering, reaping a potential profit of $1,972.91 for this one layering instance.

Trading in "BBB" on December 12, 2014

49. On December 12, 2014 at 12:14:10.077, the PBBO[12] for BBB was $91.64 (100 shares) x $91.69 (100 shares).

50. From 12:14:12.000 to 12:14:13.000, Avalon placed six non-bona fide orders, each to sell short 100 shares of BBB at $91.69 per share. These orders were sent to NYSE Arca, EDGX and BYX for display.

51. At 12:14:13.121, the PBBO was $91.64 (200 shares) x $91.69 (700 shares).

52. Next, at 12:14:21.000, Avalon placed an order to purchase 1,900 shares of BBB at $91.65 per share. This order was sent to EDGX. Only 900 shares of this order were displayed.

53. A fraction of a second later, at 12:14:21.573, the PBBO became $91.65 (900 shares) x $91.67 (100 shares).

[12] "Protected Best Bid and Offer" is defined as "a quotation in an NMS stock that: (i) Is displayed by an automated trading center; (ii) Is disseminated pursuant to an effective national market system plan; and (iii) Is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc." 17 CFR §242.600 - *NMS Security Designation and Definitions*.

54. Between 12:14:21.000 and 12:14:22.000, Avalon received eight executions resulting in the purchase of 1,700 shares of BBB at $91.65 per share, and then immediately cancelled the remaining 200 shares of its 1,900 share buy order.

55. Within one second of purchasing the 1,700 shares of BBB (*i.e.*, bona fide executions), Avalon cancelled its six non-bona fide sell short orders.

56. At 12:14:22.209, the PBBO was $91.62 (300 shares) x $91.67 (100 shares). The activity started at 12:14:12 and ended at 12:14:22, resulting in Avalon buying 1,700 shares of BBB at $91.65 per share. Shortly thereafter, Avalon reversed sides of the market using the same pattern of order entry and trading activity.

57. At 12:14:23.005, the PBBO was $91.66 (100 shares) x $91.70 (100 shares).

58. From 12:14:27.000 to 12:44:55.000, Avalon placed 23 non-bona fide orders to purchase 2,300 shares of BBB at prices ranging between $91.67 and $91.83 per share. These 23 orders were sent to Nasdaq, NYSE Arca, EDGX and BYX, 21 of which were displayed. Within seconds, the orders resulted in Avalon purchasing a total of 300 shares at prices ranging between $91.70 and $91.83 per share, at an average price of $91.78 per share.

59. At 12:14:55.511, the PBBO became $91.79 (700 shares) x $91.84 (300 shares).

60. Seconds later, at 12:14:59.000, Avalon placed an order to sell short 2,100 shares of BBB at $91.84 per share, which was sent to EDGX. Only 900 shares of the order were displayed.

61. At 12:14:59.046, the PBBO became $91.81 (100 shares) x $91.84 (900 shares).

62. Beginning at 12:14:59.000, Avalon's sell short order was executed, resulting in Avalon selling short a total of 900 shares at $91.84 per share. Avalon then cancelled the remaining 1,200 shares of its sell short order.

63. Seconds later, Avalon cancelled 20 of the non-bona fide buy-side orders, previously sent to NYSE Arca, EDGX, and BYX.

64. Upon completion of the cancellation of Avalon's last sell-short order, the PBBO became $91.74 (100) x $91.87 (100).

65. Thus, the activity resulted in Avalon selling short 900 shares of BBB at $91.84 per share and purchasing 300 shares at $91.78 per share. The sale price received by Avalon for its shares was at a price that would not have been otherwise available absent the existence of Avalon's layering activity.

66. In so doing, Avalon purchased a total of 1,700 shares at $91.65 and sold a total of 900 shares at $91.84, generating a potential per-share profit of $0.19 and a total profit of approximately $153.90 in less than a minute.[13]

Trading in "CCCC" on May 1, 2015

67. On May 1, 2015 at 9:38:29.540, the PBBO for CCCC was $29.02 (300 shares) x $29.11 (300 shares).

68. From 9:38:32.578 to 9:38:32.580, Avalon placed two bona fide limit orders to sell short a total of 1,200 shares of CCCC priced at $29.10 that LSCI sent to EDGX and Nasdaq for display. Only 100 shares of each order to sell short were displayed, with the remaining 1,000 shares hidden in reserve.

69. Between 9:38:34.002 and 9:38:35.930, Avalon placed ten non-bona fide orders to purchase a total of 1,000 shares of CCCC; six of those orders were at a limit price of $29.06 per

[13] Avalon's profit on the 900 shares in the example above was determined by taking the difference between the VWAP of the price of the shares bought and the price of the shares sold. Profit = 900*(VWAP sell price –VWAP buy price) = 900* ($91.84-$91.65).

share and the four remaining orders were at a limit price of $29.07 per share. LSCI sent the orders to Nasdaq, NYSE Arca, EDGA and EDGX. All orders were fully displayed.

70. Within one second after placing its non-bona fide orders, the PBBO became $29.08 (300 shares) x $29.10 (100 shares).

71. Next, between 9:38:36.020 and 9:38:36.035, Avalon received executions on its bona fide orders resulting in it selling short a total of 800 shares of CCCC at $29.10 per share.

72. From 9:38:36.097 to 9:38:36.140, Avalon placed three limit orders to purchase 300 additional shares of CCCC at $29.08 per share. LSCI sent the orders to EDGX, Nasdaq, and EDGA. All of the orders were fully displayed. With the addition of these three non-bona fide orders, Avalon's displayed interest to purchase shares of CCCC increased to 1,300 shares.

73. Less than 0.1 seconds later, Avalon received another execution on its bona fide orders resulting in it selling short an additional 100 shares at $29.10 per share.

74. Between 9:38:36.925 and 9:38:36.939, Avalon cancelled six of its previous non-bona fide orders to purchase CCCC and canceled its remaining bona fide orders to sell short 300 shares of CCCC.

75. Next, from 9:38:36.943 to 9:38:36.969, Avalon cancelled its remaining seven non-bona fide orders to purchase CCCC.

76. At 9:38:36.970, the PBBO was $29.08 (100 shares) x $29.15 (400 shares).

77. The above activity started at 9:38:32.578 and ended at 9:38:36.969 and resulted in Avalon selling short 900 shares of CCCC at a price of $29.10 per share. The execution price received by Avalon for its orders to sell CCCC short was higher than the PBBO price ($29.02) it would have received absent the existence of its layering activity.

78. Less than a minute later, Avalon reversed sides using the same pattern of order entry and trading activity. At 9:38:50.209, the PBBO was $29.00 (400 shares) x $29.08 (300 shares).

79. From 9:38:50.706 and 9:38:50.708, Avalon placed two bona fide limit orders to purchase a total of 1,362 shares of CCCC at $29.04 per share. LSCI sent the orders to EDGX and Nasdaq. Only 100 shares of each of Avalon's orders were displayed.

80. Between 9:38:51.810 and 9:38:54.047, Avalon placed 11 non-bona fide orders to sell short a total of 1,100 shares of CCCC. Five of the orders were placed at a limit price of $29.10 per share, two of the orders were placed at a limit price of $29.06 per share, and four orders were placed at a limit price of $29.07 per share. LSCI sent the orders to NYSE Arca, EDGX, EDGA, and Nasdaq and all of the orders were fully displayed.

81. At 9:38:54.046, the PBBO became $29.04 (100 shares) x $29.05 (500 shares).

82. From 9:38:54.046 to 9:38:54.056, Avalon received 13 bona fide order executions which resulted in a purchase of 1,162 shares of CCCC at $29.04 per share, which is $0.04 lower than the price Avalon would have been able to purchase at had it not placed the 11 non-bona fide orders to sell short.

83. At 9:38:54.127, Avalon placed one additional non-bona fide order to sell short 100 shares of CCCC at $29.06 per share. LSCI sent this order to Nasdaq, where the order was fully displayed.

84. At 9:38:54.470, Avalon received two more bona fide order executions which resulted in a purchase of 200 shares of CCCC at $29.04 per share.

85. Next, from 9:38:54.628 to 9:38:54.660, Avalon cancelled its twelve non-bona fide orders to sell short CCCC at limit prices between $29.06 and $29.10 per share.

86. At 9:38:54.959, the PBBO was $28.98 (100 shares) x $29.04 (100 shares).

87. The activity in this trading example started at 9:38:32.578 and ended at 9:38:54.660, resulting in Avalon purchasing 1,362 shares of CCCC at $29.04 per share. Thus, Avalon was able to purchase and sell 900 shares of CCCC at prices that would not have otherwise been available, and made a profit of $54.00, in just over twenty seconds.

Trading in "DDDD" on June 6, 2014

88. On June 6, 2014, at 9:48:23.698, the NBBO for DDDD was $155.85 (400 shares) x $156.04 (100 shares).

89. From 9:48:29.000 to 9:48:30.000, Avalon placed 12 orders to sell short 100 shares each at limit prices ranging from $156.02 to $156.07. These orders were routed for execution to NYSE Arca, Nasdaq, and EDGX.

90. Three seconds later, at 9:48:33.000, Avalon entered three orders (1,000 shares each) to buy at a limit price of $155.88. In doing so, Avalon only displayed 300 shares of buy orders for execution; the remaining 2,700 shares of buy orders were non-displayed.

91. A fraction of a second later, at 9:48:33.244, the NBBO became $155.88 (100 shares) x $156.02 (100 shares).

92. From 9:48:34.000 to 9:48:35.000, Avalon received 23 buy-side executions totaling 2,500 shares at a price of $155.88 per share. These orders were routed to, and/or executed on, NYSE Arca, NYSE, EDGX, and Nasdaq. Avalon cancelled the remainder of the buy-side orders.

93. From 9:48:35.000 to 9:48:36.000, Avalon cancelled all of the 12 short sale orders.

94. At 9:48:37.956, the NBBO became $155.81 (100 shares) x $156.02 (100 shares).

95. Thus, as a result of Avalon's layering, which occurred during a span of seven seconds, Avalon executed its purchase of 2,500 shares at $155.88, which was a lower price than it would have paid in the absence of such layering. Avalon reversed sides of the market but continued using the same pattern to increase the NBBO for the security, and reaped a potential profit of $427.50 for this layering instance.

Trading in "EEE" on December 26, 2014

96. On December 26, 2014 at 9:57:05.004, the PBBO for EEE was $8.08 (3,400 shares) x $8.09 (1,700 shares).

97. From 9:57:05.037 to 9:57:07.303, Avalon placed 37 orders through its account at LSCI to buy a total of 3,700 shares of EEE at prices ranging from $8.06 to $8.09 per share. These orders were routed to NYSE Arca, EDGX, Nasdaq, EDGA, and BYX for execution. This resulted in Avalon receiving two executions, buying a total of 200 shares of EEE, 100 shares at $8.08 per share and 100 shares at $8.09 per share.

98. A fraction of a second later, at 9:57:07.356, the PBBO became $8.08 (6,700 shares) x $8.09 (900 shares).

99. Next, from 9:57:07.460 to 9:57:07.663, Avalon placed six orders to sell short 6,600 shares of EEE at $8.09 per share. These orders were non-displayed orders and routed by LSCI to EDGA and other exchanges for execution. This resulted in Avalon receiving 26 executions, selling short a total of 4,600 shares of EEE at $8.09 per share.

100. From 9:57:11.893 to 9:57:13.687, Avalon canceled 35 of its 37 orders to buy EEE, leaving open two orders to purchase 2,000 shares of EEE at prices ranging from $8.08 to $8.09 per share.

101. A fraction of a second later, at 9:57:13.695, the PBBO decreased to $8.07 (1,200 shares) x $8.08 (2,700 shares).

102. From 9:57:13.757 to 9:57:13.860, Avalon canceled the remaining orders to sell 1,400 of the 6,600 shares of EEE short.

103. In sum, in less than nine seconds, Avalon sold short 4,600 shares of EEE at $8.09 per share, a price that would not have been received absent the existence of Avalon's layering activity.

104. Next, a fraction of a second later, at 9:57:14.617, Avalon reversed sides of the market but continued using the same pattern to decrease the PBBO for the security.

105. At 9:57:14.389, the PBBO for EEE was $8.06 (1,100 shares) x $8.07 (2,200 shares).

106. From 9:57:14.617 to 9:57:16.023, Avalon placed 38 orders to sell short a total of 3,800 shares of EEE at prices ranging from $8.07 to $8.09 per share. These orders were routed by LSCI to NYSE Arca, EDGX, Nasdaq, EDGA and BYX.

107. A fraction of a second later, at 9:57:16.157, the PBBO for EEE was $8.06 (200 shares) x $8.07 (5,100 shares).

108. From 9:57:16.070 to 9:57:31.523, Avalon placed six non-displayed orders and 43 displayed orders to purchase a total of 13,900 shares of EEE at prices ranging from $8.06 to $8.09. These orders were routed by LSCI to NYSE Arca, EDGX, Nasdaq, EDGA and BYX for execution. This resulted in Avalon buying a total of 4,800 shares of EEE at $8.06 per share.

109. From 9:57:24.707 to 9:57:26.740, Avalon canceled all 38 of its orders to sell shares of EEE short it previously submitted between 9:57:14.617 and 9:57:16.023. A few seconds later, from 9:57:28.347 to 9:57:31.520, Avalon received four additional executions,

purchasing a total of 400 additional shares of EEE at $8.09 per share. This resulted in 8,700 of the 13,900 shares of EEE for which Avalon previously submitted orders to purchase remaining unfilled.

110. At 9:57:32.100, the PBBO for EEE was $8.08 (7,000 shares) x $8.09 (800 shares).

111. Thus, in less than 30 seconds, Avalon purchased 5,200 shares of EEE at an average price of $8.0623 per share.

112. In this instance, Avalon entered orders on both sides of the market which created the appearance of directional pressure in the security. As a result of these two instances of layering activity, Avalon purchased and sold 4,600 shares of EEE and made a profit of $127 from this activity.

Manipulative Intent of Avalon

113. The nature of the layering activity, the staggering frequency with which it occurred, and the absence of a legitimate economic purpose for such activity shows manipulative intent by Avalon.

114. Emails also show that, in July 2012, Avalon opened an account for "DT", who claimed to represent a group of traders from China. DT had previously emailed Lek inquiring about opening an account at LSCI in which to engage in layering. While Lek appeared to decline opening the account, Avalon did not.[14]

115. Avalon also indicated its intent to permit its traders to engage in layering in a Skype chat dated March 20, 2013 with a potential customer, if the price were right: "commission

[14] *See* para. 154. Lek appears to have declined opening the account due to insufficient trading volume, not the proposed layering activity.

is standard, layering is VERY expensive now, and we pay very big legal bills to protect this. A lot of firms don't have this ability and kick traders out. we do." [sic]. This chat was included in a subsequent email dated May 7, 2013 from Avalon FA to the same potential customer, in which Avalon also set the price for layering: "if you need layering strategies and around 2mm bp per account, 2000 is per account. . . ."

116. Further, Avalon's website, as of March 2013, indicated Avalon's intent to permit its traders to engage in layering by implying that it was a safe haven for traders wishing to engage in manipulative trading, notwithstanding regulatory risks. For example, Avalon stated on the English-language version of its website that it would not "blindly shut down anything we don't necessarily like" and that "[t]here isn't a time where our traders are 'kicked out' just because someone somewhere doesn't understand or like something. That's the power of trading with a leader."[15]

117. Avalon also stated on its website in August 2013 that: "Our compliance team works hard every day to ensure that our traders are able to trade the way they need. When our internal team our [sic] not enough, we do not hesitate to employ outside law firms to help us defend or promote a certain trading strategy. Many of our attorneys are on retainer and we are ready to fight for what we believe is just and compliant trading."

118. Avalon did not disclose on its website, however, the identity of its "compliance team." In reality, Avalon had no compliance team and relied on LSCI and Lek for all compliance issues.

119. Thus, Avalon touted on its website that it had a compliance team that would

[15] http://www.avalonfaltd.com captured on the English version of the website on Mar. 21, 2013. The statement appears in the Professional Compliance section of the website.

defend and promote its traders' unlawful trading strategies, rather than a team that would ensure compliance with applicable securities laws and regulations. In fact, it had no compliance team at all. This is consistent with Avalon's intent to permit manipulative trading through LSCI.

LSCI and Lek Provided Substantial Assistance

120. During the relevant period, both LSCI and Lek provided substantial assistance to Avalon's traders in furtherance of their manipulative layering activity.

121. LSCI and Lek provided Avalon traders access to United States markets ("market access") by permitting the Avalon master account to use an LSCI MPID and an additional MPID provided to LSCI by another market access provider[16] to transmit orders to the exchanges throughout the relevant period.

122. LSCI and Lek also provided office space, computer servers, trading software, and the services of Pustelnik and SVP to essentially manage all aspects of the Avalon account, including setting up new accounts, negotiating terms for commissions and deposits, acting as the primary contact on the account, maintaining all Avalon paperwork, tracking profits, performing back-office and accounting functions, and handling expenses and billing. By providing such market access, office space, personnel, equipment and services, LSCI and Lek provided substantial assistance to Avalon traders in furtherance of their layering activity.

123. LSCI and Lek also continued to provide substantial assistance and market access for the Avalon master account and its traders notwithstanding multiple inquiries and warnings from regulators, and numerous red flags indicating the need to investigate further the manipulative activity in the Avalon account.

[16] Through Dec. 1, 2013.

124. LSCI and Lek also failed to implement, prior to February 2013, any layering controls for the Avalon account.

125. On February 1, 2013, after FINRA submitted multiple information requests regarding LSCI's layering controls, LSCI finally implemented so-called "Q6" controls ostensibly to curtail layering activity.

126. The Q6 controls blocked orders where the difference, or "delta," between the number of orders on one side of the market exceeds the number of orders on the other side of the market.

127. LSCI and Lek, however, disclosed the nature and parameters of the Q6 controls to NF and thereby overtly permitted Avalon to circumvent the controls.

128. The default delta for the controls was 10, but it was adjustable. LSCI originally implemented the controls at the default delta.

129. Lek testified that, once implemented, the Q6 controls "virtually had the effect of shutting down" Avalon.

130. Avalon then requested LSCI increase the delta to 75. The next week, LSCI increased the delta for Avalon to 100.

131. By disclosing the nature of the Q6 controls to Avalon and adjusting its delta upon Avalon's request, LSCI and Lek provided further substantial assistance to Avalon to continue and increase its layering activity.

LSCI and Lek Acted with Scienter

LSCI and Lek Were Aware that Layering Was an Illicit Trading Strategy

132. On September 13, 2010—prior to the Avalon account being transferred to LSCI—FINRA announced in a press release that it had censured and fined Trillium Brokerage Services,

LLC ("Trillium") for engaging in an "illicit" trading strategy that involved the entry of "numerous layered, non-bona fide market moving orders to generate selling or buying interest in specific stocks." FINRA further explained that "[b]y entering the non-bona fide orders, often in substantial size relative to a stock's overall legitimate pending order volume, Trillium traders created a false appearance of buy- or sell-side pressure."[17]

133. On February 8, 2012, Lek sent an email to an LSCI employee, "NL," who, in turn, forwarded the email to Pustelnik. The subject line in the email was "HF Trading" and it included the following statement by Lek, showing awareness of the concern over layering:

> FINRA continues to be concerned about the use of so-called "momentum ignition strategies" where a market participant attempts to induce others to trade at artificially high or low prices. Examples of this activity [include] layering strategies where a market participant places a bona fide order on one side of the market and simultaneously "layers" non-bona fide orders on the other side of the market (typically above the offer or below the bid) in an attempt to bait other market participants to react to the non-bona fide orders and trade with the bona fide orders on the other side of the market. . . . FINRA has observed several variations of this strategy in terms of the number, price and size of the non bona fide orders, but the essential purpose behind these orders remains the same, to bait others to trade at higher or lower prices.

134. In an email dated September 17, 2012, NL forwarded to Lek an email he received from LSCI's Compliance Officer, AS. In the email, AS included a website link to an article in *Traders Magazine* concerning "layering-spoofing," with the notation, "Read article below . . . talks about trillium, genesis, Master-sub." The article in *Traders Magazine* described recent FINRA cases in which Trillium and nine traders settled to a censure and fine of more than $2 million for layering and in which Genesis agreed to an expulsion and its CEO agreed to a bar for allowing master-sub account owners to operate as unregistered broker-dealers.[18]

[17] FINRA Press Release (Sept. 13, 2010) ("FINRA Sanctions Trillium Brokerage Services, LLC, Director of Trading, Chief Compliance Officer, and Nine Traders $2.26 Million for Illicit Equities Trading Strategy").
[18] Traders Magazine Online News, May 24, 2012 "Regulators Finishing Probes on 'Layering,' 'Spoofing' of Trades" (Tom Steinert-Threlkeld). http://www.tradersmagazine.com/news/layering-spoofing-trades-equities-

135. On September 25, 2012, Lek received notice of an SEC press release regarding the *Hold Brothers* settlement with both the SEC and FINRA, pursuant to which Hold Brothers was fined more than $5.9 million for manipulative trading and anti-money laundering and other violations. The SEC press release defined layering as an illegal manipulation.[19]

136. Subsequent communications from various exchanges provided further notice that layering constituted illegal manipulation and was, potentially, occurring at LSCI. For example, in July 2013, Bats Global Markets advised Lek of possible layering through LSCI. In November 2013, a NYSE Hearing Board found that LSCI had violated numerous exchange rules including supervisory failures related to spoofing and that the firm did not have a system to enable it to monitor for irregular trading, wash sales or marking the close.[20] In addition, FINRA issued Wells' notices to the Firm beginning in July 2014 advising of potential manipulative trading taking place through the Avalon account. Thus, LSCI and Lek were aware that layering constituted an illicit trading strategy.

LSCI and Lek Were Aware of Red Flags

110033-1.html. The article provides the following description: "In layering, the trading firm or firms involved send out waves of false orders intended to give the impression that the market for shares of a particular security at that moment is deep…The traders then take advantage of the market's reaction to the layering of orders."

[19] SEC Press Release no. 2012-197 (Sept. 25, 2012) further defines layering:

> In layering . . . [t]raders placed a bona fide order that was intended to be executed on one side of the market (buy or sell). The traders then immediately entered numerous non-bona fide orders on the opposite side of the market for the purpose of attracting interest to the bona fide order and artificially improving or depressing the bid or ask price of the security. The nature of these non-bona fide orders was to induce other traders to execute against the initial, bona fide order. Immediately after the execution against the bona fide order, the overseas traders canceled the open non-bona fide orders, and repeated this strategy on the opposite side of the market to close out the position. . . . Traders and the firms that provide them market access should not labor under the illusion that illegally layering orders amidst voluminous trading data will somehow allow them to evade detection by the SEC.

See also FINRA Press Release (Sept. 25, 2012) ("FINRA Joins Exchanges and the SEC in Fining Hold Brothers More Than $5.9 Million for Manipulative Trading, Anti-Money Laundering, and Other Violations").

[20] *Department of Market Regulation v. Lek Securities Corp.,* Proceeding No. 20110270056 (NYSE Hearing Board Nov. 14, 2013) (*on appeal*).

Indicating the Potential for Manipulative Activity in the Avalon Account

137. LSCI and Lek knew or recklessly disregarded information that constituted red flags alerting them to the potential for manipulative trading in the Avalon account.

138. LSCI and Lek disregarded red flags arising from Pustelnik's prior employment at Genesis when Pustelnik introduced Avalon to LSCI. As set forth above, Pustelnik managed the Regency account at Genesis through which the Avalon trading group traded. SVP was his assistant at Genesis, and AL was associated with the Avalon trading group. Pustelnik left Genesis in September 2010, when Genesis shut down the Regency account, and Pustelnik simply migrated the Avalon account to LSCI as a "foreign finder." Shortly thereafter, AL and SVP were both hired by LSCI, followed by Pustelnik in March 2011. The red flags surrounding the backgrounds of the three (*e.g.*, their association with a firm under investigation by FINRA and the SEC) and the origin of the Avalon account, however, prompted no meaningful inquiry into their backgrounds or into the trading activity that took place in the Avalon account at Genesis before it was on-boarded by LSCI or, for that matter, after it was on-boarded by LSCI.

139. LSCI and Lek also disregarded red flags associated with FINRA's press release in July 2012 regarding the Genesis settlement, which resulted in expulsion of the firm and a bar for its CEO, with findings that Genesis had allowed unregistered broker-dealers to operate through master-sub accounts. Lek testified that he read about the Genesis settlement when it was announced and knew that Pustelnik had testified in the Genesis investigation. Notwithstanding this information, no meaningful inquiry took place into the background of the three new hires or into the trading activity that took place in the Avalon account while at Genesis or LSCI.

140. LSCI and Lek also disregarded red flags that Avalon, once on-boarded, was operating as an unregistered broker-dealer at LSCI. LSCI and Lek were both aware that Avalon

charged commissions to its sub-account traders and required deposits. Such practices were consistent with Avalon functioning as an unregistered broker-dealer for sub-account holders and not consistent with Avalon simply being a trading account. Such red flags should have prompted further inquiry into the activity in the account.

141. LSCI and Lek also disregarded red flags raised by the business use of personal email accounts by the same LSCI employees who brought and then handled the Avalon account. Pustelnik used a personal email account for LSCI business purposes after he was hired, a fact known to the Firm but contrary to Firm policies. Similarly, SVP used a personal email account for LSCI business purposes after she was hired, a fact also known to the Firm.

142. Other red flags arose from LSCI's installation of three separate Avalon servers in its New York office, only one of which was accessible to LSCI officers. By allowing the installation of non-firm servers for Avalon-related business, LSCI and Lek disregarded the red flags associated with a purported foreign customer acting as a broker-dealer whose servers were actually located in the U.S., were not under the direct control of the purported foreign broker-dealer, and were not accessible to supervisors of LSCI but to a registered representative whose background presented its own red flags.

LSCI and Lek Were Aware that Layering Was Occurring in the Avalon Account and Demonstrated the Ability to Prevent It

143. On July 30, 2012, FINRA issued a request for documents to LSCI on behalf of NYSE Arca, and a second one on September 11, 2012, specifically inquiring about the trading in the Avalon account and seeking a "more fulsome explanation" as to how such trading was not consistent with the manipulative practice known as layering. Lek responded on September 27, 2012, stating its customer's firm, *i.e.*, Avalon, was engaged in "market making."

144. On November 27, 2012, Lek received an email from another broker-dealer (which provided sponsored access to LSCI) stating, "Sam, please see attached emails from FINRA, who is alleging layering through Lek Securities."

145. During a phone call on or about July 23, 2013, BZX Market Regulation explained to LSCI that LSCI was triggering a substantial number of layering alerts through its MPID and requested that LSCI and Lek put a stop to the layering activity or BZX would be forced to take steps to terminate LSCI's access to BZX.

146. Immediately after this conversation, the LSCI layering alerts detected by BZX Market Regulation (using an exchange-specific surveillance pattern) decreased from hundreds per day to zero or near-zero. For example, on July 23, 2013, there were 1,247 instances of layering (or potential layering) detected on the BZX exchange. By July 29, 2013, there were none. Further, there were only 16 instances of layering (or potential layering) detected on BZX over the next twelve months. The alerts similarly decreased on BYX. *See* Exhibit 9 to the Complaint.

147. By August 2013, Market Regulation's investigation of LSCI's trading had grown to more than 30 separate matters, nearly all of which involved trading by Avalon.

148. On August 20, 2013, the Executive Vice President of FINRA Market Regulation, on behalf of FINRA and eight client exchanges (including NYSE), issued a warning letter to LSCI and Lek. The letter advised both LSCI and Lek that:

> Market Regulation continues to have serious concerns with the Firm's supervision of its direct market access customers, its regulatory risk management controls, its ability to detect and prevent violative activity, and its supervisory procedures in connection with the market access it provides. In addition to these concerns, Market Regulation is particularly concerned with orders, executions and cancellations relating to Lek customers, **specifically including but not limited to, Avalon FA, Ltd ("Avalon") . . . .** Market Regulation expects the Firm to act promptly to address the foregoing. [Emphasis in original.]

149. Following the Bats and FINRA warning letters, LSCI's layering activity through the BZX and BYX exchanges remained at very low levels. Approximately one year later, layering activity began to increase. *See* Exhibit 9 to the Complaint.

150. The decrease in layering activity on BZX and BYX after regulators threatened to terminate market access, followed by a resumption of that activity approximately one year later, demonstrates that LSCI and Lek knew that layering was occurring in LSCI accounts (including Avalon) and that they had the ability to prevent it if they so desired.

LSCI and Lek Were Aware of Red Flags Regarding the Potential for Compliance Issues at Avalon

151. As set forth above, Avalon's website solicited new traders with language implying that it was a safe haven for those wishing to engage in manipulative trading, notwithstanding regulatory risks, *e.g.*, that Avalon would not "shut down anything we don't necessarily like" or kick out traders because "someone somewhere" does not like it; and that they had a compliance team that would defend and promote such trading.

152. LSCI and Lek also knew or were extremely reckless in disregarding information that Avalon relied upon the Firm for compliance issues.

153. Thus, LSCI and Lek knew or were extremely reckless in disregarding red flags that Avalon touted itself as a safe haven for manipulators and, at the same time, relied upon LSCI for compliance issues.

LSCI and Lek Claim to Disagree with Regulators that Layering is Illegal

154. LSCI and Lek knowingly or recklessly rejected the statements of regulators that layering was a form of illegal manipulation and appeared willing to permit such activity in accounts at LSCI. Between May 2012 and October 2012, Lek exchanged a series of emails with

a potential new customer in which the customer, "DT," informed Lek that they wanted to engage in "layering," *i.e.*, stating explicitly that "*we put hundres [sic] of orders to push the stock price and then cancel them"* (emphasis added). In response, Lek stated he does not agree with regulators that such a strategy constituted illegal manipulation: "regulators have argued that your trading strategy 'layering' is manipulative and illegal. This is of concern to us, *even though I do not agree with their position*" (emphasis added). Lek continued to discuss the possibility of DT opening an account with LSCI and appeared to reject DT as a LSCI customer *because the profits to be generated from DT's business were insufficient*.[21] LSCI's and Lek's disregard of regulators' warnings was, at a minimum, reckless.

LSCI and Lek Required Avalon to Pay the Firm's Legal Fees

155. In September 2012, in response to LSCI and Lek's receipt of FINRA requests for information, LSCI's CFO, DH, contacted Pustelnik on multiple occasions regarding expenses incurred in responding to regulatory inquiries related to Avalon's trading activities. For example, on September 7, 2012, DH sent an email with the subject line: "we need to talk about avalon's rate...please call me Monday." In the body of the email, DH states: "We may have a regulatory case against us that will cost us hundreds of thousands of dollars to defend."

156. On September 20, 2012, DH sent an email to Pustelnik, with the subject line entitled "Avalon or you" and containing the following inquiry: "Can they or you give us $50,000 that we can put in a separate account as a hold back against real legal fees." DH confirmed that he sent the email because Lek had told him that he had been devoting more time to responding to regulatory inquiries and that it was a good idea to create a so-called "good faith" deposit account for Avalon.

[21] *See* para. 114. Emails show that DT subsequently opened an account with Avalon.

157. DH created the "good-faith" account and funded it in 2012 and 2013 with transfers from Avalon's trading account. Subsequent transfers of funds from Avalon's account were sometimes made without NF's permission. Through such transfers, LSCI obtained approximately $300,000 to $400,000 from Avalon for legal expenses in 2013 alone.

Pustelnik's Scienter Regarding Layering in the Avalon Account is Imputable to LSCI

158. Pustelnik was the registered representative at LSCI who brought the Avalon account to LSCI, partially funded it, effectively controlled it, and had Power of Attorney over it.

159. LSCI installed servers for Avalon in its office in New York City and in Pustelnik's home, with no access provided to LSCI officers.

160. Pustelnik was aware, no later than February 2012, that regulators considered layering to be a form of manipulation. In September 2012, he was aware that FINRA was investigating layering activity in the Avalon account.

161. Pustelnik was subsequently involved in handling regulatory inquiries on behalf of LSCI regarding the layering activity detected in the Avalon account.

162. After certain controls were implemented by LSCI on February 1, 2013, ostensibly to prevent layering, Pustelnik was involved in loosening those controls over Avalon.

163. In so doing, Pustelnik knew, or was reckless in not knowing, that Avalon was engaged in layering activity. As LSCI's registered representative handling the Avalon account, Pustelnik was acting within the scope of his duties and thus his scienter is imputed to LSCI.

LSCI and Lek Admit Knowledge of the Subject Trading

164. In their Wells' Response of September 5, 2014, regarding allegations that LSCI and Lek did not reasonably supervise the trading in the Avalon account and lacked certain

controls to address manipulative trading, Counsel for LSCI and Lek admitted on pp. 2 and 3 that *both were aware of the subject trading* in the Avalon account:

> Suggesting that LSC and Mr. Lek were unaware of the trading at issue is contradicted by the facts. Indeed, information provided to the Department [of Market Regulation] through documents, OTRs and a presentation show that *LSC [LSCI] and Mr. Lek were very aware of the trading,* frequently followed up with the customers for explanations, [and] conducted their own trade analysis.
> ...
> There was an abundance of evidence conclusively demonstrating that *LSC and Mr. Lek were very knowledgeable of Avalon's and [another account's] trading activity,* followed up frequently with the customers to get explanations for certain trades, and carefully analyzed their trading for any patterns suggestive of manipulation. [Emphasis added].

165. In sum, LSCI and Lek knew (or were extremely reckless in disregarding) that layering was an illicit trading strategy; that there were red flags associated with the hiring of SVP, AL and Pustelnik and the on-boarding of the Avalon account, and other red flags that should have prompted inquiry into the trading in the Avalon account; that there was notice from regulators that layering was suspected in the Avalon account; that information indicated Avalon touted itself as a safe haven for manipulators; and that LSCI had asked Avalon and Pustelnik to pay for legal fees incurred as a result of Avalon's trading. LSCI and Lek also demonstrated that they could prevent the layering if they wished, and both admitted that they were aware of the subject trading activity in the Avalon account. Lek simply disagreed that it should be illegal.

166. Because LSCI and Lek knowingly, or with extreme recklessness, rendered substantial assistance to Avalon in connection with its manipulative layering activity, LSCI and Lek aided and abetted the manipulation.

Avalon Acted as an Unregistered Broker-Dealer

167. Under Section 15(a)(1) of the Exchange Act, it is unlawful for a broker-dealer to operate without registering with the SEC.

168. Avalon operated through two corporate entities: Avalon FA and "Avalon Fund Aktiv" ("Avalon Fund").

169. Avalon Fund was incorporated by AL in New Jersey in 2006. It was owned and operated by NF, who registered it with Ukrainian authorities as a U.S. corporation.

170. Avalon Fund operated an office in Kiev, Ukraine, for a small number of traders. The office was equipped with a telephone line with a U.S. number.

171. Avalon FA was incorporated in the Republic of Seychelles in February 2010 by NF, its sole officer and owner.

172. Upon the closing of the Regency account at Genesis, Pustelnik migrated Avalon traders to LSCI in October 2010, placing them into the master-sub account of Avalon FA.

173. Neither Avalon Fund nor Avalon FA was registered with FINRA or the SEC during the relevant period. Further, neither Avalon Fund nor Avalon FA was registered with any securities exchange during the relevant period.

174. While Avalon professed to only be a proprietary trading account trading its own assets, and not a broker-dealer, it is clear that Avalon was operating its master-sub account as a broker-dealer.

175. Typically, broker-dealers provide market access to their clients to trade their personal assets in return for commissions and fees. Broker-dealers also generally require clients to deposit their own funds and maintain a minimum balance in order to continue trading. Broker-dealer clients are typically retail or institutional customers. Broker-dealers customarily charge fees to the clients for whom they provide market access. Additionally, a broker-dealer may charge for access to a trading platform.

176. Proprietary trading accounts, on the other hand, generally trade the account-

holder's own assets with professional, non-retail traders who are paid by the account holder. Proprietary trading accounts generally do not require a trader to deposit his or her own funds or maintain a minimum balance. Proprietary trading account-holders generally do not charge fees to their traders or charge for access to a trading platform.

177. Avalon's website featured a Russian-language version of the website that used Avalon Fund, the U.S. entity, as its corporate name, while the English-language version of the website used Avalon FA, the ostensibly foreign entity, as its corporate name.

178. The Russian version touted a 1:20 buying power, *i.e.*, a margin requirement of only 5%, compared to 25% under FINRA rules,[22] and commissions as low as .00224 USD per share for Avalon Fund.

179. The English version advertised "Access to Global Markets" for traders, including the U.S. equity and options markets, and stated Avalon FA had offices in the U.S. It listed LSCI's address in New York City as its own and listed a phone number associated with Pustelnik as its "US Direct" number. Voicemail notifications for the number were forwarded to Pustelnik's personal email account.

180. Thus, Avalon solicited clients to open trading accounts with payment of commissions and fees, with profits or losses attributed to clients.

181. Most, if not all, of Avalon's sub-account traders were non-professionals. Numerous account opening forms establish that they self-identified as non-professionals, *i.e.*, as retail clients of Avalon, not as proprietary traders.

182. Further, Avalon's sub-account trading agreements show that clients were required to maintain a minimum balance in order to trade; that clients paid transaction-based commissions

[22] FINRA Rule 4210(c)(1) (effective Dec. 2, 2010) (formerly NASD Rule 2520(c)(1)).

from each sub-account's equity, as well as fees; and that clients were to receive 100% of profits generated and sustain all losses.

183. The agreements show that Avalon was providing services to retail clients as a broker-dealer and not proprietarily trading for its own account.

184. Avalon profited because its commissions for trading in the Avalon account exceeded those charged to Avalon by LSCI. Avalon further profited by charging various fees, including fees for traders using ROX, LSCI's proprietary trading platform, even though LSCI did not charge such fees to Avalon.

185. Because the Avalon account bore all of the hallmarks of a broker-dealer and none of a proprietary trading account, Avalon operated as an unregistered retail broker-dealer through its account at LSCI in violation of Section 15(a)(1) of the Exchange Act.

LSCI Provided Substantial Assistance

186. LSCI provided substantial assistance to Avalon regarding its operation as an unregistered broker-dealer. For example, LSCI provided access to U.S. markets by permitting Avalon to use an LSCI MPID and an additional MPID provided to LSCI by another broker-dealer, until terminated by that broker-dealer, to transmit orders to the exchanges throughout the relevant period, notwithstanding multiple inquiries from regulators and other red flags.

187. Further, LSCI also provided office space, computer servers, trading software, and the services of Pustelnik and SVP to essentially manage all aspects of the Avalon account, including setting up new accounts, negotiating terms for commissions and deposits, acting as the primary contact on the account, maintaining all Avalon paperwork, tracking profits, performing back-office and accounting functions, and handling expenses and billing. By providing such market access, office space, personnel, equipment and services, LSCI provided substantial

assistance to Avalon in furtherance of its operation as an unregistered broker-dealer.

LSCI Acted with Scienter

LSCI Knew or Recklessly Disregarded Information that Avalon Operated as an Unregistered Broker Dealer

188. Because LSCI employees managed virtually all aspects of the Avalon accounts, LSCI knew or was extremely reckless in disregarding information that Avalon was operating as an unregistered broker-dealer. LSCI knew that Avalon charged sub-account clients commissions, received deposits from the sub-account clients, disabled trading accounts until deposits were received, and that the sub-account clients identified themselves as non-professionals. Emails show that LSCI knew that Avalon charged commissions at the sub-account level; that LSCI provided Pustelnik and/or SVP with profit and loss breakdowns on a trader-by-trader basis; and that LSCI required Avalon to identify the commission rates for each sub-account.

189. LSCI also knew that employees Pustelnik and SVP had communications in which they discussed commission rates, deposit minimums, and other indicia of broker-dealer operations directly with NF, sub-account customers or their group leaders, evidencing *de facto* control of Avalon. As one example of such control, SVP signed her emails to LSCI officers as Avalon's "Head of Finance."

190. Further, via a February 1, 2011 email from NF, LSCI's CFO received a Power of Attorney authorizing Pustelnik and SVP, "as agent and attorney in fact," to act on behalf of Avalon FA "in every respect" and "in all matters," including buying and selling securities. LSCI was therefore aware that employees Pustelnik and SVP had not only *de facto*, but legal control of Avalon.

191. Thus, LSCI knew—or was extremely reckless in disregarding information—that indicated Avalon operated as an unregistered broker-dealer under the control of LSCI employees Pustelnik and SVP.

LSCI Knew or Recklessly Disregarded Information that Avalon's Business Operations Were Centered in the United States

192. In the course of the underlying investigation, LSCI and Lek claimed that Avalon was exempt from the registration requirement of Section 15(a)(1) of the Exchange Act because, they contend, Avalon is a "foreign broker or dealer" exempted by 17 C.F.R § 240.15a-6.

193. To qualify as a foreign broker or dealer, however, an entity must be engaged in its business "entirely outside of the United States." 17 C.F.R. § 240.15a-1(g).

194. Avalon, however, conducted most, if not all of its business, within the United States and thus was not a foreign broker or dealer.

195. Avalon Fund was incorporated in the U.S. and NF registered it with Ukrainian authorities as a U.S. corporation.

196. Avalon's website stated it had U.S. offices, listed LSCI's New York address as its headquarters with a U.S. phone number, and used a photo of LSCI's internal conference room as its own. Further, Avalon's sub-account trading agreements claimed that Avalon was a New York corporation operating under U.S. law.

197. NF, Avalon's manager, resided in New Jersey, was a U.S. citizen, and worked out of LSCI's office in New York. LSCI was aware of these facts because a copy of NF's U.S. passport was provided to LSCI's Compliance Officer, "AS," by email dated November 1, 2010, when opening the Avalon account at LSCI.

198. Pustelnik, LSCI's registered representative who brought the Avalon account to the firm and effectively controlled it, resided in New Jersey and worked out of LSCI's office in

New York. Pustelnik had Power of Attorney over the Avalon account. He also performed most, if not all, of the back-office functions for Avalon.

199. SVP, LSCI's employee who identified herself as "Head of Finance" for Avalon, worked out of LSCI's office in New York and handled Avalon's accounts and paid its expenses from a U.S. bank account. SVP also had Power of Attorney over the Avalon account.

200. AL, Avalon Fund's registered agent who was also LSCI's registered representative for the Avalon account, resided in the U.S. and worked out of LSCI's office in New York.

201. Several Avalon FA computer servers were physically located in LSCI's office in New York. The servers provided access to Avalon's billing and financial records, account information, order entry and trading records. The servers were accessible only to Pustelnik and LSCI technical staff.

202. Thus, LSCI knew—or was extremely reckless in disregarding information—indicating that most, if not all, of Avalon's business operations were centered in the U.S. and, therefore, that Avalon was not a foreign broker or dealer.

203. Because LSCI knowingly or recklessly rendered substantial assistance to Avalon's operation as an unregistered broker-dealer in violation of Section 15(a)(1) of the Exchange Act, LSCI aided and abetted the violations.

LSCI and Lek Failed to Establish and Maintain a Supervisory System, Including Written Supervisory Procedures, Reasonably Designed to Achieve Compliance with Applicable Securities Laws, Regulations, and Rules

LSCI and Lek Failed to Establish Adequate Supervisory Procedures, Including WSPs

204. A NYSE member is required to establish, maintain, and enforce WSPs that will enable it to properly supervise the activities of its associated persons and to assure compliance

with applicable securities laws, rules, regulations, and statements of policy promulgated thereunder, as well as Exchange rules and the rules of any applicable designated self-regulatory organization.[23] Each NYSE member also is required to designate a partner, officer, or manager in each office of supervisory jurisdiction, including the main office, to carry out the WSPs, and to review the activities of each office, including the periodic examination of customer accounts to detect and prevent irregularities or abuses.[24] In order to accomplish such supervisory requirements, a NYSE member's WSPs must be tailored to supervise the types of business in which it engages.

205. LSCI and Lek failed to satisfy this obligation by, among other things, including generic language in the WSPs not applicable to the Firm's actual business.

206. The Firm's WSPs also failed to address key business lines, such as its market access business. Although the Firm provided market access to customers, including Avalon, the Firm's WSPs did not provide for sufficient reviews of trading activity by market access customers, did not provide for supervision of accounts with master-sub account arrangements, and did not include monitoring for various forms of potentially manipulative activity by customers, including but not limited to layering. In addition, the Firm's WSPs did not provide for monitoring the use of, and payments to, putative foreign finders.

207. Further, LSCI and Lek failed to establish adequate supervisory procedures to review for potentially manipulative trading activity and, instead, relied upon manual reviews of accounts in real-time by Lek and other desk supervisors, as well as firm "gateways" that contained "certain compliance checks, fat finger checks, or credit checks", and post-trade

[23] NYSE Rule 342 "Offices – Approval, Supervision and Control" (pre-Dec. 1, 2014); Rule 3110 "Supervision" (effective Dec. 1, 2014); and Rule 3120 "Supervisory Control System" (effective Dec. 1, 2014).

[24] *Id.*

tracking reports. There were, however, no gateway checks, and no exception reports, for layering prior to February 1, 2013.

208. The Firm also relied upon so-called wash sale exception reports, which failed to identify potential or actual wash sales that were separately identified in regulatory inquiries. In fact, both LSCI and Lek acknowledged that, prior to January 2013, the Firm could not determine which trades on the wash sale exception reports were actually wash sales.

209. Further, the Firm had no controls specific to layering until it applied a limited "Q6" layering control on February 1, 2013. The Q6 control only applied to some accounts at LSCI. Further, the control was limited to one parameter: a comparison of the numbers of orders placed on one side of the market relative to the other side of the market. If the difference exceeded a pre-set threshold, the order causing the threshold to be exceeded would not go through.

210. As described above, however, the Firm intentionally undercut the effectiveness of the limited Q6 control with respect to the Avalon account by disclosing the nature of the controls to Avalon and by subsequently loosening the Q6 control after NF objected to the limits.

211. Thus, the Q6 control failed to provide effective review of potentially manipulative trading. Avalon's layering activity continued and, in fact, increased throughout the relevant period.

LSCI and Lek Failed to Maintain Adequate Supervisory Procedures, Including WSPs

212. Lek supervised all firm employees during the relevant period. As LSCI's CEO and CCO, he was responsible for establishing, maintaining, and enforcing LSCI's supervisory system and WSPs. Lek purportedly delegated responsibility for updating the Firm's WSPs to AS.

213. AS, however, failed to review all of the WSPs, and was unfamiliar with various aspects of the supervisory reviews and tools referenced in the WSPs, such as the existence or use of a Daily Transaction Report mentioned in the "Prohibited Transactions" section.

214. The WSPs also failed to identify the designated principal responsible for particular supervisory reviews described in the document and to maintain a comprehensive list that identified the designated supervisor for each supervisory review specified in the WSPs.

215. LSCI's and Lek's failure to maintain an adequate supervisory system is also revealed by inconsistencies between Firm practices and the procedures described in the WSPs. For example, particular reviews were not conducted as frequently as was specified in the WSPs.

216. Other sections of the WSPs contained errors acknowledged by LSCI or were inadequate:

(a) Prior to 2012, the "SEC 15c3-5 (Market Access Rule) and Firm Trading Systems" section contained errors concerning trading limits and "fat finger" controls.

(b) The "Sharing Commissions or Fees with Non-Registered Persons" section failed to address issues/reviews pertaining to non-registered foreign finders who receive transaction-based compensation.

(c) The "Hiring Procedures" section failed to include any requirements to confirm the citizenship of potential foreign finders and failed to identify the principal responsible for conducting pre-hiring investigations of new employees.

(d) The "CRD Electronic Filings" section failed to specify the person responsible for ensuring the accuracy of information filed in the Central Registration Depository.

(e) The "Regulatory Requests and Inquiries" section did not provide for a clear supervisory system to ensure responses were timely, complete and accurate.

(f) The Firm's WSPs required review of electronic mail, but did not specify a designated principal with responsibility to do so. Further, the frequency of such reviews inconsistently referred to both daily and monthly reviews. Moreover, the methodology specified impractical steps, such as requiring employees to provide hard copies of outgoing e-mails to the reviewer, while incoming emails were electronically maintained on the reviewer's terminal for purposes of review.

LSCI and Lek Failed to Enforce Its Supervisory Procedures, Including WSPs

217. LSCI and Lek also failed to enforce the WSPs that it had in place. The Firm's WSPs required annual certifications pertaining to outside business activities and accounts, and adherence to the Firm's electronic communications policy. The Firm did not obtain executed certifications for Pustelnik and AL for 2011 and 2012.

218. Further, LSCI and Lek were aware of the use of personal email accounts used for Firm business by Pustelnik and SVP, contrary to Firm policy, but failed to review such correspondence and take meaningful steps to prevent further violations.

LSCI and Lek Failed to Reasonably Supervise The Activities of Associated Persons

219. Under NYSE Rules 342, 3110 and 3120,[25] a NYSE member is required to properly supervise the activities of its associated persons through the establishment, maintenance, and enforcement of written procedures to assure their compliance with applicable securities laws and regulations, and with the rules of NYSE and any applicable designated self-regulatory organization. Further, a NYSE member is required to review the activities of each of its offices, including the periodic examination of customer accounts to detect and prevent irregularities or abuses.

220. Because Pustelnik, AL, and SVP were employed by LSCI, they were associated persons of LSCI.

221. Pustelnik, AL, and SVP controlled the Avalon account that was used for manipulative purposes for more than four years.

[25] NYSE Rule 342 "Offices—Approval, Supervision and Control" (pre-Dec. 1, 2014) (setting forth supervisory responsibilities to reasonably discharge duties and obligations in connection with supervision and control of the activities of those employees related to the business of their employer and compliance with securities laws and regulations; Supplementary Materials indicate written procedures are required). NYSE Rule 342 was replaced by NYSE Rules 3110 and 3120 on Dec. 1, 2014.

222. Despite knowledge of all the facts set forth herein, LSCI and Lek failed to establish and maintain supervisory procedures and a system to supervise the activities of associated persons Pustelnik, AL and SVP that were reasonably designed to achieve compliance with applicable securities laws and regulations, and with NYSE rules.

LSCI Failed to Establish, Document, and Maintain a System of Risk Management Controls and Supervisory Procedures Reasonably Designed to Manage the Financial, Regulatory, or Other Risks of Its Market Access Business; and Lek Caused Such Failures

223. On November 3, 2010, the SEC announced the adoption of Rule 15c3-5—the Market Access Rule—"to require that broker-dealers with market access 'appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system.'"[26]

224. Rule 15c3-5 established specific requirements for broker-dealers providing market access, including that such firms "establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, or other risks" of its business.[27]

225. The Market Access Rule further specified the required elements for risk management controls and supervisory procedures and mandated that the controls and procedures be under the "direct and exclusive control" of the broker-dealer.[28]

[26] 17 C.F.R. § 240.15c3-5; *Risk Management Controls for Brokers or Dealers With Market Access*, 75 Fed. Reg. 69792, 69792 (Nov. 15, 2010).

[27] 17 C.F.R. § 240.15c3-5(b).

[28] *Id.* § 240.15c3-5(c)-(d).

226. LSCI was required to comply with the Market Access Rule as of July 14, 2011.[29]

227. Consistent with the previously described inadequacies regarding LSCI's WSPs and supervisory procedures, LSCI did not have in place risk management controls and supervisory procedures mandated for broker-dealers by SEC Rule 15c3-5. In particular, LSCI lacked controls and procedures to detect and prevent layering and other manipulative trading activity by its market access customers, including the Avalon account. Instead, LSCI's risk management controls were primarily focused on credit and financial risks and not on other areas of regulatory compliance risk, *i.e.*, detection and prevention of manipulative trading.

228. As the Firm's CEO and CCO ultimately responsible for supervising all employees and the Firm's supervisory system and controls, Lek was a cause of the Firm's failure to comply with SEC Rule 15c3-5 by negligently or recklessly failing to ensure the Firm had controls and procedures reasonably designed to manage the financial, regulatory, or other risks of market access, including reasonable controls and procedures to detect and prevent layering and other manipulative trading activity.

229. Despite FINRA staff's communications with LSCI in 2012 about repeated regulatory trading alerts of suspicious trading in the Avalon account involving, among other things, layering and wash sales, LSCI's controls and procedures continued to fail to detect or prevent the manipulative activity. Further, Lek negligently (or recklessly) failed to implement such controls and informed regulators that the terms used to describe such manipulative conduct, including "layering" and "spoofing," were "made up." Notwithstanding regulatory inquiries, Lek continued to question whether such conduct was manipulative or illegal.

[29] *See* Exchange Act Release No. 34-64748 (June 27, 2011).

230. Lek's negligence (or recklessness) regarding 15c3-5 controls is consistent with his previously described comments to a potential customer interested in layering, the Firm's reputation as a safe haven for layering, and Lek's disregard of numerous red flags about Pustelnik, SVP, AL, the Avalon account, and the layering reported therein. It is also consistent with the substantial assistance he provided to Avalon, as described above, to aid and abet the layering activity.

231. The Firm eventually adopted its Q6 layering risk control in February 2013 ostensibly to curtail layering activity. As described above, however, the Q6 controls were circumvented by the disclosure to Avalon of the methodology employed and by relaxing the only operative parameter at the request of Avalon.

232. Further, the Firm lacked systematic procedures for obtaining and maintaining information about such customer accounts/sub-accounts, lacked information about the identities of some sub-accounts, and had minimal information about other sub-accounts, which was decentralized and frequently maintained away from the firm's systems on the personal electronic accounts of SVP.

233. Moreover, the Firm failed to adequately document its controls and procedures for assuring that surveillance personnel receive immediate post-trade execution reports. Similarly, the Firm failed to adequately document its system and procedures for regularly reviewing the effectiveness of its risk management controls and supervisory procedures, for Rule 15c3-5 purposes, and to the extent they existed at all, such systems and procedures were inadequate, as evidenced by the Firm's failures to identify and address the aforementioned deficiencies in its controls and procedures and the ongoing suspicious and manipulative activity that is the subject of this action.

LSCI Failed to Use Diligence as to the Avalon Account

234. NYSE Rules require every NYSE member to use due diligence to learn the essential facts relative to every customer, every order, every cash or margin account accepted or carried by such organization, and to supervise diligently all accounts handled by registered representatives of the organization.[30]

235. LSCI failed to exercise due diligence with respect to the opening and maintenance of the Avalon account, given the additional regulatory risks arising from its history, country of origin, and trading activity that was the subject of regulatory inquiries. Moreover, LSCI failed to retain evidence of reviews of Avalon and other such accounts.

236. LSCI also failed to exercise due diligence to investigate underlying organizational documents and other information about the entities behind the Avalon structure and related website information about Avalon. Such information revealed that one of the alter ego entities constituting Avalon (Avalon FA) was incorporated in the Republic of Seychelles but was precluded by its Articles of Association from conducting any business there, while its Articles listed LSCI's New York address as its own and its sole officer worked out of that office.

237. Other information revealed that the other alter ego, Avalon Fund, appeared to operate an office in Kiev, Ukraine, but was incorporated in New Jersey.

238. Further, the sub-account trading agreements, referencing the names of both entities, stated Avalon was a New York limited liability company. Finally, the website for the putative foreign entity was in English, with a link to the website for the U.S. entity in Russian.

[30] NYSE Rule 405 "Diligence as to Accounts" (now NYSE Rule 2090 "Know Your Customer").

239. Despite this information and these red flags, LSCI failed to exercise due diligence to investigate the individuals behind the Avalon structure and its traders, the reasons for its master-sub account structure, and the terms of the sub-account agreements, which would have revealed that Avalon was acting as an unregistered broker-dealer and that it was not entitled to the foreign broker exception.

240. Further, LSCI had no systematic procedures for obtaining and maintaining information about the Avalon master account or sub-accounts, and lacked information about the identities and backgrounds of certain sub-account traders and had minimal information about others.

241. Thus, LSCI failed to use due diligence in bringing on Avalon and the individuals behind that entity, failed to diligently investigate the reasons for the master-sub-account structure and the terms of the sub-account agreements, and failed to diligently investigate the many red flags that arose concerning both the trading activity in the Avalon account as well as its use as an unregistered broker-dealer.

LSCI Failed to Maintain and Supervise Electronic Communications

242. NYSE Rules require that members make and preserve books and records as the Exchange may prescribe and as prescribed by [Exchange Act] Rule 17a-3.[31] Rule 17a-4(b)(4), applicable to members subject to Rule 17a-3, specifically requires preservation of "all communications received and . . . sent."

243. Section 2.16 of the Firm's WSPs provides that communications with customers were "permitted only through company-sponsored or alternative approved facilities" but fails to address how the Firm would supervise for the use of personal email accounts for business

[31] NYSE Rule 440 "Books and Records."

purposes or communications with customers. Further, Section 2.16.10 required annual certifications of its employees' adherence to these provisions, but the Firm did not provide signed forms from Pustelnik or AL for 2011 or 2012, and section 5.14.1.5 required the Firm to conduct a review of LSCI electronic mail on a monthly basis, but did not specify the supervisor who would do so.

244. LSCI was aware that business-related emails were sent or received by Pustelnik and SVP through their personal accounts because LSCI officers were on such emails.

245. During the investigation of this matter, Pustelnik turned over approximately 23,595 emails sent to or from his personal email account that was used for business purposes, of which approximately 18,273 emails were not captured or reviewed by LSCI in the ordinary course of business.

246. Similarly, SVP turned over approximately 11,188 emails sent to or from her personal email account(s) that was used for business purposes across the relevant period, of which approximately 5,900 of the emails were not captured or reviewed by LSCI in the ordinary course of business.

247. For these reasons and those set forth above, the Firm's supervisory system and its WSPs regarding the supervision of electronic communications were inadequate, the Firm failed to adequately capture and retain the electronic communications of its employees and independent contractors, and failed to supervise and review those communications in accordance with applicable regulatory rules and Firm procedures.

LSCI Failed to Maintain and Supervise CRD Records

248. NYSE members are prohibited from permitting any person to perform any duties of a registered representative, Securities Trader or a direct supervisor of such persons unless such

person is registered with, qualified by, and approved by the Exchange. Members registering individuals must electronically file Forms U-4 and any related amendments thereto with CRD.[32]

249. LSCI's employee profiles on the Forms U-4 in FINRA's CRD contained incomplete or out-of-date information. LSCI did not request associated persons SVP, AL, or Pustelnik fill out Annual Certifications for 2011 and failed to produce to FINRA any of the forms for 2012 for AL and Pustelnik. The certifications include statements regarding outside business activities. Thus, LSCI did not have current information to update CRD with respect to their outside business activities. For example, Pustelnik failed to disclose his outside business activity in "uafunds.com," an entity controlled by him that provided a link on Avalon's website to Avalon's daily trading blotter.

250. Further, there were errors in the Forms U-4. Pustelnik's address on his form was incorrect and AL's form did not to include any alternative spellings of his name, of which there were many. Also, the forms for Pustelnik and AL did not indicate they were independent contractors, while Lek maintained that they were. AL also disclosed to LSCI his employment with "Avalon Fund Aktiv LLC," a business incorporated in New Jersey, but it was reported in CRD as "Avalon Fund" in *Kiev, Russia* [sic].

251. In addition, LSCI's WSPs contained no provisions identifying the person responsible for ensuring compliance with applicable rules and regulations regarding CRD registration. Specifically, Section 4.1.1.3 of the WSPs fails to specify the person responsible to conduct pre-hiring investigations of new employees and Section 4.2.2 fails to specify the person responsible for ensuring the accuracy of information filed in CRD.

[32] NYSE Rule 345 "Employees—Registration, Approval, Records."

252. Thus, LSCI failed to adequately maintain its employees' CRD records, and failed to establish, maintain and enforce a supervisory system reasonably designed to ensure the accuracy of information submitted to CRD.

LSCI Failed to Enforce Supervisory Procedures Concerning Outside Business Activities

253. NYSE Rules 346 and 3270[33] prohibit registered persons from any outside employment without prior written notice to the member. LSCI's WSPs contained provisions for compliance with applicable rules and regulations regarding any outside business activities of its employees. The "Outside Business Activities" section of the WSPs required submission of "Outside Business Activity Request" forms to "Compliance" and approval thereby, prior to the employee engaging in outside business activities, and required completion of "Annual Certification" forms that included statements regarding outside business activities, adherence to the Firm's electronic communications policy, and information regarding any outside accounts.

254. On November 26, 2013, FINRA Staff requested copies of the Annual Certification forms for LSCI employees Pustelnik, AL, and SVP for the years 2010-2013. LSCI failed to provide the requested certifications for 2011 because it had failed to send the forms to Pustelnik, AL, or SVP in 2011, although it sent the forms to numerous other employees. For 2012, LSCI provided a single form executed by SVP and, for 2013, forms executed by Pustelnik, AL and SVP (notably, SVP's 2013 form was executed *after* the FINRA request). During this period, Pustelnik was engaged in various outside business activities, including Algo Design LP, and Algo Design LLC, and had several outside accounts. LSCI was also unable to produce any

[33] On March 28, 2011, NYSE Rule 346 "Limitations – Employment and Association with Members and Member Organizations" was deleted and replaced with NYSE Rule 3270 "Outside Business Activities of Registered Persons."

"Outside Business Activity Request" forms submitted by Pustelnik between 2010 and 2013, or any evidence of reviews of his outside accounts for the same period.

255. Thus, LSCI failed to enforce its supervisory procedures, including its WSPs, regarding outside business activities.

LSCI Failed to Comply Fully and Timely to Staff Requests for Information

256. LSCI was required to fully and timely comply with the Staff's requests for information in connection with its investigations in this matter, pursuant to NYSE Rules 27[34] and 8210[35] including, among other things, requests to the Firm to provide electronic communications and other documents and information in writing.

257. During the relevant period, FINRA Staff issued requests pursuant to FINRA Rule 8210 and analogous exchange rules for copies of "all electronic communications" for certain time periods for certain LSCI employees. In its responses, LSCI unilaterally withheld from production electronic communications and other documents through use of a Firm-controlled "electronic privilege screen" that automatically withheld emails or attachments that contained a term on the Firm's undisclosed search term list.

258. The Staff set forth its opposition to LSCI's decision to unilaterally limit its production and reiterated its requests. LSCI nonetheless continued to withhold responsive documents purportedly containing terms on its list. In fact, LSCI stated at one point that it had withheld 27,450 documents by use of its privilege screen. Moreover, despite repeated Staff

[34] NYSE Rule 27 "Regulatory Cooperation" provides that the Exchange may enter into agreements with self-regulatory organizations such as FINRA for "the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and other regulatory purposes." As previously set forth, FINRA brings this action on behalf of NYSE Regulation pursuant to a Regulatory Service Agreement effective June 22, 2010.

[35] Effective July 1, 2013.

requests to do so, the Firm has failed to produce a privilege log to the Staff identifying the documents unilaterally withheld.

259. In sum, despite repeated requests, the Firm has unilaterally withheld documents from its productions to FINRA and has neither identified them nor provided a privilege log. In so doing, the Firm has failed to fully and timely comply with the Staff's requests, thereby impeding the investigation of this matter.

Aiding and Abetting Manipulation
Prohibited Under Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder,
and Section 9(a)(2) of the Exchange Act
(Violations of NYSE Rule 2010)
(LSCI and Lek)

260. As set forth above, Avalon, acting through its traders, knowingly or recklessly engaged in manipulative trading in the Avalon account at LSCI during the review period.

261. In so doing, Avalon, through the use of the Avalon master account and its sub-accounts at LSCI, in connection with the purchase or sale of securities, directly or indirectly, by the use of a facility of a national securities exchange, knowingly or recklessly, employed a device, scheme or artifice to defraud, or engaged in an act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, thereby violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

262. In addition, Avalon, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of a facility of a national securities exchange, effected, alone or with one or more persons, a series of transactions in securities creating actual or apparent active trading in such securities, or raising or depressing the price of such securities, for the purpose of inducing the purchase or sale of such securities by others, in violation of Section 9(a)(2) of the Exchange Act.

263. As set forth above, Respondents LSCI and Lek knowingly or recklessly rendered substantial assistance to Avalon in connection with the prohibited manipulative trading described above. In so doing, Respondents LSCI and Lek aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 9(a)(2) of the Exchange Act, and thereby violated NYSE Rule 2010.

Aiding and Abetting the Operation of an Unregistered Broker-Dealer Prohibited Under Section 15(a)(1) of the Exchange Act (Violations of NYSE Rule 2010) (LSCI)

264. As set forth above, Avalon engaged in the activities of a broker-dealer operating in the United States during the relevant period but failed to register with the SEC or FINRA as a broker-dealer (or with any exchange).

265. In so doing, Avalon made use of the mails or a means or instrumentality of interstate commerce to effect transactions in securities without being duly registered, in violation of Section 15(a)(1) of the Exchange Act.

266. Respondent LSCI knowingly or recklessly rendered substantial assistance to Avalon in connection with its operation as an unregistered broker-dealer. In so doing, LSCI aided and abetted the violations of Section 15(a)(1) of the Exchange Act and thereby violated NYSE Rule 2010.

Failure to Establish, Maintain, and Enforce Written Supervisory Procedures (Violations of NYSE Rules 342, 3110, 3120 and 2010) (LSCI and Lek)

267. NYSE Rules require a member firm to establish, maintain, and enforce WSPs that will enable it to properly supervise the activities of its registered representatives, registered principals, and other associated persons and to assure compliance with applicable securities laws

and regulations, and the applicable rules of NYSE. Each NYSE member also is required to designate a partner, officer, or manager in each office of supervisory jurisdiction, including the main office, to carry out the written supervisory procedures and to review the activities of each office, including the periodic examination of customer accounts to detect and prevent irregularities or abuses.

268. As LSCI's CEO and CCO, Lek was ultimately responsible for the Firm's compliance with supervision requirements.

269. As set forth above, during the relevant period LSCI and Lek failed to establish required WSPs in numerous ways, including the failure to tailor the procedures to LSCI's business and to include sufficient procedures for the Firm's market access business.

270. Further, as set forth above, during the relevant period LSCI and Lek failed to maintain required WSPs in numerous ways, including by failing to designate a responsible person who was sufficiently informed to perform his duties and by maintaining WSPs that were inadequate, contained errors, or were at variance with steps actually performed.

271. In addition, as set forth above, during the relevant period LSCI and Lek failed to enforce the Firm's WSPs, including its procedures pertaining to outside business activities and accounts and adherence to the Firm's electronic communications policy.

272. In so doing, LSCI and Lek violated NYSE Rules 342, 3110(b), 3120[36] and 2010.

Failure to Establish and Maintain a Reasonable Supervisory System
(Violations of NYSE Rules 342, 3110, 3120 and 2010)
(LSCI and Lek)

273. A NYSE member is required to properly supervise the activities of its associated persons through the establishment, maintenance, and enforcement of written procedures to assure

[36] NYSE Rule 342 (pre-Dec. 1, 2014); NYSE Rules 3110 and 3120 (effective Dec. 1, 2014).

their compliance with applicable securities laws and regulations, and the rules of NYSE, and to review the activities of each of its offices, including the periodic examination of customer accounts to detect and prevent irregularities or abuses.

274. As LSCI's CEO and CCO, Lek was ultimately responsible for the Firm's compliance with supervision requirements.

275. As set forth above, during the relevant period LSCI and Lek failed to establish and maintain the required system to supervise the activities of its registered representatives, registered principals, and/or associated persons, including but not limited to Pustelnik, AL, and SVP, notwithstanding numerous red flags suggesting closer supervision was warranted.

276. In so doing, LSCI and Lek violated NYSE Rules 342, 3110(a), 3120[37] and 2010.

Market Access Rule Violations
(Willful Violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-5 thereunder, and Violations of NYSE Rules 342, 3110, 3120 and 2010 (LSCI); Violation of NYSE Rule 2010 (Lek))

277. Lek was ultimately responsible for the Firm's risk management controls and supervisory system as the Firm's CEO and CCO.

278. LSCI and Lek failed to appropriately control the risks associated with providing its customers with market access during the relevant period so as not to jeopardize the Firm's and other market participants' financial condition and the integrity of the trading on the securities markets, as required by Rule 15c3-5 under Section 15(c)(3) of the Exchange Act.

279. LSCI and Lek failed to establish, document, and maintain a system of risk management controls and supervisory procedures during the relevant period reasonably designed

[37] NYSE Rule 342 (pre-Dec. 1, 2014); NYSE Rules 3110 and 3120 (effective Dec. 1, 2014).

to manage the financial, regulatory, and other risks of providing market access, as that term is defined in Rule 15c3-5, and as required in Rule 15c3-5(b).

280. LSCI and Lek failed to ensure, as required by Rule 15c3-5(c), that LSCI had in place appropriate regulatory risk management controls and supervisory procedures during the relevant period so as to: (i) prevent the entry of orders unless there was compliance with all regulatory requirements; (ii) prevent the entry of orders if the customer or trader is restricted from trading; (iii) restrict access to trading systems and technology to persons pre-approved and authorized by LSCI; and (iv) assure appropriate surveillance personnel receive immediate post-trade execution reports that result from market access.

281. LSCI and Lek also failed to ensure that LSCI's regulatory risk management controls and supervisory procedures were under LSCI's direct and exclusive control during the relevant period, as required by Rule 15c3-5(d). LSCI was not relieved of any of its obligations to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of market access.

282. LSCI and Lek also failed to establish, document and maintain a system for regularly reviewing the effectiveness of LSCI's risk management controls and supervisory procedures during the relevant period, as required by Rule 15c3-5(e).

283. As detailed above, by failing to establish, document and maintain a system of risk management controls and supervisory procedures reasonably designed to systematically manage the regulatory and other risks of providing market access, LSCI willfully violated Section

15(c)(3) of the Exchange Act and Rule 15c3-5 thereunder (beginning July 14, 2011), and violated NYSE Rules 342, 3110, 3120[38] and 2010.

284. Lek's statements to potential investors and regulators regarding layering, as well as his disregard of numerous red flags and inquiries about Avalon and its trading as he aided and abetted the misconduct, are consistent with, at the least, negligence or recklessness on his part with respect to LSCI's deficient market access controls.

285. By failing to ensure the Firm had controls and procedures reasonably designed to manage the financial, regulatory, or other risks of market access, including reasonable controls and procedures to detect and prevent layering and other manipulative trading activity, Lek caused the Firm's willful violations of Exchange Act Section 15(c)(3) and Rule 15c3-5 thereunder, in violation of NYSE Rule 2010.

Failure to Use Due Diligence as to Accounts
(Violations of NYSE Rules 405 and 2010)
(LSCI)

286. Under NYSE Rule 405, LSCI was required to use due diligence to learn the essential facts relative to every customer, every order, every cash or margin account accepted or carried by such organization, and to supervise diligently all accounts handled by registered representatives of the organization use due diligence, in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer.

287. During the relevant period, LSCI failed to know its customer, Avalon, by failing to use due diligence to understand the origins of Avalon and the individuals behind it, as well as those who were trading in or through its master account and sub-accounts, and the reasons for its

[38] NYSE Rule 342 (pre-Dec. 1, 2014); NYSE Rules 3110 and 3120 (effective Dec. 1, 2014).

structure and the terms of its operation, both in the course of onboarding Avalon and in the maintenance of its account.

288. In so doing, LSCI violated NYSE Rules 405[39] and 2010.

Failure to Make and Preserve Email Books and Records
(Willful Violations of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder, and Violations of NYSE Rules 440 and 2010)
(LSCI)

289. NYSE Rule 440 requires that members make and preserve books and records as the Exchange may prescribe and as prescribed by Exchange Act Rule 17a-3.

290. Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, applicable to members subject to Rule 17a-3, specifically require that copies of communications received and sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business, be preserved for a period of not less than three years.

291. During the relevant period LSCI employees and independent contractors were using non-firm, *i.e.*, personal, email accounts to conduct LSCI business. The Firm was on notice of such use as early as October 2010 and yet such use continued through at least December 2013. The Firm did not preserve records of these communications.

292. In so doing, LSCI failed to adequately make and preserve email business records of its employees and independent contractors and thereby willfully violated Section 17(a) of the Exchange Act and Rule 17a-4 thereunder, and also violated NYSE Rules 440 and 2010.

[39] Now NYSE Rule 2090.

Failure to Supervise Electronic Communications
(Violations of NYSE Rules 342, 3110, 3120 and 2010)
(LSCI)

293. The Firm's WSPs during the relevant period contained no provisions applicable to reviewing personal email accounts despite the fact its employees used personal email accounts to conduct Firm business activities.

294. Further, review of the electronic communications provided by LSCI revealed that employees were using personal email accounts to conduct Firm business; in fact, AS, identified by Lek as the person responsible for Firm WSPs and supervision, received business-related emails from employee personal email accounts yet failed to take steps to stop the practice.

295. In so doing, LSCI failed to adequately supervise its employee's electronic communications as certain business-related emails were outside its purview, in violation of NYSE Rules 342, 3110, 3120[40] and 2010.

Failure to Maintain Accurate CRD Information
(Violations of NYSE Rules 345 and 2010)
(LSCI)

296. NYSE Rule 345[41] prohibits member organizations from permitting natural persons to perform the duties customarily performed by a securities lending representative, a Securities Trader or a direct supervisor of such, unless such person is registered on CRD. Application for registration shall be submitted via Form U-4, which must be kept current.

[40] NYSE Rule 342 (pre-Dec. 1, 2014); NYSE Rules 3110 and 3120 (effective Dec. 1, 2014).

[41] NYSE Rule 345 "Employees—Registration, Approval, Records."

297. During the relevant period, AL, SVP, and Pustelnik were registered representatives or associated persons of the Firm. Accordingly, LSCI was required to file and maintain complete and accurate Form U-4s in CRD for each.

298. As set forth above, certain U-4 information specific to AL, SVP, or Pustelnik was incomplete or inaccurate during the relevant time period, including information related to outside business activities and addresses, including the address of Avalon Fund.

299. As a result, LSCI failed to adequately maintain its employees' CRD records, *i.e.*, the Firm submitted and maintained inaccurate and/or incomplete information in its registrants' profiles on the Forms U-4 in CRD, in violation of NYSE Rules 345 and 2010.

Failure to Supervise to Ensure Accurate CRD Information
(Violations of NYSE Rules 342, 3110, 3120 and 2010)
(LSCI)

300. Pursuant to NYSE Rules 342, 345, 3110 and 3120, in order to meet its obligations under the supervision requirements, member Firms must designate a partner(s) or corporate officer(s) responsible for supervision of its activities to assure compliance with applicable securities laws and regulations and Exchange rules, including supervising CRD registration functions and ensuring the accuracy of the information being submitted. No such person was identified.

301. Further, based upon its review of two of the Firm's employees' Forms U-4, FINRA Staff found six separate reporting inaccuracies.

302. In so doing, LSCI failed to establish, maintain and enforce a supervisory system, reasonably designed to ensure the accuracy of information submitted to CRD, in violation of NYSE Rules 342, 3110, 3120[42] and 2010.

[42] NYSE Rule 342 (pre-Dec. 1, 2014); NYSE Rules 3110 and 3120 (effective Dec. 1, 2014).

Supervisory Violations Concerning Outside Business Activities
(Violations of NYSE Rules 342, 3110, 3120 and 2010)
(LSCI)

303. NYSE Rules 346[43] and 3270[44] state that no registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member organization, unless he or she has provided prior written notice to the member organization, in such form as specified by the member organization.

304. While LSCI's WSPs addressed outside business activity certifications, the Firm failed to distribute Annual Certification forms to Pustelnik, AL and SVP in 2011, and produced only one executed form, by SVP, for 2012. During this period, Pustelnik was engaged in several outside business activities. The Firm was also unable to produce any Outside Business Activity Request forms from Pustelnik for the relevant period.

305. In so doing, LSCI failed to enforce its WSPs regarding outside business activities, in violation of NYSE Rules 342, 3110, 3120[45] and 2010.

Improperly Paying Transaction-Based Compensation to an Unregistered Person
(Violations of NYSE Rules 345, 353 and 2010)
(LSCI)

306. NYSE Rule 345 requires all persons who perform regularly the duties customarily performed by a securities representative to be registered. Supplementary materials also provide that member organizations "shall thoroughly investigate the previous record of persons whom

[43] NYSE Rule 346 "Limitations—Employment and Association with Members and Member Organizations" (pre-Dec. 15, 2011 conduct).

[44] NYSE Rule 3270 "Outside Business Activities of Registered Persons" (effective Mar. 28, 2011).

[45] NYSE Rule 342 (pre-Dec. 1, 2014); NYSE Rules 3110 and 3120 (effective Dec. 1, 2014).

they contemplate employing…" In addition, NYSE Rule 353[46] prohibited a member, principal executive, officer or registered representative from rebating to any person any part of the compensation received for the solicitation of orders to purchase or sell securities.

307. By paying transaction-related compensation to an unregistered person, namely, Pustelnik, prior to his registration with LSCI, LSCI violated NYSE Rules 345, 353 and 2010.

Failure to Comply Fully and Timely with Information Requests
(Violations of NYSE Rules 8210 and 2010)

308. NYSE Rule 27 provides that the Exchange may enter into agreements with self-regulatory organizations such as FINRA for "the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and other regulatory purposes." NYSE Rule 8210[47] states that Exchange staff shall have the right to require a member organization or covered person to provide information orally, in writing, or electronically and to testify under oath, and to inspect and copy their books and records, with respect to any matter involved in the investigation, complaint, examination or proceeding, and that Exchange staff may enter into agreements with other SROs and regulators to exchange such information and other forms of material assistance.

309. FINRA brings this action on behalf of NYSE Regulation pursuant to a Regulatory Service Agreement effective June 22, 2010.

310. During the relevant period LSCI failed to fully and timely respond to the Staff's requests for information issued pursuant to FINRA Rule 8210 and various exchanges' analogous provisions. In particular—and to date—LSCI has failed to produce, despite repeated requests, all

[46] NYSE Rule 353 "Rebates and Commissions" (now NYSE Rule 2040).

[47] Effective July 1, 2013.

requested emails in response to FINRA's request and a privilege log for the thousands of documents it has withheld.

311. In so doing, LSCI impeded the ability of FINRA and other regulators to investigate the serious misconduct at issue, thereby violating NYSE Rules 8210 and 2010.

Failure to Comply with Standards of Commercial Honor and Principles of Trade
(Violations of NYSE Rule 2010)
(LSCI and Lek)

312. NYSE Rule 2010 requires that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

313. By engaging in the conduct described in paragraphs 1-311 above, LSCI and Lek failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of NYSE Rule 2010.

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

SANCTIONS

It is ordered that the following sanctions be imposed:

A. As against Samuel F. Lek, a permanent bar, in all capacities;

B. As against Lek Securities Corporation, a censure, a fine of $900,000, of which $69,230.77 shall be paid to NYSE,[48] and the following equitable relief and undertakings:

[48] The remainder of the fine shall be paid to FINRA, NYSE Arca, NYSE American, Nasdaq, BX, PHLX, Cboe, BZX, BYX, EDGA, EDGX, and ISE.

1) **Business-Line Restrictions Regarding Foreign Intra-Day Trading**

a. ***Definitions.*** For purposes herein, the following definitions shall apply:

(i) ***"Affiliates of the Firm."*** The term "Affiliates of the Firm" includes Lek Securities U.K. Limited ("Lek UK"), Lek Holdings Limited ("Lek Holdings"), and any parent, subsidiary, predecessor, successor, entity owned or controlled by, or under common control with, the Firm, Lek UK, or Lek Holdings.

(ii) ***"Customer."*** The term "Customer" shall mean any individual or entity holding an account at or trading through the Firm.

(iii) ***"Foreign Customer."*** The term "Foreign Customer" shall mean any Customer who is not a citizen, national, or resident of the United States or its territories, or is not incorporated or domiciled in the United States or its territories. Any Foreign Customers of Affiliates of the Firm shall be treated as Foreign Customers of the Firm.

(iv) ***"Intra-Day Trading."*** The term "Intra-Day Trading" shall mean executing, through an account at the Firm, more than five buy and more than five sell orders in the same security (equity or option), within a single day.

b. **Business-Line Restrictions.**

(i) The Firm is restricted for a period of three years from the date of entry of the Offer of Settlement, from having Foreign Customers that engage in Intra-Day Trading. This shall be referred to as the "Foreign Intra-Day Trading Restriction."

(ii) The Foreign Intra-Day Trading Restriction does not apply where the Firm engages in the following limited non-executing prime brokerage functions: (1) post-execution clearing services; (2) settlement of securities; (3) custody services, including providing technical services necessary to the provision of such custody services; and (4) pre-execution credit checks conducted in connection with (1)-(3) above.

(iii) **Exceptions to the Foreign Intra-Day Trading Restriction.**

Trading Exceptions. Subject to the Time-Out Period described in section IV.C.1)b.(iv) of the Offer, the Foreign Intra-Day Trading Restriction shall not apply to the following types of trading by Foreign Customers:

(1) instances where the Monitor (defined below) determines that the Intra-Day Trading was solely to unwind specific positions in a single day due to news events, unique changes in market conditions, or to correct a bona-fide error; provided, however, that if the Firm or the Customer does not or cannot provide the Monitor with requested information to determine if the trading falls under this exception, then this exception shall not apply;

(2) instances where the Monitor determines that the Intra-Day Trading was related to hedging that is not part of a manipulative or illegal strategy; provided, however, that if the Firm or the Customer does not or cannot provide the Monitor with requested information to determine if the trading falls under this exception, then this exception shall not apply;

(3) instances where the Monitor determines that the Intra-Day Trading was related to stop loss orders that are not part of a manipulative or illegal strategy; provided, however, that if the Firm or the Customer does not or cannot provide the Monitor with requested information to determine if the trading falls under this exception, then this exception shall not apply;

Foreign Customer Exceptions. The Foreign Intra-Day Trading Restriction shall not apply to Foreign Customers in the following categories:

(4) institutional Customers with assets under management in excess of $50 million; or

(5) pension funds, broker dealers subject to comprehensive regulation in their local jurisdiction, licensed banks, and entities that meet the definition of foreign financial institutions under 26 U.S.C. §§ 1471(d)(4) and (d)(5) and that are subject to comprehensive regulation in their local jurisdiction by a regulatory body applicable to that type of entity.

(iv) ***Applicability of Exceptions.***

(1) **Existing Foreign Customers.** From the date of entry of the Foreign Intra-Day Trading Restriction until the later of (i) 120 days, or (ii) 3 days after the Monitor's first report ("Time Out Period"), the Exceptions to the Foreign Intra-Day

Restriction set forth in section IV.C.1)b.(iii)(2)-(5) of the Offer shall be available only to existing Foreign Customers of the Firm. Attachment A of the Offer is a list of existing Foreign Customers of the Firm.

(2) **New Foreign Customers.** At the end of the Time Out Period, subject to review and approval by the Monitor, the Firm may begin excepting new Foreign Customers from the Foreign Intra-Day Trading Restriction pursuant to section IV.C.1)b.(iii)(2)-(5) of the Offer.

2) **Requirement to Terminate Certain Foreign Customers.** Foreign Customers of the Firm may be deemed Significant Compliance Risks and must be terminated as following:

a. **Significant Compliance Risk Designation.** A Foreign Customer is deemed a Significant Compliance Risk if:

(i) A Foreign Customer that does not fall within the exceptions in section IV.C.1)b.(iii)(4)-(5) of the Offer engages in Intra-Day Trading twice in a 30-day period; or

(ii) A Foreign Customer, regardless of whether it falls within any exception set forth in section IV.C.1)b(iii) of the Offer, engages in potential manipulative trading or other market manipulation that is flagged by the Monitor, the SEC, FINRA, or another Self-Regulatory Organization ("SRO").

b. **Significant Compliance Risk Review.** The Firm must cause the Monitor to conduct a review of a Foreign Customer that has been deemed a Significant Compliance Risk within 30 days of the Foreign Customer being so designated, as set forth in section IV.C.3)h. of the Offer.

c. **Account Suspension.** The Firm must suspend all trading by the Foreign Customer that is deemed a Significant Compliance Risk during the Significant Compliance Risk review if the Monitor so recommends, as set forth in section IV.C.3)h. of the Offer.

d. **Termination.**

(i) The Firm must terminate a Foreign Customer that is deemed a Significant Compliance Risk if, after the Significant Compliance Risk review, the Monitor determines that the Foreign Customer should be terminated.

(ii) If the Firm or the Foreign Customer cannot or does not provide information requested by the Monitor to conduct the Significant Compliance Risk review, the Firm must terminate that Foreign Customer, as set forth in section IV.C.3)h. of the Offer.

3) **Retention of Monitor.** Within 30 days of the execution of this Offer of Settlement, retain an Independent Compliance Monitor (the "Monitor"), not unacceptable to FINRA, for a period of three years, to conduct a comprehensive and ongoing review of the Firm concerning the areas and subjects set forth below, and to carry out the tasks set forth herein. The Firm may apply to FINRA for an extension of that deadline before it arrives, and upon a showing of good cause by the Firm, FINRA, in its sole discretion, may grant such extension for a period of time it deems appropriate.

a. **Terms and Payment of Monitor**. The Monitor shall remain in place for a period of three years from the date of retention, provided, however, that if the Firm fails to implement the Monitor's recommendations and obtain the Monitor's certification of such implementation within that period, the Monitor will remain in place until the Firm complies with all recommendations and the Monitor certifies that such recommendations have been implemented. The Firm shall be solely responsible for payment of the Monitor's fees and expenses.

b. **Independence of Monitor.** The Firm shall require the Monitor to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Monitor shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Firm or any of its present or former affiliates, directors, officers, employees, or agents acting in those capacities. The agreement will also provide that the Monitor will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Monitor in performance of his/her duties under this Offer shall not, without prior written consent of FINRA, enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Firm, or any of its present or former affiliates, directors, officers, employees, or agents acting in those capacities for the period of the engagement and for a period of two years after the engagement.

c. **Confirmation.** Within three (3) business days after retaining the Monitor pursuant to the above, the Firm must provide to FINRA a copy of the engagement letter detailing the Monitor's responsibilities.

d. **Cooperation.** The Firm will cooperate fully with the Monitor, including providing the Monitor with access to its files, books, records, and personnel (and the files, books, records, and personnel of Affiliates of the Firm), as reasonably requested for the tasks set forth herein, and the Firm will obtain

the cooperation of its employees or other persons under its supervision or control.

e. **Account Information to Provide to Monitor.** In order to facilitate the Monitor's reviews and assessments that are to be performed hereunder, and in addition to any information required below, the Firm shall provide the Monitor with the following information and documents, within such time as the Monitor reasonably requires and on an ongoing basis if and as required by the Monitor:

(i) The identity and full legal name of every Customer, including the account holder and every person authorized by the Firm to trade in the account.

(ii) For each individual identified in subparagraph (i) above, a statement of whether the person is a citizen, national, or resident of the United States or its territories, and if so, identification of the location from which the individual does business, and a copy of the driver's license or U.S. passport of such individual.

(iii) If the individual identified in subparagraph (i) above is not a citizen, national, or resident of the United States or its territories, a statement of the nationality, the location from which the individual does business, and a copy of government-issued identification.

(iv) For each entity identified in subparagraph (i) above, identification of the names of the entity's principals, and a statement of whether it is incorporated or domiciled in the United States or its territories, and if so, the state in which it is incorporated, and the state in which it has its principal place of business.

(v) If the entity identified in subparagraph (i) above is not incorporated or domiciled in the United States or its territories, identification of the country in which it is incorporated, and the country in which it has its principal place of business.

(vi) Such other information as the Monitor requests.

f. ***Monitor's Review, Assessment and Recommendations of the Firm's Compliance with Foreign Intra-Day Trading Restriction.***

(i) The Firm shall require the Monitor to review and assess on an ongoing basis whether the Firm is complying with the Foreign Intra-Day Trading Restriction. This shall include but not be limited to requiring the Monitor to: (i) review and assess all Intra-Day Trading by Foreign Customers who are not excepted from such restriction

under section IV.C.1)b.(iii)(2)-(5) and (iv) of the Offer; (ii) review and assess the sufficiency and reasonableness of the Firm's systems, policies, and procedures related to Intra-Day Trading by Foreign Customers; (iii) review and assess the Firm's compliance with the Foreign Intra-day Trading Restriction; and (iv) conduct reviews and make recommendations pursuant to the Significant Compliance Risk provisions below.

(ii) In order to facilitate the Monitor's review required by this section and the Significant Compliance Risk provisions below, the Firm shall provide the Monitor with the following information for all Intra-Day Trading by Foreign Customers who are not excepted from such restriction under section IV.C.1)b.(iii)(2)-(5) and (iv) of the Offer:

(1) The date and time, security, quantity, price, and other details requested by the Monitor concerning orders placed and trades executed;

(2) For orders and trades identified under subparagraph (1) above, the identity and location of the Customer, sub-account, or trader who entered each order and trade; and

(3) Such other information as the Monitor requests, including but not limited to the information described in section IV.C.3)e. of the Offer.

(iii) The Firm shall make the information required by this section IV.C.3)f. available to the Monitor beginning no later than 30 days after the date of entry of the Foreign Intra-Day Trading Restriction, and then every 30 days thereafter, or at such other intervals as the Monitor may require.

(iv) The Firm shall require the Monitor to perform and complete the review, assessment and making of recommendations required by this section within 120 days of the date of the Monitor's appointment, and again by the end of each 120-day period thereafter, for so long as the Monitor is engaged.

(v) The Firm shall require the Monitor to submit a report to the Firm and to FINRA on the review, assessment and recommendations required by this section within 120 days of the date of the Monitor's appointment, and again by the end of each 120-day period thereafter, for so long as the Monitor is engaged. The report shall include information concerning review and recommendations regarding Intra-Day Trading by Foreign Customers.

g. **Monitor's Review, Assessment and Recommendations Regarding Firm Supervision and Controls.**

(i) The Firm shall require the Monitor to review and assess the reasonableness of the Firm's supervisory system, including its WSPs, with respect to the areas described in paragraphs 267-276 above, and to recommend actions to be taken by the Firm to ensure the reasonableness of its supervisory system, including its WSPs, to address the risks associated with trading by Foreign Customers, including trading through sub-accounts associated with Foreign Customers;

(ii) The Firm shall require the Monitor to review and assess the reasonableness of the Firm's supervisory system, including its WSPs, with respect to customer identification procedures, and to recommend actions to be taken by the Firm to ensure the reasonableness of its supervisory system, including its WSPs, to address the risks associated with opening or maintaining accounts for Foreign Customers, including sub-accounts associated with Foreign Customers;

(iii) The Firm shall require the Monitor to review and assess the reasonableness of the Firm's market access controls with respect to the areas described in paragraphs 277-285 above, to include but not limited to, credit limits, open order limits, and other pre-trade controls, as well as post-trade controls and reviews, and to recommend actions to be taken by the Firm to ensure the reasonableness of its market access controls to address the risks associated with providing market access to Foreign Customers, including market access through sub-accounts associated with Foreign Customers.

(iv) The Firm shall require the Monitor to submit a report to the Firm and to FINRA on the review, assessment, and recommendations required by this section within 120 days of the date of the Monitor's appointment, and again by the end of each 120-day period thereafter, for so long as the Monitor is engaged. The report shall include information concerning the Monitor's review and recommendations regarding supervision, customer identification procedures, and market access controls. The Firm may apply to FINRA for an extension of the deadline for submitting a report before it arrives, and upon a showing of good cause by the Firm, FINRA, in its sole discretion, may grant such extension for a period of time it deems appropriate.

h. ***Monitor's Review and Recommendations Concerning Significant Compliance Risks and Termination.***

(i) The Firm shall require the Monitor to review, assess, and make recommendations on an ongoing basis concerning the Firm's compliance with the Requirement to Terminate Certain Foreign Customers provisions in section IV.C.2) of the Offer. This shall include but not be limited to requiring the Monitor to: (i) review and assess the sufficiency and reasonableness of the Firm's systems, policies, and procedures for identifying Foreign Customers as Significant Compliance Risks; (ii) review and assess the Firm's compliance with the Requirement to Terminate Certain Foreign Customer provisions in section IV.C.2) of the Offer; and (iii) conduct reviews and make recommendations where a Foreign Customer has been designated a Significant Compliance Risk.

(ii) Where a Foreign Customer has been designated a Significant Compliance Risk, the Firm shall require the Monitor to undertake reviews and recommendations as follows:

(1) Conduct a review within 30 days of the Foreign Customer being designated a Significant Compliance Risk ("Significant Compliance Risk Review") to determine whether the Foreign Customer has engaged in Intra-Day Trading not subject to the exceptions set forth in section IV.C.1)b.(iii) of the Offer or has engaged in manipulative trading or other market manipulation.

(2) Recommend whether the Firm should suspend all trading by the Foreign Customer during the period of the Significant Compliance Risk Review.

(3) Determine whether the Firm and the Foreign Customer have provided all information requested to conduct the Significant Compliance Risk Review.

(4) Determine whether the Foreign Customer has engaged in Intra-Day Trading not subject to the exceptions set forth in section IV.C.1)b.(iii) of the Offer or has engaged in manipulative trading or other market manipulation.

(5) Make a recommendation regarding termination of the Foreign Customer based upon the Monitor's determinations under subparagraphs (3) and (4) above and the Requirement to Terminate Certain Foreign Customer provisions under section IV.C.2) of the Offer.

(iii) The Firm shall require the Monitor to perform this review, assessment, and making of recommendations on an ongoing basis for so long as the Monitor is engaged.

(iv) The Firm shall require the Monitor to submit a report to the Firm and FINRA on the review, assessment and recommendations required by this section within 120 days of the date of the Monitor's appointment, and again by the end of each 120-day period thereafter, for so long as the Monitor is engaged. The report shall include information concerning the Monitor's review and recommendations regarding any Foreign Customers identified as Significant Compliance Risks.

i. ***Monitor's Review and Assessment of Whether Samuel F. Lek Has Any Interest or Role in the Firm.***

(i) The Firm shall require that the Monitor review and assess the Firm's corporate governance structure, ownership, and management, so as to determine whether Samuel F. Lek has any legal or beneficial interest or role in the Firm.

(ii) The Firm shall require the Monitor to perform and complete this review and assessment within 120 days of the date of the Monitor's appointment, and again by the end of each 120-day period thereafter, for so long as the Monitor is engaged.

(iii) The Firm shall require the Monitor to submit a report to the Firm and FINRA on the review, assessment, and recommendations required by this section within 120 days of the date of the Monitor's appointment, and again by the end of each 120-day period thereafter, for so long as the Monitor is engaged.

j. **Implementation of Recommendations.**

(i) Except as set forth in section IV.C.3)j.(ii)-(vii) of the Offer, the Firm shall have ninety (90) days from the date of receiving any recommendations from the Monitor to adopt and implement such recommendations. The Firm shall notify the Monitor and FINRA in writing when each such recommendation has been implemented.

(ii) Any recommendations that the Monitor makes regarding suspending all trading by the Foreign Customer during a period of Significant

Compliance Risk Review must be implemented within one (1) business day of the Monitor's recommendation.

(iii) Any recommendations that the Monitor makes regarding termination of a Foreign Customer must be implemented within two (2) business days of the Monitor's recommendation.

(iv) If the Firm considers any recommendation unduly burdensome, impractical, or costly, or inconsistent with applicable law or regulation, the Firm need not adopt that recommendation at that time, but may submit in writing to the Monitor and FINRA within fifteen (15) days of receiving the recommendation, an alternative policy, procedure, or system designed to achieve the same objective or purpose. This provision shall not apply, however, to recommendations that the Monitor makes regarding (i) suspending all trading by the Foreign Customer during a period of Significant Compliance Risk Review, or (ii) termination of a Foreign Customer.

(v) If the Firm considers any recommendation relating to (i) suspending all trading by the Foreign Customer during a period of Significant Compliance Risk Review, or (ii) termination of a Foreign Customer, to be unduly burdensome, impractical, or costly, or inconsistent with applicable law or regulation, the Firm shall adopt the recommendation at that time, but may submit in writing to the Monitor and FINRA within fifteen (15) days of receiving the recommendation, an alternative policy, procedure, or system designed to achieve the same objective or purpose.

(vi) In the event that the Firm and the Monitor are unable to agree on an acceptable alternative proposal under sections (iv) and (v) above, the Firm shall promptly notify FINRA. The Firm must abide by the Monitor's ultimate determination with respect to any such disputes. Pending such ultimate determination, the Firm shall not be required to implement any contested recommendation(s) except, as set forth above, recommendations regarding (i) suspending all trading by the Foreign Customer during a period of Significant Compliance Risk Review, or (ii) termination of a Foreign Customer.

(vii) With respect to any recommendation that the Monitor determines cannot reasonably be implemented within ninety (90) days after receiving it, the Monitor may extend the time period for implementation, so long as FINRA does not object.

k. **Providing Information to FINRA and other SROs.** For the period of the Monitor's engagement, the Firm shall provide FINRA and other affected SROs[49] with any information reasonably requested by FINRA or the SROs pertaining to the subject matter of this Offer of Settlement. The Firm shall require that the Monitor provide FINRA and the SROs with any information that FINRA or the SROs request regarding such matters, including but not limited to the Monitor's review, assessments, recommendations, and any communications and interactions between the Monitor and the Firm.

l. **Requirements Hereunder Do Not Supplant Other Legal Requirements.** The prohibitions and obligations set forth herein do not supplant any obligations that the Firm has under the law or under the rules of any self-regulatory organization or exchange of which the Firm is a member. No determinations by the Monitor, and no provisions herein, shall preclude FINRA or any self-regulatory organization from bringing actions against Respondents.

m. **Certification by the Firm.** Within thirty (30) days after the date of implementation of any recommendation herein, the Chief Executive Officer of the Firm shall certify to the Monitor and FINRA, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. FINRA may make reasonable requests for further evidence of compliance, and the Firm agrees to provide such evidence.[50]

[49] See SROs listed in Sec. III, para. 3, *supra.*

[50] In determining the above sanctions, NYSE has taken into account the monetary sanctions imposed by the SEC in its parallel action against the Firm and Samuel Lek for, *inter alia*, aiding and abetting fraudulent trading of Avalon FA Ltd, Nathan Fayyer, and Serge Pustelnik, in violation of Sections 9(a)(2) and 10(b) of the Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and Section 17(a) of the Securities Act of 1933 (*see S.E.C. v. Lek Secs. Corp.*, No. 17 Civ. 1789 (DLC)(S.D.N.Y.)). As such, the monetary sanctions herein are imposed solely for violations of the Third through Fourteenth Causes of Action herein, not the First or Second, which allege aiding and abetting activity similar to the allegations in the SEC action.

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

SO ORDERED.

Adam J. Wasserman
Head of Enforcement
NYSE Regulation
Signed on behalf of New York Stock Exchange LLC, by delegated authority from its Chief Regulatory Officer

Dated: October 28, 2019

THE NEW YORK STOCK EXCHANGE LLC
OFFICE OF HEARING OFFICERS

Department of Enforcement, Complainant, v. Lek Securities Corporation (CRD No. 33135), and Samuel Frederik Lek (CRD No. 1642936), Respondents.	Disciplinary Proceeding No. 20110297130-07 Hearing Officer - MC

OFFER OF SETTLEMENT

I.

Respondents Lek Securities Corporation ("LSCI" or the "Firm") and Samuel Frederik Lek ("Lek", and together with LSCI, "Respondents") make this Offer of Settlement ("Offer") to the New York Stock Exchange LLC ("NYSE") with respect to the matters alleged by the Department of Enforcement at the Financial Industry Regulatory Authority ("FINRA"), on behalf of NYSE in Disciplinary Proceeding No. 20110297130-07, filed on March 27, 2017 (the "Complaint"), as amended by this Offer.[1]

[1] Since the filing of the Complaint, the Legal Section of FINRA's Department of Market Regulation has merged with FINRA's Department of Enforcement. Accordingly, unless noted otherwise, all references herein are to FINRA's Department of Enforcement. The Department of Enforcement is handling this matter on behalf of NYSE Regulation pursuant to a Regulatory Services Agreement among NYSE Group, Inc., New York Stock Exchange LLC, NYSE Arca, Inc., NYSE American LLC, NYSE Regulation and FINRA, which became effective January 1, 2016.

This Offer is submitted to resolve this proceeding and is made without admitting or denying the allegations of the Complaint, as amended by this Offer. It is also submitted upon the condition that NYSE shall not institute or entertain, at any time, any further proceeding as to Respondents based on the allegations of the Complaint, as amended by this Offer, and upon further condition that it will not be used in this proceeding, in any other proceeding, or otherwise, unless it is accepted by NYSE's Chief Regulatory Officer pursuant to NYSE Rule 9216.

II.

ORIGIN OF DISCIPLINARY ACTION

This matter stems from an investigation by FINRA's Department of Market Regulation.

III.

ALLEGED ACTS OR PRACTICES AND VIOLATIONS BY RESPONDENTS

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

Summary

1. Between October 1, 2010 and June 30, 2015 (the "relevant period"), Respondents, aided and abetted manipulative trading ("layering") by "Avalon," a customer of the Firm whose master-sub account was known as "the Avalon account." LSCI also aided and abetted Avalon in the operation of an unregistered broker-dealer through the Avalon account. In addition, LSCI committed, and Lek caused, Market Access Rule violations; LSCI and Lek committed supervisory violations; and LSCI committed numerous ancillary violations concerning know-your-customer rules, failure to retain electronic communications, failure to retain complete and accurate Central Registration Depository ("CRD") records, improperly paying transaction-based

compensation to an unregistered person, and supervisory violations related to review of electronic communications, ensuring the accuracy of CRD information and enforcing procedures regarding outside business activities. LSCI also failed to comply fully and timely with information requests, and both LSCI and Lek failed to observe high standards of commercial honor and just and equitable principles of trade. The violations occurred on numerous exchanges, including NYSE.

2. Taken together, the various violations demonstrate that LSCI and Lek knowingly or with extreme recklessness aided and abetted the misconduct occurring in the Avalon account throughout the relevant period simply because the Avalon account brought in sufficient business to the Firm to make it profitable, notwithstanding numerous red flags and ongoing investigations into the activity by FINRA, the Securities and Exchange Commission ("SEC"), NYSE, and other exchanges.

Respondents and Jurisdiction

3. LSCI is a Delaware corporation headquartered in New York, New York, and has been registered with FINRA since April 1, 1996. LSCI operates as an independent order-execution and clearing firm providing customers direct market access to numerous exchanges, including NYSE. LSCI is a member of NYSE, FINRA, and the following exchanges that are relevant to this Complaint: NYSE Arca, Inc. ("NYSE Arca"); NYSE American LLC, formerly NYSE MKT LLC and AMEX LLC ("NYSE American"); The NASDAQ Stock Market LLC ("Nasdaq"); NASDAQ BX, Inc. ("BX"); NASDAQ PHLX LLC ("PHLX"); Cboe Exchange, Inc. ("Cboe"); Cboe BZX Exchange, Inc. ("BZX"); Cboe BYX Exchange, Inc. ("BYX"); Cboe EDGA Exchange, Inc. ("EDGA"); Cboe EDGX Exchange, Inc. ("EDGX"); and NASDAQ ISE, LLC, formerly the International Securities Exchange, LLC ("ISE"). NYSE has jurisdiction over

LSCI because it is currently registered as a member firm of NYSE, and it committed the misconduct at issue while a member.

4. Lek has been employed in the securities industry since August 1986, and founded the Firm in January 1990. At all times during the relevant period, Lek was the owner, CEO, and Chief Compliance Officer ("CCO") of LSCI. NYSE has jurisdiction over Lek because he is currently associated with LSCI, a member firm of NYSE, and committed the misconduct at issue while registered with a member firm.

Statement of Facts

Master-Sub Account Structure

5. In the master-sub account trading model, a top-level customer typically opens an account with a registered broker-dealer (the "master account") that permits the customer to have subordinate accounts for different trading activities (the "sub-accounts"). The master account is usually divided into sub-accounts for the use of individual traders or groups. In some instances, the sub-accounts are further divided to such an extent that the master account customer and the registered broker-dealer with which the master account is opened may not know the actual identity of the underlying traders.[2]

6. Although master-sub account arrangements may be used for legitimate business purposes, some customers who seek to use master-sub account relationships structure their account with a broker-dealer in this fashion in an attempt to avoid or minimize regulatory obligations and oversight.[3]

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[2] SEC Office of Compliance Inspections and Examinations ("OCIE") National Exam Risk Alert, Vol. 1, No. 1, pp. 1-2 (Sept. 29, 2011).

[3] *Id.*

7. A sub-account trader may, for example, open multiple accounts under a single master account and proceed to effect trades on both sides of the market to manipulate a stock price by entering orders to drive the price up, mark the close, or engage in other manipulative activity. Such conduct may create the false appearance of activity or volume and, as a result, may fraudulently influence the price of a security.[4]

Layering

8. Layering is a form of market manipulation that typically includes placement of multiple limit orders on one side of the market at various price levels at or away from the National Best Bid and Offer ("NBBO") that are intended to create the appearance of a change in the levels of supply and demand. In some instances, layering involves placing multiple limit orders at the same or varying prices across multiple exchanges or other trading venues. An order is then executed on the opposite side of the market and most, if not all, of the multiple limit orders are immediately cancelled. The purpose of the multiple limit orders that are subsequently cancelled is to induce, or trick, other market participants to enter orders due to the appearance of interest created by the orders such that the trader is able to receive a more favorable execution on the opposite side of the market.[5]

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[4] *Id*., pp. 6-7.

[5] *See, e.g.*, FINRA Press Release (Sept. 25, 2012) ("FINRA Joins Exchanges and the SEC in Fining Hold Brothers More Than $5.9 Million for Manipulative Trading, Anti-Money Laundering, and Other Violations") (re: *In the Matter of Hold Brothers On-Line Inv. Svcs., LLC*, Admin. Proc. No. 3-15046 (Sept. 25, 2012)). Two years prior to the *Hold Brothers* press release, FINRA issued a press release announcing fines and sanctions against Trillium Brokerage Services and others. *See* FINRA Press Release (Sept. 13, 2010) ("FINRA Sanctions Trillium Brokerage Services, LLC, Director of Trading, Chief Compliance Officer, and Nine Traders $2.26 Million for Illicit Equities Trading Strategy") (re: *Trillium Brokerage Services, LLC*, FINRA STAR No. 20070076782-01 (Aug. 5, 2010). In doing so, the *Trillium* press release stated that the firm "entered numerous layered, non-bona fide market moving orders to generate selling or buying interest in specific stocks. By entering the non-bona fide orders, often in substantial size relative to a stock's overall legitimate pending order volume, Trillium traders created a false appearance of buy- or sell-side pressure." *Id*.

9. The multiple orders that are cancelled are termed "non-bona fide" herein, while the executed orders are termed "bona fide." Non-bona fide orders refers to orders that a trader does not intend to have executed; rather, they are intended to inject false information into the marketplace about supply and demand for the security at issue and thereby induce other market participants to execute against the bona fide orders (*i.e.,* orders that the trader intends to have executed) for the same security on the opposite side of the market.

10. The false appearance of supply and demand typically pushes the price in a direction favorable to the trader, and permits the trader to obtain better prices on the bona fide orders, or better prices for that quantity and at that point in time, than would otherwise be available.

11. When both the non-bona fide cancellations and bona fide executions constituting an instance of layering occur through the same Market Participant Identifier ("MPID"), it is termed a "single-participant" instance. When the non-bona fide cancellations occur through a different MPID than the MPID used for the bona fide executions, it is termed a "pair-participant" instance.

Origins of the Avalon Account at LSCI

12. Genesis Securities, LLC ("Genesis") was previously a broker-dealer and a member of FINRA, NYSE, and other exchanges. Sergey Pustelnik a/k/a Serge Pustelnik ("Pustelnik") was previously a registered representative at Genesis.

13. Pustelnik handled the Regency Capital ("Regency") account at Genesis, which was a focus of a FINRA investigation into the operation of unregistered broker-dealers through master-sub accounts. The Regency account was a master-sub account that provided market access to foreign traders. One of its sub-accounts was called "Avalon."

14. The Avalon sub-account, in turn, was a master-sub account with sub-accounts in which Russian and Ukrainian individuals traded. The Avalon group of traders was originally brought to the Regency account by "NF," who was a close friend of Pustelnik, and "AL," who was Pustelnik's brother-in-law.

15. While at Genesis, Pustelnik had an assistant, "SVP," who received paychecks from Avalon.

16. On September 8, 2010, in the midst of ongoing investigations by FINRA, the SEC, and other exchanges, Pustelnik's registration with Genesis was terminated.

17. On September 16, 2010, Genesis closed the Regency account, including the Avalon sub-account.

18. NF, who was not registered, became the manager of a newly-incorporated and purportedly foreign entity called Avalon FA, Ltd.

19. In October 2010, Pustelnik brought the Avalon traders to LSCI, followed by AL and SVP, who were hired by LSCI in December 2010 and January 2011, respectively. The Avalon account at LSCI was opened under the name Avalon FA, Ltd.

20. SVP was hired to be Pustelnik's assistant, and AL was hired to be the registered representative on the Avalon account.

21. In migrating the Avalon account to LSCI, Pustelnik was paid as a putative "foreign finder" for LSCI, although he was a U.S. citizen.

22. On March 11, 2011, Pustelnik became a registered representative with LSCI.

23. Thus, Avalon, as referred to herein, is both a legal entity[6] and a group of traders trading through Avalon's account at LSCI.

24. Following the departure of Avalon from Genesis, Genesis withdrew its application for membership with NYSE on January 20, 2011; was terminated from Nasdaq and BX on August 8, 2011; expelled from BZX and BYX on May 14, 2012; and its membership revoked from EDGA and EDGX on May 16, 2012 for various supervisory violations. The violations included failing to conduct adequate reviews for potentially manipulative trading activity; failing to subject to heightened review accounts that posed increased risk, either because of the accountholder's regulatory history, country of origin, employment status, or because of trading in the account that was the subject of regulatory inquiries; and for failing to supervise and establish adequate Written Supervisory Procedures ("WSPs") to address, *inter alia,* master sub-account arrangements, the use of foreign finders, and review of transactions for suspicious activity.

25. On May 21, 2012, Genesis was expelled from FINRA for, *inter alia,* willful violations of Section 15(A)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"), aiding and abetting such violations, willful violations of SEC Rule 17a-4, and supervisory violations based upon findings that the firm and its CEO operated two unregistered broker-dealers through master and sub-account arrangements at the firm, even though the firm and its CEO were aware that the sub-accounts had different beneficial owners, that the master accounts charged the sub-accounts transaction-based compensation, and that the master account profited by charging commission rates that were higher than the rates they paid to the firm.

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[6] Avalon actually uses two legal entities as alter egos: Avalon FA, Ltd., a purported foreign corporation, and Avalon Fund Aktiv, a U.S. corporation.

26. On January 21, 2015, Pustelnik was barred from the industry by FINRA for violating FINRA Rule 8210 when he refused to provide a copy of his non-firm Gmail account—an account he used for business purposes at LSCI—in response to a FINRA Market Regulation request in this matter.

27. On June 12, 2015, AL was barred from the industry by FINRA for refusing to testify in this matter after asserting his Fifth Amendment privilege against self-incrimination.

Manipulative Trading in the Avalon Account

28. From November 2010 through June 2015, Market Regulation's layering surveillance patterns detected more than 1.7 million instances of layering at LSCI.

29. Specifically, between November 2010 and July 2012, Market Regulation's exchange-specific surveillance patterns detected 5,538 instances of "single-participant" instances of layering; *i.e.*, an execution on one side of the market (a bona fide order) that was quickly followed by a number of cancelled orders on the other side of the market (non-bona fide orders), where *both the execution and cancellations* occurred through the same LSCI MPID.[7]

30. After implementing a cross-market surveillance pattern beginning in August 2012 (that is, surveilling for an instance of layering where the execution and cancelled orders occurred on more than one exchange),[8] Market Regulation detected, through the end of June 2015, an additional 1,213,658 instances of single-participant layering at LSCI. *See* Exhibit 1 to the Complaint for exchange-by-exchange and aggregate data.

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[7] The surveillance patterns count each layering bona fide execution as an instance of layering, regardless of the number of non-bona fide cancellations. Only instances that meet alert criteria, however, are counted.

[8] The cross-market surveillance period began in August 2012 for some exchanges but as late as October 2014 for others.

31. The cross-market surveillance pattern also detected 485,011 "paired-participant" instances of layering during the same period, *i.e.*, an execution on one side of the market that was quickly followed by a number of cancelled orders on the other side of the market, *where the execution but not the cancellations* occurred through an LSCI MPID. *See* Exhibit 2 to the Complaint for exchange-by-exchange and aggregate data.

32. As part of its investigation, FINRA requested trading data from LSCI in 224 stock symbols involved in the reported layering. Reviews of the trading data confirmed that each instance reflected *actual* layering activity (except where the trading data provided by LSCI was insufficient to make that determination), *i.e.*, multiple orders were placed on one side of the market at various price levels at or away from the NBBO, creating the appearance of a change in the levels of supply and demand, and triggering the price of the security to move. An order was then executed on the opposite side of the market at the artificially created price and most, if not all, of the remaining orders were immediately cancelled. While both the bona fide executions and non-bona fide cancellations occurred in LSCI accounts, transactions were often routed to multiple exchanges, *i.e.*, cross-market. In total, actual layering activity was confirmed in 217 of the 224 symbols. *See* Exhibit 3 to the Complaint.

33. The trading data for the 224 symbols also reveals the prominent role the Avalon account played in the layering activity at LSCI with respect to the selected symbols. Avalon was involved to some extent in almost all layering activity (in 215 of the 217 symbols) and dominated it in most instances (in 148 of the 215 symbols, at least 95% of all transactions, *i.e.*, cancellations or executions, involved Avalon; in 198 of the 215 symbols, at least 50% of all transactions involved Avalon).

34. Indeed, Avalon blotter data, mapped into the cross-market data, confirms the role of the Avalon account in the layering activity at LSCI. In the aggregate, Avalon was involved in 526,052 instances of single-participant layering and 95,515 instances of paired-participant layering across multiple exchanges during the cross-market surveillance period. *See* Exhibits 4 and 5 to the Complaint for exchange-by-exchange and aggregate data.

35. Thus, the Avalon account was involved in approximately 43% of all single-participant layering instances and in approximately 20% of all paired-participant layering instances where the executions occurred at LSCI. The Avalon account was also used in approximately 81% of all single-participant cancellations and 72% of all paired-participant cancellations detected at LSCI. *See* Exhibits 6 and 7 to the Complaint.

36. Significantly, LSCI was responsible for just 0.07% of cross-market order flow volume among all market participants during the cross-market surveillance period, but for 14.79% of all non-bona fide cancellations. Further, during the same period, *one out of every 13 orders* at LSCI was non-bona fide; for all other market participants, the ratio was *one out of every 3,143 orders*.[9] *See* Exhibit 8 to the Complaint.

37. LSCI and Lek profited from the layering scheme through receipt of commissions, fees, and rebates from Avalon's trading.

38. Below are examples of layering activity in the Avalon account during the relevant period.

[9] These numbers consider all instances of layering, not just those meeting alert criteria.

Trading in "AAA"[10] on November 30, 2012

39. On November 30, 2012, the NBBO for AAA was $6.77 (50,000 shares) x $6.78 (12,000 shares).

40. From 12:26:58.000 to 12:27:40.000, Avalon placed 60 orders through its account at LSCI to sell short a total of 600,000 shares of AAA at share prices ranging from $6.79 to $6.77. These orders were routed for execution to various exchanges, including BZX, EDGA, EDGX, NYSE, NYSE Arca, and Nasdaq.

41. A fraction of a second later, at 12:27:40.248, the NBBO for AAA decreased to $6.75 (12,700 shares) x $6.76 (24,400 shares).

42. At 12:28:03.000, Avalon placed an order to buy 99,600 shares of AAA, which resulted in Avalon buying 58,800 shares of AAA at the lower price of $6.75 per share. The buy orders were fully displayed.

43. Next, from 12:28:21.000 to 12:29:52.000, Avalon placed orders to buy that resulted in Avalon buying an additional 50,200 shares of AAA at $6.76 per share.

44. In sum, in less than three minutes Avalon bought a total of 109,000 shares of AAA at prices 1-2 cents lower than the NBBO price prior to this activity.

45. A fraction of a second later, at 12:29:57.697, the NBBO for AAA became $6.76 (22,000 shares) x $6.77 (18,500 shares).

46. At 12:29:57.000, Avalon canceled 15 of its 60 orders to sell AAA short that were priced at $6.77 per share, leaving open the 45 orders priced at $6.78 and $6.79 per share.

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[10] The actual trading symbols are anonymized herein but set forth in the Notice of Aliases that was filed with the Complaint.

47. From 12:30:08.000 to 12:30:16.000, Avalon purchased an additional 4,200 shares of AAA at prices ranging from $6.765 to $6.77 per share.

48. Finally, from 12:30:18.000 to 12:30:19.000, Avalon canceled its remaining 45 orders to sell AAA short at prices ranging from $6.79 to $6.78. Thus, in less than four minutes, Avalon placed a total of 370 orders, cancelled all 60 of its sell short orders, leaving only buy orders that resulted in the purchase of a total of 113,200 shares of AAA at prices ranging from $6.75 to $6.77 per share, which was .01 to .02 lower than it would have received in the absence of such layering, reaping a potential profit of $1,972.91 for this one layering instance.

Trading in "BBB" on December 12, 2014

49. On December 12, 2014 at 12:14:10.077, the PBBO[11] for BBB was $91.64 (100 shares) x $91.69 (100 shares).

50. From 12:14:12.000 to 12:14:13.000, Avalon placed six non-bona fide orders, each to sell short 100 shares of BBB at $91.69 per share. These orders were sent to NYSE Arca, EDGX and BYX for display.

51. At 12:14:13.121, the PBBO was $91.64 (200 shares) x $91.69 (700 shares).

52. Next, at 12:14:21.000, Avalon placed an order to purchase 1,900 shares of BBB at $91.65 per share. This order was sent to EDGX. Only 900 shares of this order were displayed.

53. A fraction of a second later, at 12:14:21.573, the PBBO became $91.65 (900 shares) x $91.67 (100 shares).

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[11] "Protected Best Bid and Offer" is defined as "a quotation in an NMS stock that: (i) Is displayed by an automated trading center; (ii) Is disseminated pursuant to an effective national market system plan; and (iii) Is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of The Nasdaq Stock Market, Inc." 17 CFR §242.600 - *NMS Security Designation and Definitions*.

54. Between 12:14:21.000 and 12:14:22.000, Avalon received eight executions resulting in the purchase of 1,700 shares of BBB at $91.65 per share, and then immediately cancelled the remaining 200 shares of its 1,900 share buy order.

55. Within one second of purchasing the 1,700 shares of BBB (*i.e.*, bona fide executions), Avalon cancelled its six non-bona fide sell short orders.

56. At 12:14:22.209, the PBBO was $91.62 (300 shares) x $91.67 (100 shares). The activity started at 12:14:12 and ended at 12:14:22, resulting in Avalon buying 1,700 shares of BBB at $91.65 per share. Shortly thereafter, Avalon reversed sides of the market using the same pattern of order entry and trading activity.

57. At 12:14:23.005, the PBBO was $91.66 (100 shares) x $91.70 (100 shares).

58. From 12:14:27.000 to 12:44:55.000, Avalon placed 23 non-bona fide orders to purchase 2,300 shares of BBB at prices ranging between $91.67 and $91.83 per share. These 23 orders were sent to Nasdaq, NYSE Arca, EDGX and BYX, 21 of which were displayed. Within seconds, the orders resulted in Avalon purchasing a total of 300 shares at prices ranging between $91.70 and $91.83 per share, at an average price of $91.78 per share.

59. At 12:14:55.511, the PBBO became $91.79 (700 shares) x $91.84 (300 shares).

60. Seconds later, at 12:14:59.000, Avalon placed an order to sell short 2,100 shares of BBB at $91.84 per share, which was sent to EDGX. Only 900 shares of the order were displayed.

61. At 12:14:59.046, the PBBO became $91.81 (100 shares) x $91.84 (900 shares).

62. Beginning at 12:14:59.000, Avalon's sell short order was executed, resulting in Avalon selling short a total of 900 shares at $91.84 per share. Avalon then cancelled the remaining 1,200 shares of its sell short order.

63. Seconds later, Avalon cancelled 20 of the non-bona fide buy-side orders, previously sent to NYSE Arca, EDGX, and BYX.

64. Upon completion of the cancellation of Avalon's last sell-short order, the PBBO became $91.74 (100) x $91.87 (100).

65. Thus, the activity resulted in Avalon selling short 900 shares of BBB at $91.84 per share and purchasing 300 shares at $91.78 per share. The sale price received by Avalon for its shares was at a price that would not have been otherwise available absent the existence of Avalon's layering activity.

66. In so doing, Avalon purchased a total of 1,700 shares at $91.65 and sold a total of 900 shares at $91.84, generating a potential per-share profit of $0.19 and a total profit of approximately $153.90 in less than a minute.[12]

Trading in "CCCC" on May 1, 2015

67. On May 1, 2015 at 9:38:29.540, the PBBO for CCCC was $29.02 (300 shares) x $29.11 (300 shares).

68. From 9:38:32.578 to 9:38:32.580, Avalon placed two bona fide limit orders to sell short a total of 1,200 shares of CCCC priced at $29.10 that LSCI sent to EDGX and Nasdaq for display. Only 100 shares of each order to sell short were displayed, with the remaining 1,000 shares hidden in reserve.

69. Between 9:38:34.002 and 9:38:35.930, Avalon placed ten non-bona fide orders to purchase a total of 1,000 shares of CCCC; six of those orders were at a limit price of $29.06 per

[12] Avalon's profit on the 900 shares in the example above was determined by taking the difference between the VWAP of the price of the shares bought and the price of the shares sold. Profit = 900*(VWAP sell price –VWAP buy price) = 900* ($91.84-$91.65).

share and the four remaining orders were at a limit price of $29.07 per share. LSCI sent the orders to Nasdaq, NYSE Arca, EDGA and EDGX. All orders were fully displayed.

70. Within one second after placing its non-bona fide orders, the PBBO became $29.08 (300 shares) x $29.10 (100 shares).

71. Next, between 9:38:36.020 and 9:38:36.035, Avalon received executions on its bona fide orders resulting in it selling short a total of 800 shares of CCCC at $29.10 per share.

72. From 9:38:36.097 to 9:38:36.140, Avalon placed three limit orders to purchase 300 additional shares of CCCC at $29.08 per share. LSCI sent the orders to EDGX, Nasdaq, and EDGA. All of the orders were fully displayed. With the addition of these three non-bona fide orders, Avalon's displayed interest to purchase shares of CCCC increased to 1,300 shares.

73. Less than 0.1 seconds later, Avalon received another execution on its bona fide orders resulting in it selling short an additional 100 shares at $29.10 per share.

74. Between 9:38:36.925 and 9:38:36.939, Avalon cancelled six of its previous non-bona fide orders to purchase CCCC and canceled its remaining bona fide orders to sell short 300 shares of CCCC.

75. Next, from 9:38:36.943 to 9:38:36.969, Avalon cancelled its remaining seven non-bona fide orders to purchase CCCC.

76. At 9:38:36.970, the PBBO was $29.08 (100 shares) x $29.15 (400 shares).

77. The above activity started at 9:38:32.578 and ended at 9:38:36.969 and resulted in Avalon selling short 900 shares of CCCC at a price of $29.10 per share. The execution price received by Avalon for its orders to sell CCCC short was higher than the PBBO price ($29.02) it would have received absent the existence of its layering activity.

78. Less than a minute later, Avalon reversed sides using the same pattern of order entry and trading activity. At 9:38:50.209, the PBBO was $29.00 (400 shares) x $29.08 (300 shares).

79. From 9:38:50.706 and 9:38:50.708, Avalon placed two bona fide limit orders to purchase a total of 1,362 shares of CCCC at $29.04 per share. LSCI sent the orders to EDGX and Nasdaq. Only 100 shares of each of Avalon's orders were displayed.

80. Between 9:38:51.810 and 9:38:54.047, Avalon placed 11 non-bona fide orders to sell short a total of 1,100 shares of CCCC. Five of the orders were placed at a limit price of $29.10 per share, two of the orders were placed at a limit price of $29.06 per share, and four orders were placed at a limit price of $29.07 per share. LSCI sent the orders to NYSE Arca, EDGX, EDGA, and Nasdaq and all of the orders were fully displayed.

81. At 9:38:54.046, the PBBO became $29.04 (100 shares) x $29.05 (500 shares).

82. From 9:38:54.046 to 9:38:54.056, Avalon received 13 bona fide order executions which resulted in a purchase of 1,162 shares of CCCC at $29.04 per share, which is $0.04 lower than the price Avalon would have been able to purchase at had it not placed the 11 non-bona fide orders to sell short.

83. At 9:38:54.127, Avalon placed one additional non-bona fide order to sell short 100 shares of CCCC at $29.06 per share. LSCI sent this order to Nasdaq, where the order was fully displayed.

84. At 9:38:54.470, Avalon received two more bona fide order executions which resulted in a purchase of 200 shares of CCCC at $29.04 per share.

85. Next, from 9:38:54.628 to 9:38:54.660, Avalon cancelled its twelve non-bona fide orders to sell short CCCC at limit prices between $29.06 and $29.10 per share.

86. At 9:38:54.959, the PBBO was $28.98 (100 shares) x $29.04 (100 shares).

87. The activity in this trading example started at 9:38:32.578 and ended at 9:38:54.660, resulting in Avalon purchasing 1,362 shares of CCCC at $29.04 per share. Thus, Avalon was able to purchase and sell 900 shares of CCCC at prices that would not have otherwise been available, and made a profit of $54.00, in just over twenty seconds.

Trading in "DDDD" on June 6, 2014

88. On June 6, 2014, at 9:48:23.698, the NBBO for DDDD was $155.85 (400 shares) x $156.04 (100 shares).

89. From 9:48:29.000 to 9:48:30.000, Avalon placed 12 orders to sell short 100 shares each at limit prices ranging from $156.02 to $156.07. These orders were routed for execution to NYSE Arca, Nasdaq, and EDGX.

90. Three seconds later, at 9:48:33.000, Avalon entered three orders (1,000 shares each) to buy at a limit price of $155.88. In doing so, Avalon only displayed 300 shares of buy orders for execution; the remaining 2,700 shares of buy orders were non-displayed.

91. A fraction of a second later, at 9:48:33.244, the NBBO became $155.88 (100 shares) x $156.02 (100 shares).

92. From 9:48:34.000 to 9:48:35.000, Avalon received 23 buy-side executions totaling 2,500 shares at a price of $155.88 per share. These orders were routed to, and/or executed on, NYSE Arca, NYSE, EDGX, and Nasdaq. Avalon cancelled the remainder of the buy-side orders.

93. From 9:48:35.000 to 9:48:36.000, Avalon cancelled all of the 12 short sale orders.

94. At 9:48:37.956, the NBBO became $155.81 (100 shares) x $156.02 (100 shares).

95. Thus, as a result of Avalon's layering, which occurred during a span of seven seconds, Avalon executed its purchase of 2,500 shares at $155.88, which was a lower price than it would have paid in the absence of such layering. Avalon reversed sides of the market but continued using the same pattern to increase the NBBO for the security, and reaped a potential profit of $427.50 for this layering instance.

Trading in "EEE" on December 26, 2014

96. On December 26, 2014 at 9:57:05.004, the PBBO for EEE was $8.08 (3,400 shares) x $8.09 (1,700 shares).

97. From 9:57:05.037 to 9:57:07.303, Avalon placed 37 orders through its account at LSCI to buy a total of 3,700 shares of EEE at prices ranging from $8.06 to $8.09 per share. These orders were routed to NYSE Arca, EDGX, Nasdaq, EDGA, and BYX for execution. This resulted in Avalon receiving two executions, buying a total of 200 shares of EEE, 100 shares at $8.08 per share and 100 shares at $8.09 per share.

98. A fraction of a second later, at 9:57:07.356, the PBBO became $8.08 (6,700 shares) x $8.09 (900 shares).

99. Next, from 9:57:07.460 to 9:57:07.663, Avalon placed six orders to sell short 6,600 shares of EEE at $8.09 per share. These orders were non-displayed orders and routed by LSCI to EDGA and other exchanges for execution. This resulted in Avalon receiving 26 executions, selling short a total of 4,600 shares of EEE at $8.09 per share.

100. From 9:57:11.893 to 9:57:13.687, Avalon canceled 35 of its 37 orders to buy EEE, leaving open two orders to purchase 2,000 shares of EEE at prices ranging from $8.08 to $8.09 per share.

101. A fraction of a second later, at 9:57:13.695, the PBBO decreased to $8.07 (1,200 shares) x $8.08 (2,700 shares).

102. From 9:57:13.757 to 9:57:13.860, Avalon canceled the remaining orders to sell 1,400 of the 6,600 shares of EEE short.

103. In sum, in less than nine seconds, Avalon sold short 4,600 shares of EEE at $8.09 per share, a price that would not have been received absent the existence of Avalon's layering activity.

104. Next, a fraction of a second later, at 9:57:14.617, Avalon reversed sides of the market but continued using the same pattern to decrease the PBBO for the security.

105. At 9:57:14.389, the PBBO for EEE was $8.06 (1,100 shares) x $8.07 (2,200 shares).

106. From 9:57:14.617 to 9:57:16.023, Avalon placed 38 orders to sell short a total of 3,800 shares of EEE at prices ranging from $8.07 to $8.09 per share. These orders were routed by LSCI to NYSE Arca, EDGX, Nasdaq, EDGA and BYX.

107. A fraction of a second later, at 9:57:16.157, the PBBO for EEE was $8.06 (200 shares) x $8.07 (5,100 shares).

108. From 9:57:16.070 to 9:57:31.523, Avalon placed six non-displayed orders and 43 displayed orders to purchase a total of 13,900 shares of EEE at prices ranging from $8.06 to $8.09. These orders were routed by LSCI to NYSE Arca, EDGX, Nasdaq, EDGA and BYX for execution. This resulted in Avalon buying a total of 4,800 shares of EEE at $8.06 per share.

109. From 9:57:24.707 to 9:57:26.740, Avalon canceled all 38 of its orders to sell shares of EEE short it previously submitted between 9:57:14.617 and 9:57:16.023. A few seconds later, from 9:57:28.347 to 9:57:31.520, Avalon received four additional executions,

purchasing a total of 400 additional shares of EEE at $8.09 per share. This resulted in 8,700 of the 13,900 shares of EEE for which Avalon previously submitted orders to purchase remaining unfilled.

110. At 9:57:32.100, the PBBO for EEE was $8.08 (7,000 shares) x $8.09 (800 shares).

111. Thus, in less than 30 seconds, Avalon purchased 5,200 shares of EEE at an average price of $8.0623 per share.

112. In this instance, Avalon entered orders on both sides of the market which created the appearance of directional pressure in the security. As a result of these two instances of layering activity, Avalon purchased and sold 4,600 shares of EEE and made a profit of $127 from this activity.

Manipulative Intent of Avalon

113. The nature of the layering activity, the staggering frequency with which it occurred, and the absence of a legitimate economic purpose for such activity shows manipulative intent by Avalon.

114. Emails also show that, in July 2012, Avalon opened an account for "DT", who claimed to represent a group of traders from China. DT had previously emailed Lek inquiring about opening an account at LSCI in which to engage in layering. While Lek appeared to decline opening the account, Avalon did not.[13]

115. Avalon also indicated its intent to permit its traders to engage in layering in a Skype chat dated March 20, 2013 with a potential customer, if the price were right: "commission

[13] *See* para. 154. Lek appears to have declined opening the account due to insufficient trading volume, not the proposed layering activity.

is standard, layering is VERY expensive now, and we pay very big legal bills to protect this. A lot of firms don't have this ability and kick traders out. we do." [sic]. This chat was included in a subsequent email dated May 7, 2013 from Avalon FA to the same potential customer, in which Avalon also set the price for layering: "if you need layering strategies and around 2mm bp per account, 2000 is per account. . . ."

116. Further, Avalon's website, as of March 2013, indicated Avalon's intent to permit its traders to engage in layering by implying that it was a safe haven for traders wishing to engage in manipulative trading, notwithstanding regulatory risks. For example, Avalon stated on the English-language version of its website that it would not "blindly shut down anything we don't necessarily like" and that "[t]here isn't a time where our traders are 'kicked out' just because someone somewhere doesn't understand or like something. That's the power of trading with a leader."[14]

117. Avalon also stated on its website in August 2013 that: "Our compliance team works hard every day to ensure that our traders are able to trade the way they need. When our internal team our [sic] not enough, we do not hesitate to employ outside law firms to help us defend or promote a certain trading strategy. Many of our attorneys are on retainer and we are ready to fight for what we believe is just and compliant trading."

118. Avalon did not disclose on its website, however, the identity of its "compliance team." In reality, Avalon had no compliance team and relied on LSCI and Lek for all compliance issues.

119. Thus, Avalon touted on its website that it had a compliance team that would

[14] http://www.avalonfaltd.com captured on the English version of the website on Mar. 21, 2013. The statement appears in the Professional Compliance section of the website.

defend and promote its traders' unlawful trading strategies, rather than a team that would ensure compliance with applicable securities laws and regulations. In fact, it had no compliance team at all. This is consistent with Avalon's intent to permit manipulative trading through LSCI.

LSCI and Lek Provided Substantial Assistance

120. During the relevant period, both LSCI and Lek provided substantial assistance to Avalon's traders in furtherance of their manipulative layering activity.

121. LSCI and Lek provided Avalon traders access to United States markets ("market access") by permitting the Avalon master account to use an LSCI MPID and an additional MPID provided to LSCI by another market access provider[15] to transmit orders to the exchanges throughout the relevant period.

122. LSCI and Lek also provided office space, computer servers, trading software, and the services of Pustelnik and SVP to essentially manage all aspects of the Avalon account, including setting up new accounts, negotiating terms for commissions and deposits, acting as the primary contact on the account, maintaining all Avalon paperwork, tracking profits, performing back-office and accounting functions, and handling expenses and billing. By providing such market access, office space, personnel, equipment and services, LSCI and Lek provided substantial assistance to Avalon traders in furtherance of their layering activity.

123. LSCI and Lek also continued to provide substantial assistance and market access for the Avalon master account and its traders notwithstanding multiple inquiries and warnings from regulators, and numerous red flags indicating the need to investigate further the manipulative activity in the Avalon account.

[15] Through Dec. 1, 2013.

124. LSCI and Lek also failed to implement, prior to February 2013, any layering controls for the Avalon account.

125. On February 1, 2013, after FINRA submitted multiple information requests regarding LSCI's layering controls, LSCI finally implemented so-called "Q6" controls ostensibly to curtail layering activity.

126. The Q6 controls blocked orders where the difference, or "delta," between the number of orders on one side of the market exceeds the number of orders on the other side of the market.

127. LSCI and Lek, however, disclosed the nature and parameters of the Q6 controls to NF and thereby overtly permitted Avalon to circumvent the controls.

128. The default delta for the controls was 10, but it was adjustable. LSCI originally implemented the controls at the default delta.

129. Lek testified that, once implemented, the Q6 controls "virtually had the effect of shutting down" Avalon.

130. Avalon then requested LSCI increase the delta to 75. The next week, LSCI increased the delta for Avalon to 100.

131. By disclosing the nature of the Q6 controls to Avalon and adjusting its delta upon Avalon's request, LSCI and Lek provided further substantial assistance to Avalon to continue and increase its layering activity.

LSCI and Lek Acted with Scienter

LSCI and Lek Were Aware that Layering Was an Illicit Trading Strategy

132. On September 13, 2010—prior to the Avalon account being transferred to LSCI—FINRA announced in a press release that it had censured and fined Trillium Brokerage Services,

LLC ("Trillium") for engaging in an "illicit" trading strategy that involved the entry of "numerous layered, non-bona fide market moving orders to generate selling or buying interest in specific stocks." FINRA further explained that "[b]y entering the non-bona fide orders, often in substantial size relative to a stock's overall legitimate pending order volume, Trillium traders created a false appearance of buy- or sell-side pressure."[16]

133. On February 8, 2012, Lek sent an email to an LSCI employee, "NL," who, in turn, forwarded the email to Pustelnik. The subject line in the email was "HF Trading" and it included the following statement by Lek, showing awareness of the concern over layering:

> FINRA continues to be concerned about the use of so-called "momentum ignition strategies" where a market participant attempts to induce others to trade at artificially high or low prices. Examples of this activity [include] layering strategies where a market participant places a bona fide order on one side of the market and simultaneously "layers" non-bona fide orders on the other side of the market (typically above the offer or below the bid) in an attempt to bait other market participants to react to the non-bona fide orders and trade with the bona fide orders on the other side of the market. . . . FINRA has observed several variations of this strategy in terms of the number, price and size of the non bona fide orders, but the essential purpose behind these orders remains the same, to bait others to trade at higher or lower prices.

134. In an email dated September 17, 2012, NL forwarded to Lek an email he received from LSCI's Compliance Officer, AS. In the email, AS included a website link to an article in *Traders Magazine* concerning "layering-spoofing," with the notation, "Read article below . . . talks about trillium, genesis, Master-sub." The article in *Traders Magazine* described recent FINRA cases in which Trillium and nine traders settled to a censure and fine of more than $2

[16] FINRA Press Release (Sept. 13, 2010) ("FINRA Sanctions Trillium Brokerage Services, LLC, Director of Trading, Chief Compliance Officer, and Nine Traders $2.26 Million for Illicit Equities Trading Strategy").

million for layering and in which Genesis agreed to an expulsion and its CEO agreed to a bar for allowing master-sub account owners to operate as unregistered broker-dealers.[17]

135. On September 25, 2012, Lek received notice of an SEC press release regarding the *Hold Brothers* settlement with both the SEC and FINRA, pursuant to which Hold Brothers was fined more than $5.9 million for manipulative trading and anti-money laundering and other violations. The SEC press release defined layering as an illegal manipulation.[18]

136. Subsequent communications from various exchanges provided further notice that layering constituted illegal manipulation and was, potentially, occurring at LSCI. For example, in July 2013, Bats Global Markets advised Lek of possible layering through LSCI. In November 2013, a NYSE Hearing Board found that LSCI had violated numerous exchange rules including supervisory failures related to spoofing and that the firm did not have a system to enable it to monitor for irregular trading, wash sales or marking the close.[19] In addition, FINRA issued

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[17] Traders Magazine Online News, May 24, 2012 "Regulators Finishing Probes on 'Layering,' 'Spoofing' of Trades" (Tom Steinert-Threlkeld). http://www.tradersmagazine.com/news/layering-spoofing-trades-equities-110033-1.html. The article provides the following description: "In layering, the trading firm or firms involved send out waves of false orders intended to give the impression that the market for shares of a particular security at that moment is deep…The traders then take advantage of the market's reaction to the layering of orders."

[18] SEC Press Release no. 2012-197 (Sept. 25, 2012) further defines layering:

> In layering . . . [t]raders placed a bona fide order that was intended to be executed on one side of the market (buy or sell). The traders then immediately entered numerous non-bona fide orders on the opposite side of the market for the purpose of attracting interest to the bona fide order and artificially improving or depressing the bid or ask price of the security. The nature of these non-bona fide orders was to induce other traders to execute against the initial, bona fide order. Immediately after the execution against the bona fide order, the overseas traders canceled the open non-bona fide orders, and repeated this strategy on the opposite side of the market to close out the position. . . . Traders and the firms that provide them market access should not labor under the illusion that illegally layering orders amidst voluminous trading data will somehow allow them to evade detection by the SEC.

See also FINRA Press Release (Sept. 25, 2012) ("FINRA Joins Exchanges and the SEC in Fining Hold Brothers More Than $5.9 Million for Manipulative Trading, Anti-Money Laundering, and Other Violations").

[19] *Department of Market Regulation v. Lek Securities Corp.,* Proceeding No. 20110270056 (NYSE Hearing Board Nov. 14, 2013) (*on appeal*).

Wells' notices to the Firm beginning in July 2014 advising of potential manipulative trading taking place through the Avalon account. Thus, LSCI and Lek were aware that layering constituted an illicit trading strategy.

LSCI and Lek Were Aware of Red Flags
Indicating the Potential for Manipulative Activity in the Avalon Account

137. LSCI and Lek knew or recklessly disregarded information that constituted red flags alerting them to the potential for manipulative trading in the Avalon account.

138. LSCI and Lek disregarded red flags arising from Pustelnik's prior employment at Genesis when Pustelnik introduced Avalon to LSCI. As set forth above, Pustelnik managed the Regency account at Genesis through which the Avalon trading group traded. SVP was his assistant at Genesis, and AL was associated with the Avalon trading group. Pustelnik left Genesis in September 2010, when Genesis shut down the Regency account, and Pustelnik simply migrated the Avalon account to LSCI as a "foreign finder." Shortly thereafter, AL and SVP were both hired by LSCI, followed by Pustelnik in March 2011. The red flags surrounding the backgrounds of the three (*e.g.*, their association with a firm under investigation by FINRA and the SEC) and the origin of the Avalon account, however, prompted no meaningful inquiry into their backgrounds or into the trading activity that took place in the Avalon account at Genesis before it was on-boarded by LSCI or, for that matter, after it was on-boarded by LSCI.

139. LSCI and Lek also disregarded red flags associated with FINRA's press release in July 2012 regarding the Genesis settlement, which resulted in expulsion of the firm and a bar for its CEO, with findings that Genesis had allowed unregistered broker-dealers to operate through master-sub accounts. Lek testified that he read about the Genesis settlement when it was announced and knew that Pustelnik had testified in the Genesis investigation. Notwithstanding

this information, no meaningful inquiry took place into the background of the three new hires or into the trading activity that took place in the Avalon account while at Genesis or LSCI.

140. LSCI and Lek also disregarded red flags that Avalon, once on-boarded, was operating as an unregistered broker-dealer at LSCI. LSCI and Lek were both aware that Avalon charged commissions to its sub-account traders and required deposits. Such practices were consistent with Avalon functioning as an unregistered broker-dealer for sub-account holders and not consistent with Avalon simply being a trading account. Such red flags should have prompted further inquiry into the activity in the account.

141. LSCI and Lek also disregarded red flags raised by the business use of personal email accounts by the same LSCI employees who brought and then handled the Avalon account. Pustelnik used a personal email account for LSCI business purposes after he was hired, a fact known to the Firm but contrary to Firm policies. Similarly, SVP used a personal email account for LSCI business purposes after she was hired, a fact also known to the Firm.

142. Other red flags arose from LSCI's installation of three separate Avalon servers in its New York office, only one of which was accessible to LSCI officers. By allowing the installation of non-firm servers for Avalon-related business, LSCI and Lek disregarded the red flags associated with a purported foreign customer acting as a broker-dealer whose servers were actually located in the U.S., were not under the direct control of the purported foreign broker-dealer, and were not accessible to supervisors of LSCI but to a registered representative whose background presented its own red flags.

LSCI and Lek Were Aware that Layering Was Occurring in the Avalon Account and Demonstrated the Ability to Prevent It

143. On July 30, 2012, FINRA issued a request for documents to LSCI on behalf of NYSE Arca, and a second one on September 11, 2012, specifically inquiring about the trading in

the Avalon account and seeking a "more fulsome explanation" as to how such trading was not consistent with the manipulative practice known as layering. Lek responded on September 27, 2012, stating its customer's firm, *i.e.*, Avalon, was engaged in "market making."

144. On November 27, 2012, Lek received an email from another broker-dealer (which provided sponsored access to LSCI) stating, "Sam, please see attached emails from FINRA, who is alleging layering through Lek Securities."

145. During a phone call on or about July 23, 2013, BZX Market Regulation explained to LSCI that LSCI was triggering a substantial number of layering alerts through its MPID and requested that LSCI and Lek put a stop to the layering activity or BZX would be forced to take steps to terminate LSCI's access to BZX.

146. Immediately after this conversation, the LSCI layering alerts detected by BZX Market Regulation (using an exchange-specific surveillance pattern) decreased from hundreds per day to zero or near-zero. For example, on July 23, 2013, there were 1,247 instances of layering (or potential layering) detected on the BZX exchange. By July 29, 2013, there were none. Further, there were only 16 instances of layering (or potential layering) detected on BZX over the next twelve months. The alerts similarly decreased on BYX. *See* Exhibit 9 to the Complaint.

147. By August 2013, Market Regulation's investigation of LSCI's trading had grown to more than 30 separate matters, nearly all of which involved trading by Avalon.

148. On August 20, 2013, the Executive Vice President of FINRA Market Regulation, on behalf of FINRA and eight client exchanges (including NYSE), issued a warning letter to LSCI and Lek. The letter advised both LSCI and Lek that:

> Market Regulation continues to have serious concerns with the Firm's supervision of its direct market access customers, its regulatory risk management controls, its

> ability to detect and prevent violative activity, and its supervisory procedures in connection with the market access it provides. In addition to these concerns, Market Regulation is particularly concerned with orders, executions and cancellations relating to Lek customers, **specifically including but not limited to, Avalon FA, Ltd ("Avalon") . . . .** Market Regulation expects the Firm to act promptly to address the foregoing. [Emphasis in original.]

149. Following the Bats and FINRA warning letters, LSCI's layering activity through the BZX and BYX exchanges remained at very low levels. Approximately one year later, layering activity began to increase. *See* Exhibit 9 to the Complaint.

150. The decrease in layering activity on BZX and BYX after regulators threatened to terminate market access, followed by a resumption of that activity approximately one year later, demonstrates that LSCI and Lek knew that layering was occurring in LSCI accounts (including Avalon) and that they had the ability to prevent it if they so desired.

LSCI and Lek Were Aware of Red Flags Regarding the Potential for Compliance Issues at Avalon

151. As set forth above, Avalon's website solicited new traders with language implying that it was a safe haven for those wishing to engage in manipulative trading, notwithstanding regulatory risks, *e.g.*, that Avalon would not "shut down anything we don't necessarily like" or kick out traders because "someone somewhere" does not like it; and that they had a compliance team that would defend and promote such trading.

152. LSCI and Lek also knew or were extremely reckless in disregarding information that Avalon relied upon the Firm for compliance issues.

153. Thus, LSCI and Lek knew or were extremely reckless in disregarding red flags that Avalon touted itself as a safe haven for manipulators and, at the same time, relied upon LSCI for compliance issues.

LSCI and Lek Claim to Disagree with Regulators that Layering is Illegal

154. LSCI and Lek knowingly or recklessly rejected the statements of regulators that layering was a form of illegal manipulation and appeared willing to permit such activity in accounts at LSCI. Between May 2012 and October 2012, Lek exchanged a series of emails with a potential new customer in which the customer, "DT," informed Lek that they wanted to engage in "layering," *i.e.*, stating explicitly that "*we put hundres [sic] of orders to push the stock price and then cancel them"* (emphasis added). In response, Lek stated he does not agree with regulators that such a strategy constituted illegal manipulation: "regulators have argued that your trading strategy 'layering' is manipulative and illegal. This is of concern to us, *even though I do not agree with their position*" (emphasis added). Lek continued to discuss the possibility of DT opening an account with LSCI and appeared to reject DT as a LSCI customer *because the profits to be generated from DT's business were insufficient*.[20] LSCI's and Lek's disregard of regulators' warnings was, at a minimum, reckless.

LSCI and Lek Required Avalon to Pay the Firm's Legal Fees

155. In September 2012, in response to LSCI and Lek's receipt of FINRA requests for information, LSCI's CFO, DH, contacted Pustelnik on multiple occasions regarding expenses incurred in responding to regulatory inquiries related to Avalon's trading activities. For example, on September 7, 2012, DH sent an email with the subject line: "we need to talk about avalon's rate...please call me Monday." In the body of the email, DH states: "We may have a regulatory case against us that will cost us hundreds of thousands of dollars to defend."

[20] *See* para. 114. Emails show that DT subsequently opened an account with Avalon.

156. On September 20, 2012, DH sent an email to Pustelnik, with the subject line entitled "Avalon or you" and containing the following inquiry: "Can they or you give us $50,000 that we can put in a separate account as a hold back against real legal fees." DH confirmed that he sent the email because Lek had told him that he had been devoting more time to responding to regulatory inquiries and that it was a good idea to create a so-called "good faith" deposit account for Avalon.

157. DH created the "good-faith" account and funded it in 2012 and 2013 with transfers from Avalon's trading account. Subsequent transfers of funds from Avalon's account were sometimes made without NF's permission. Through such transfers, LSCI obtained approximately $300,000 to $400,000 from Avalon for legal expenses in 2013 alone.

Pustelnik's Scienter Regarding Layering in the Avalon Account is Imputable to LSCI

158. Pustelnik was the registered representative at LSCI who brought the Avalon account to LSCI, partially funded it, effectively controlled it, and had Power of Attorney over it.

159. LSCI installed servers for Avalon in its office in New York City and in Pustelnik's home, with no access provided to LSCI officers.

160. Pustelnik was aware, no later than February 2012, that regulators considered layering to be a form of manipulation. In September 2012, he was aware that FINRA was investigating layering activity in the Avalon account.

161. Pustelnik was subsequently involved in handling regulatory inquiries on behalf of LSCI regarding the layering activity detected in the Avalon account.

162. After certain controls were implemented by LSCI on February 1, 2013, ostensibly to prevent layering, Pustelnik was involved in loosening those controls over Avalon.

163. In so doing, Pustelnik knew, or was reckless in not knowing, that Avalon was engaged in layering activity. As LSCI's registered representative handling the Avalon account, Pustelnik was acting within the scope of his duties and thus his scienter is imputed to LSCI.

LSCI and Lek Admit Knowledge of the Subject Trading

164. In their Wells' Response of September 5, 2014, regarding allegations that LSCI and Lek did not reasonably supervise the trading in the Avalon account and lacked certain controls to address manipulative trading, Counsel for LSCI and Lek admitted on pp. 2 and 3 that *both were aware of the subject trading* in the Avalon account:

> Suggesting that LSC and Mr. Lek were unaware of the trading at issue is contradicted by the facts. Indeed, information provided to the Department [of Market Regulation] through documents, OTRs and a presentation show that *LSC [LSCI] and Mr. Lek were very aware of the trading,* frequently followed up with the customers for explanations, [and] conducted their own trade analysis.
> ...
> There was an abundance of evidence conclusively demonstrating that *LSC and Mr. Lek were very knowledgeable of Avalon's and [another account's] trading activity,* followed up frequently with the customers to get explanations for certain trades, and carefully analyzed their trading for any patterns suggestive of manipulation. [Emphasis added].

165. In sum, LSCI and Lek knew (or were extremely reckless in disregarding) that layering was an illicit trading strategy; that there were red flags associated with the hiring of SVP, AL and Pustelnik and the on-boarding of the Avalon account, and other red flags that should have prompted inquiry into the trading in the Avalon account; that there was notice from regulators that layering was suspected in the Avalon account; that information indicated Avalon touted itself as a safe haven for manipulators; and that LSCI had asked Avalon and Pustelnik to pay for legal fees incurred as a result of Avalon's trading. LSCI and Lek also demonstrated that they could prevent the layering if they wished, and both admitted that they were aware of the subject trading activity in the Avalon account. Lek simply disagreed that it should be illegal.

166. Because LSCI and Lek knowingly, or with extreme recklessness, rendered substantial assistance to Avalon in connection with its manipulative layering activity, LSCI and Lek aided and abetted the manipulation.

Avalon Acted as an Unregistered Broker-Dealer

167. Under Section 15(a)(1) of the Exchange Act, it is unlawful for a broker-dealer to operate without registering with the SEC.

168. Avalon operated through two corporate entities: Avalon FA and "Avalon Fund Aktiv" ("Avalon Fund").

169. Avalon Fund was incorporated by AL in New Jersey in 2006. It was owned and operated by NF, who registered it with Ukrainian authorities as a U.S. corporation.

170. Avalon Fund operated an office in Kiev, Ukraine, for a small number of traders. The office was equipped with a telephone line with a U.S. number.

171. Avalon FA was incorporated in the Republic of Seychelles in February 2010 by NF, its sole officer and owner.

172. Upon the closing of the Regency account at Genesis, Pustelnik migrated Avalon traders to LSCI in October 2010, placing them into the master-sub account of Avalon FA.

173. Neither Avalon Fund nor Avalon FA was registered with FINRA or the SEC during the relevant period. Further, neither Avalon Fund nor Avalon FA was registered with any securities exchange during the relevant period.

174. While Avalon professed to only be a proprietary trading account trading its own assets, and not a broker-dealer, it is clear that Avalon was operating its master-sub account as a broker-dealer.

175. Typically, broker-dealers provide market access to their clients to trade their

personal assets in return for commissions and fees. Broker-dealers also generally require clients to deposit their own funds and maintain a minimum balance in order to continue trading. Broker-dealer clients are typically retail or institutional customers. Broker-dealers customarily charge fees to the clients for whom they provide market access. Additionally, a broker-dealer may charge for access to a trading platform.

176. Proprietary trading accounts, on the other hand, generally trade the account-holder's own assets with professional, non-retail traders who are paid by the account holder. Proprietary trading accounts generally do not require a trader to deposit his or her own funds or maintain a minimum balance. Proprietary trading account-holders generally do not charge fees to their traders or charge for access to a trading platform.

177. Avalon's website featured a Russian-language version of the website that used Avalon Fund, the U.S. entity, as its corporate name, while the English-language version of the website used Avalon FA, the ostensibly foreign entity, as its corporate name.

178. The Russian version touted a 1:20 buying power, *i.e.*, a margin requirement of only 5%, compared to 25% under FINRA rules,[21] and commissions as low as .00224 USD per share for Avalon Fund.

179. The English version advertised "Access to Global Markets" for traders, including the U.S. equity and options markets, and stated Avalon FA had offices in the U.S. It listed LSCI's address in New York City as its own and listed a phone number associated with Pustelnik as its "US Direct" number. Voicemail notifications for the number were forwarded to Pustelnik's personal email account.

[21] FINRA Rule 4210(c)(1) (effective Dec. 2, 2010) (formerly NASD Rule 2520(c)(1)).

180. Thus, Avalon solicited clients to open trading accounts with payment of commissions and fees, with profits or losses attributed to clients.

181. Most, if not all, of Avalon's sub-account traders were non-professionals. Numerous account opening forms establish that they self-identified as non-professionals, *i.e.*, as retail clients of Avalon, not as proprietary traders.

182. Further, Avalon's sub-account trading agreements show that clients were required to maintain a minimum balance in order to trade; that clients paid transaction-based commissions from each sub-account's equity, as well as fees; and that clients were to receive 100% of profits generated and sustain all losses.

183. The agreements show that Avalon was providing services to retail clients as a broker-dealer and not proprietarily trading for its own account.

184. Avalon profited because its commissions for trading in the Avalon account exceeded those charged to Avalon by LSCI. Avalon further profited by charging various fees, including fees for traders using ROX, LSCI's proprietary trading platform, even though LSCI did not charge such fees to Avalon.

185. Because the Avalon account bore all of the hallmarks of a broker-dealer and none of a proprietary trading account, Avalon operated as an unregistered retail broker-dealer through its account at LSCI in violation of Section 15(a)(1) of the Exchange Act.

LSCI Provided Substantial Assistance

186. LSCI provided substantial assistance to Avalon regarding its operation as an unregistered broker-dealer. For example, LSCI provided access to U.S. markets by permitting Avalon to use an LSCI MPID and an additional MPID provided to LSCI by another broker-

dealer, until terminated by that broker-dealer, to transmit orders to the exchanges throughout the relevant period, notwithstanding multiple inquiries from regulators and other red flags.

187. Further, LSCI also provided office space, computer servers, trading software, and the services of Pustelnik and SVP to essentially manage all aspects of the Avalon account, including setting up new accounts, negotiating terms for commissions and deposits, acting as the primary contact on the account, maintaining all Avalon paperwork, tracking profits, performing back-office and accounting functions, and handling expenses and billing. By providing such market access, office space, personnel, equipment and services, LSCI provided substantial assistance to Avalon in furtherance of its operation as an unregistered broker-dealer.

LSCI Acted with Scienter

LSCI Knew or Recklessly Disregarded Information that Avalon Operated as an Unregistered Broker Dealer

188. Because LSCI employees managed virtually all aspects of the Avalon accounts, LSCI knew or was extremely reckless in disregarding information that Avalon was operating as an unregistered broker-dealer. LSCI knew that Avalon charged sub-account clients commissions, received deposits from the sub-account clients, disabled trading accounts until deposits were received, and that the sub-account clients identified themselves as non-professionals. Emails show that LSCI knew that Avalon charged commissions at the sub-account level; that LSCI provided Pustelnik and/or SVP with profit and loss breakdowns on a trader-by-trader basis; and that LSCI required Avalon to identify the commission rates for each sub-account.

189. LSCI also knew that employees Pustelnik and SVP had communications in which they discussed commission rates, deposit minimums, and other indicia of broker-dealer operations directly with NF, sub-account customers or their group leaders, evidencing *de facto*

control of Avalon. As one example of such control, SVP signed her emails to LSCI officers as Avalon's "Head of Finance."

190. Further, via a February 1, 2011 email from NF, LSCI's CFO received a Power of Attorney authorizing Pustelnik and SVP, "as agent and attorney in fact," to act on behalf of Avalon FA "in every respect" and "in all matters," including buying and selling securities. LSCI was therefore aware that employees Pustelnik and SVP had not only *de facto*, but legal control of Avalon.

191. Thus, LSCI knew—or was extremely reckless in disregarding information—that indicated Avalon operated as an unregistered broker-dealer under the control of LSCI employees Pustelnik and SVP.

LSCI Knew or Recklessly Disregarded Information that Avalon's Business Operations Were Centered in the United States

192. In the course of the underlying investigation, LSCI and Lek claimed that Avalon was exempt from the registration requirement of Section 15(a)(1) of the Exchange Act because, they contend, Avalon is a "foreign broker or dealer" exempted by 17 C.F.R § 240.15a-6.

193. To qualify as a foreign broker or dealer, however, an entity must be engaged in its business "entirely outside of the United States." 17 C.F.R. § 240.15a-1(g).

194. Avalon, however, conducted most, if not all of its business, within the United States and thus was not a foreign broker or dealer.

195. Avalon Fund was incorporated in the U.S. and NF registered it with Ukrainian authorities as a U.S. corporation.

196. Avalon's website stated it had U.S. offices, listed LSCI's New York address as its headquarters with a U.S. phone number, and used a photo of LSCI's internal conference room as

its own. Further, Avalon's sub-account trading agreements claimed that Avalon was a New York corporation operating under U.S. law.

197. NF, Avalon's manager, resided in New Jersey, was a U.S. citizen, and worked out of LSCI's office in New York. LSCI was aware of these facts because a copy of NF's U.S. passport was provided to LSCI's Compliance Officer, "AS," by email dated November 1, 2010, when opening the Avalon account at LSCI.

198. Pustelnik, LSCI's registered representative who brought the Avalon account to the firm and effectively controlled it, resided in New Jersey and worked out of LSCI's office in New York. Pustelnik had Power of Attorney over the Avalon account. He also performed most, if not all, of the back-office functions for Avalon.

199. SVP, LSCI's employee who identified herself as "Head of Finance" for Avalon, worked out of LSCI's office in New York and handled Avalon's accounts and paid its expenses from a U.S. bank account. SVP also had Power of Attorney over the Avalon account.

200. AL, Avalon Fund's registered agent who was also LSCI's registered representative for the Avalon account, resided in the U.S. and worked out of LSCI's office in New York.

201. Several Avalon FA computer servers were physically located in LSCI's office in New York. The servers provided access to Avalon's billing and financial records, account information, order entry and trading records. The servers were accessible only to Pustelnik and LSCI technical staff.

202. Thus, LSCI knew—or was extremely reckless in disregarding information—indicating that most, if not all, of Avalon's business operations were centered in the U.S. and, therefore, that Avalon was not a foreign broker or dealer.

203. Because LSCI knowingly or recklessly rendered substantial assistance to Avalon's operation as an unregistered broker-dealer in violation of Section 15(a)(1) of the Exchange Act, LSCI aided and abetted the violations.

LSCI and Lek Failed to Establish and Maintain a Supervisory System, Including Written Supervisory Procedures, Reasonably Designed to Achieve Compliance with Applicable Securities Laws, Regulations, and Rules

LSCI and Lek Failed to Establish Adequate Supervisory Procedures, Including WSPs

204. A NYSE member is required to establish, maintain, and enforce WSPs that will enable it to properly supervise the activities of its associated persons and to assure compliance with applicable securities laws, rules, regulations, and statements of policy promulgated thereunder, as well as Exchange rules and the rules of any applicable designated self-regulatory organization.[22] Each NYSE member also is required to designate a partner, officer, or manager in each office of supervisory jurisdiction, including the main office, to carry out the WSPs, and to review the activities of each office, including the periodic examination of customer accounts to detect and prevent irregularities or abuses.[23] In order to accomplish such supervisory requirements, a NYSE member's WSPs must be tailored to supervise the types of business in which it engages.

205. LSCI and Lek failed to satisfy this obligation by, among other things, including generic language in the WSPs not applicable to the Firm's actual business.

206. The Firm's WSPs also failed to address key business lines, such as its market access business. Although the Firm provided market access to customers, including Avalon, the

[22] NYSE Rule 342 "Offices – Approval, Supervision and Control" (pre-Dec. 1, 2014); Rule 3110 "Supervision" (effective Dec. 1, 2014); and Rule 3120 "Supervisory Control System" (effective Dec. 1, 2014).

[23] *Id.*

Firm's WSPs did not provide for sufficient reviews of trading activity by market access customers, did not provide for supervision of accounts with master-sub account arrangements, and did not include monitoring for various forms of potentially manipulative activity by customers, including but not limited to layering. In addition, the Firm's WSPs did not provide for monitoring the use of, and payments to, putative foreign finders.

207. Further, LSCI and Lek failed to establish adequate supervisory procedures to review for potentially manipulative trading activity and, instead, relied upon manual reviews of accounts in real-time by Lek and other desk supervisors, as well as firm "gateways" that contained "certain compliance checks, fat finger checks, or credit checks", and post-trade tracking reports. There were, however, no gateway checks, and no exception reports, for layering prior to February 1, 2013.

208. The Firm also relied upon so-called wash sale exception reports, which failed to identify potential or actual wash sales that were separately identified in regulatory inquiries. In fact, both LSCI and Lek acknowledged that, prior to January 2013, the Firm could not determine which trades on the wash sale exception reports were actually wash sales.

209. Further, the Firm had no controls specific to layering until it applied a limited "Q6" layering control on February 1, 2013. The Q6 control only applied to some accounts at LSCI. Further, the control was limited to one parameter: a comparison of the numbers of orders placed on one side of the market relative to the other side of the market. If the difference exceeded a pre-set threshold, the order causing the threshold to be exceeded would not go through.

210. As described above, however, the Firm intentionally undercut the effectiveness of the limited Q6 control with respect to the Avalon account by disclosing the nature of the controls

to Avalon and by subsequently loosening the Q6 control after NF objected to the limits.

211. Thus, the Q6 control failed to provide effective review of potentially manipulative trading. Avalon's layering activity continued and, in fact, increased throughout the relevant period.

LSCI and Lek Failed to Maintain Adequate Supervisory Procedures, Including WSPs

212. Lek supervised all firm employees during the relevant period. As LSCI's CEO and CCO, he was responsible for establishing, maintaining, and enforcing LSCI's supervisory system and WSPs. Lek purportedly delegated responsibility for updating the Firm's WSPs to AS.

213. AS, however, failed to review all of the WSPs, and was unfamiliar with various aspects of the supervisory reviews and tools referenced in the WSPs, such as the existence or use of a Daily Transaction Report mentioned in the "Prohibited Transactions" section.

214. The WSPs also failed to identify the designated principal responsible for particular supervisory reviews described in the document and to maintain a comprehensive list that identified the designated supervisor for each supervisory review specified in the WSPs.

215. LSCI's and Lek's failure to maintain an adequate supervisory system is also revealed by inconsistencies between Firm practices and the procedures described in the WSPs. For example, particular reviews were not conducted as frequently as was specified in the WSPs.

216. Other sections of the WSPs contained errors acknowledged by LSCI or were inadequate:

(a) Prior to 2012, the "SEC 15c3-5 (Market Access Rule) and Firm Trading Systems" section contained errors concerning trading limits and "fat finger" controls.

(b) The "Sharing Commissions or Fees with Non-Registered Persons" section failed to address issues/reviews pertaining to non-registered foreign finders who receive

transaction-based compensation.

(c) The "Hiring Procedures" section failed to include any requirements to confirm the citizenship of potential foreign finders and failed to identify the principal responsible for conducting pre-hiring investigations of new employees.

(d) The "CRD Electronic Filings" section failed to specify the person responsible for ensuring the accuracy of information filed in the Central Registration Depository.

(e) The "Regulatory Requests and Inquiries" section did not provide for a clear supervisory system to ensure responses were timely, complete and accurate.

(f) The Firm's WSPs required review of electronic mail, but did not specify a designated principal with responsibility to do so. Further, the frequency of such reviews inconsistently referred to both daily and monthly reviews. Moreover, the methodology specified impractical steps, such as requiring employees to provide hard copies of outgoing e-mails to the reviewer, while incoming emails were electronically maintained on the reviewer's terminal for purposes of review.

LSCI and Lek Failed to Enforce Its Supervisory Procedures, Including WSPs

217. LSCI and Lek also failed to enforce the WSPs that it had in place. The Firm's WSPs required annual certifications pertaining to outside business activities and accounts, and adherence to the Firm's electronic communications policy. The Firm did not obtain executed certifications for Pustelnik and AL for 2011 and 2012.

218. Further, LSCI and Lek were aware of the use of personal email accounts used for Firm business by Pustelnik and SVP, contrary to Firm policy, but failed to review such correspondence and take meaningful steps to prevent further violations.

LSCI and Lek Failed to Reasonably Supervise the Activities of Associated Persons

219. Under NYSE Rules 342, 3110 and 3120,[24] a NYSE member is required to properly supervise the activities of its associated persons through the establishment,

[24] NYSE Rule 342 "Offices—Approval, Supervision and Control" (pre-Dec. 1, 2014) (setting forth supervisory responsibilities to reasonably discharge duties and obligations in connection with supervision and control of the activities of those employees related to the business of their employer and compliance with securities laws and

maintenance, and enforcement of written procedures to assure their compliance with applicable securities laws and regulations, and with the rules of NYSE and any applicable designated self-regulatory organization. Further, a NYSE member is required to review the activities of each of its offices, including the periodic examination of customer accounts to detect and prevent irregularities or abuses.

220. Because Pustelnik, AL, and SVP were employed by LSCI, they were associated persons of LSCI.

221. Pustelnik, AL, and SVP controlled the Avalon account that was used for manipulative purposes for more than four years.

222. Despite knowledge of all the facts set forth herein, LSCI and Lek failed to establish and maintain supervisory procedures and a system to supervise the activities of associated persons Pustelnik, AL and SVP that were reasonably designed to achieve compliance with applicable securities laws and regulations, and with NYSE rules.

LSCI Failed to Establish, Document, and Maintain a System of Risk Management Controls and Supervisory Procedures Reasonably Designed to Manage the Financial, Regulatory, or Other Risks of Its Market Access Business; and Lek Caused Such Failures

223. On November 3, 2010, the SEC announced the adoption of Rule 15c3-5—the Market Access Rule—"to require that broker-dealers with market access 'appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that

regulations; Supplementary Materials indicate written procedures are required). NYSE Rule 342 was replaced by NYSE Rules 3110 and 3120 on Dec. 1, 2014.

of other market participants, the integrity of trading on the securities markets, and the stability of the financial system.'"[25]

224. Rule 15c3-5 established specific requirements for broker-dealers providing market access, including that such firms "establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, or other risks" of its business.[26]

225. The Market Access Rule further specified the required elements for risk management controls and supervisory procedures and mandated that the controls and procedures be under the "direct and exclusive control" of the broker-dealer.[27]

226. LSCI was required to comply with the Market Access Rule as of July 14, 2011.[28]

227. Consistent with the previously described inadequacies regarding LSCI's WSPs and supervisory procedures, LSCI did not have in place risk management controls and supervisory procedures mandated for broker-dealers by SEC Rule 15c3-5. In particular, LSCI lacked controls and procedures to detect and prevent layering and other manipulative trading activity by its market access customers, including the Avalon account. Instead, LSCI's risk management controls were primarily focused on credit and financial risks and not on other areas of regulatory compliance risk, *i.e.*, detection and prevention of manipulative trading.

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[25] 17 C.F.R. § 240.15c3-5; *Risk Management Controls for Brokers or Dealers With Market Access*, 75 Fed. Reg. 69792, 69792 (Nov. 15, 2010).

[26] 17 C.F.R. § 240.15c3-5(b).

[27] *Id.* § 240.15c3-5(c)-(d).

[28] *See* Exchange Act Release No. 34-64748 (June 27, 2011).

228. As the Firm's CEO and CCO ultimately responsible for supervising all employees and the Firm's supervisory system and controls, Lek was a cause of the Firm's failure to comply with SEC Rule 15c3-5 by negligently or recklessly failing to ensure the Firm had controls and procedures reasonably designed to manage the financial, regulatory, or other risks of market access, including reasonable controls and procedures to detect and prevent layering and other manipulative trading activity.

229. Despite FINRA staff's communications with LSCI in 2012 about repeated regulatory trading alerts of suspicious trading in the Avalon account involving, among other things, layering and wash sales, LSCI's controls and procedures continued to fail to detect or prevent the manipulative activity. Further, Lek negligently (or recklessly) failed to implement such controls and informed regulators that the terms used to describe such manipulative conduct, including "layering" and "spoofing," were "made up." Notwithstanding regulatory inquiries, Lek continued to question whether such conduct was manipulative or illegal.

230. Lek's negligence (or recklessness) regarding 15c3-5 controls is consistent with his previously described comments to a potential customer interested in layering, the Firm's reputation as a safe haven for layering, and Lek's disregard of numerous red flags about Pustelnik, SVP, AL, the Avalon account, and the layering reported therein. It is also consistent with the substantial assistance he provided to Avalon, as described above, to aid and abet the layering activity.

231. The Firm eventually adopted its Q6 layering risk control in February 2013 ostensibly to curtail layering activity. As described above, however, the Q6 controls were circumvented by the disclosure to Avalon of the methodology employed and by relaxing the only operative parameter at the request of Avalon.

232. Further, the Firm lacked systematic procedures for obtaining and maintaining information about such customer accounts/sub-accounts, lacked information about the identities of some sub-accounts, and had minimal information about other sub-accounts, which was decentralized and frequently maintained away from the firm's systems on the personal electronic accounts of SVP.

233. Moreover, the Firm failed to adequately document its controls and procedures for assuring that surveillance personnel receive immediate post-trade execution reports. Similarly, the Firm failed to adequately document its system and procedures for regularly reviewing the effectiveness of its risk management controls and supervisory procedures, for Rule 15c3-5 purposes, and to the extent they existed at all, such systems and procedures were inadequate, as evidenced by the Firm's failures to identify and address the aforementioned deficiencies in its controls and procedures and the ongoing suspicious and manipulative activity that is the subject of this action.

LSCI Failed to Use Diligence as to the Avalon Account

234. NYSE Rules require every NYSE member to use due diligence to learn the essential facts relative to every customer, every order, every cash or margin account accepted or carried by such organization, and to supervise diligently all accounts handled by registered representatives of the organization.[29]

235. LSCI failed to exercise due diligence with respect to the opening and maintenance of the Avalon account, given the additional regulatory risks arising from its history, country of

[29] NYSE Rule 405 "Diligence as to Accounts" (now NYSE Rule 2090 "Know Your Customer").

origin, and trading activity that was the subject of regulatory inquiries. Moreover, LSCI failed to retain evidence of reviews of Avalon and other such accounts.

236. LSCI also failed to exercise due diligence to investigate underlying organizational documents and other information about the entities behind the Avalon structure and related website information about Avalon. Such information revealed that one of the alter ego entities constituting Avalon (Avalon FA) was incorporated in the Republic of Seychelles but was precluded by its Articles of Association from conducting any business there, while its Articles listed LSCI's New York address as its own and its sole officer worked out of that office.

237. Other information revealed that the other alter ego, Avalon Fund, appeared to operate an office in Kiev, Ukraine, but was incorporated in New Jersey.

238. Further, the sub-account trading agreements, referencing the names of both entities, stated Avalon was a New York limited liability company. Finally, the website for the putative foreign entity was in English, with a link to the website for the U.S. entity in Russian.

239. Despite this information and these red flags, LSCI failed to exercise due diligence to investigate the individuals behind the Avalon structure and its traders, the reasons for its master-sub account structure, and the terms of the sub-account agreements, which would have revealed that Avalon was acting as an unregistered broker-dealer and that it was not entitled to the foreign broker exception.

240. Further, LSCI had no systematic procedures for obtaining and maintaining information about the Avalon master account or sub-accounts, and lacked information about the identities and backgrounds of certain sub-account traders and had minimal information about others.

241. Thus, LSCI failed to use due diligence in bringing on Avalon and the individuals behind that entity, failed to diligently investigate the reasons for the master-sub-account structure and the terms of the sub-account agreements, and failed to diligently investigate the many red flags that arose concerning both the trading activity in the Avalon account as well as its use as an unregistered broker-dealer.

LSCI Failed to Maintain and Supervise Electronic Communications

242. NYSE Rules require that members make and preserve books and records as the Exchange may prescribe and as prescribed by [Exchange Act] Rule 17a-3.[30] Rule 17a-4(b)(4), applicable to members subject to Rule 17a-3, specifically requires preservation of "all communications received and . . . sent."

243. Section 2.16 of the Firm's WSPs provides that communications with customers were "permitted only through company-sponsored or alternative approved facilities" but fails to address how the Firm would supervise for the use of personal email accounts for business purposes or communications with customers. Further, Section 2.16.10 required annual certifications of its employees' adherence to these provisions, but the Firm did not provide signed forms from Pustelnik or AL for 2011 or 2012, and section 5.14.1.5 required the Firm to conduct a review of LSCI electronic mail on a monthly basis, but did not specify the supervisor who would do so.

244. LSCI was aware that business-related emails were sent or received by Pustelnik and SVP through their personal accounts because LSCI officers were on such emails.

[30] NYSE Rule 440 "Books and Records."

245. During the investigation of this matter, Pustelnik turned over approximately 23,595 emails sent to or from his personal email account that was used for business purposes, of which approximately 18,273 emails were not captured or reviewed by LSCI in the ordinary course of business.

246. Similarly, SVP turned over approximately 11,188 emails sent to or from her personal email account(s) that was used for business purposes across the relevant period, of which approximately 5,900 of the emails were not captured or reviewed by LSCI in the ordinary course of business.

247. For these reasons and those set forth above, the Firm's supervisory system and its WSPs regarding the supervision of electronic communications were inadequate, the Firm failed to adequately capture and retain the electronic communications of its employees and independent contractors, and failed to supervise and review those communications in accordance with applicable regulatory rules and Firm procedures.

LSCI Failed to Maintain and Supervise CRD Records

248. NYSE members are prohibited from permitting any person to perform any duties of a registered representative, Securities Trader or a direct supervisor of such persons unless such person is registered with, qualified by, and approved by the Exchange. Members registering individuals must electronically file Forms U-4 and any related amendments thereto with CRD.[31]

249. LSCI's employee profiles on the Forms U-4 in FINRA's CRD contained incomplete or out-of-date information. LSCI did not request associated persons SVP, AL, or Pustelnik fill out Annual Certifications for 2011 and failed to produce to FINRA any of the

[31] NYSE Rule 345 "Employees—Registration, Approval, Records."

forms for 2012 for AL and Pustelnik. The certifications include statements regarding outside business activities. Thus, LSCI did not have current information to update CRD with respect to their outside business activities. For example, Pustelnik failed to disclose his outside business activity in "uafunds.com," an entity controlled by him that provided a link on Avalon's website to Avalon's daily trading blotter.

250. Further, there were errors in the Forms U-4. Pustelnik's address on his form was incorrect and AL's form did not to include any alternative spellings of his name, of which there were many. Also, the forms for Pustelnik and AL did not indicate they were independent contractors, while Lek maintained that they were. AL also disclosed to LSCI his employment with "Avalon Fund Aktiv LLC," a business incorporated in New Jersey, but it was reported in CRD as "Avalon Fund" in *Kiev, Russia* [sic].

251. In addition, LSCI's WSPs contained no provisions identifying the person responsible for ensuring compliance with applicable rules and regulations regarding CRD registration. Specifically, Section 4.1.1.3 of the WSPs fails to specify the person responsible to conduct pre-hiring investigations of new employees and Section 4.2.2 fails to specify the person responsible for ensuring the accuracy of information filed in CRD.

252. Thus, LSCI failed to adequately maintain its employees' CRD records, and failed to establish, maintain and enforce a supervisory system reasonably designed to ensure the accuracy of information submitted to CRD.

LSCI Failed to Enforce Supervisory Procedures Concerning Outside Business Activities

253. NYSE Rules 346 and 3270[32] prohibit registered persons from any outside employment without prior written notice to the member. LSCI's WSPs contained provisions for compliance with applicable rules and regulations regarding any outside business activities of its employees. The "Outside Business Activities" section of the WSPs required submission of "Outside Business Activity Request" forms to "Compliance" and approval thereby, prior to the employee engaging in outside business activities, and required completion of "Annual Certification" forms that included statements regarding outside business activities, adherence to the Firm's electronic communications policy, and information regarding any outside accounts.

254. On November 26, 2013, FINRA Staff requested copies of the Annual Certification forms for LSCI employees Pustelnik, AL, and SVP for the years 2010-2013. LSCI failed to provide the requested certifications for 2011 because it had failed to send the forms to Pustelnik, AL, or SVP in 2011, although it sent the forms to numerous other employees. For 2012, LSCI provided a single form executed by SVP and, for 2013, forms executed by Pustelnik, AL and SVP (notably, SVP's 2013 form was executed *after* the FINRA request). During this period, Pustelnik was engaged in various outside business activities, including Algo Design LP, and Algo Design LLC, and had several outside accounts. LSCI was also unable to produce any "Outside Business Activity Request" forms submitted by Pustelnik between 2010 and 2013, or any evidence of reviews of his outside accounts for the same period.

[32] On March 28, 2011, NYSE Rule 346 "Limitations – Employment and Association with Members and Member Organizations" was deleted and replaced with NYSE Rule 3270 "Outside Business Activities of Registered Persons."

255. Thus, LSCI failed to enforce its supervisory procedures, including its WSPs, regarding outside business activities.

LSCI Failed to Comply Fully and Timely to Staff Requests for Information

256. LSCI was required to fully and timely comply with the Staff's requests for information in connection with its investigations in this matter, pursuant to NYSE Rules 27[33] and 8210[34] including, among other things, requests to the Firm to provide electronic communications and other documents and information in writing.

257. During the relevant period, FINRA Staff issued requests pursuant to FINRA Rule 8210 and analogous exchange rules for copies of "all electronic communications" for certain time periods for certain LSCI employees. In its responses, LSCI unilaterally withheld from production electronic communications and other documents through use of a Firm-controlled "electronic privilege screen" that automatically withheld emails or attachments that contained a term on the Firm's undisclosed search term list.

258. The Staff set forth its opposition to LSCI's decision to unilaterally limit its production and reiterated its requests. LSCI nonetheless continued to withhold responsive documents purportedly containing terms on its list. In fact, LSCI stated at one point that it had withheld 27,450 documents by use of its privilege screen. Moreover, despite repeated Staff requests to do so, the Firm has failed to produce a privilege log to the Staff identifying the documents unilaterally withheld.

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[33] NYSE Rule 27 "Regulatory Cooperation" provides that the Exchange may enter into agreements with self-regulatory organizations such as FINRA for "the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and other regulatory purposes." As previously set forth, FINRA brings this action on behalf of NYSE Regulation pursuant to a Regulatory Service Agreement effective June 22, 2010.

[34] Effective July 1, 2013.

259. In sum, despite repeated requests, the Firm has unilaterally withheld documents from its productions to FINRA and has neither identified them nor provided a privilege log. In so doing, the Firm has failed to fully and timely comply with the Staff's requests, thereby impeding the investigation of this matter.

FIRST CAUSE OF ACTION
Aiding and Abetting Manipulation
Prohibited Under Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder, and Section 9(a)(2) of the Exchange Act
(Violations of NYSE Rule 2010)
(LSCI and Lek)

260. As set forth above, Avalon, acting through its traders, knowingly or recklessly engaged in manipulative trading in the Avalon account at LSCI during the review period.

261. In so doing, Avalon, through the use of the Avalon master account and its sub-accounts at LSCI, in connection with the purchase or sale of securities, directly or indirectly, by the use of a facility of a national securities exchange, knowingly or recklessly, employed a device, scheme or artifice to defraud, or engaged in an act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, thereby violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

262. In addition, Avalon, directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of a facility of a national securities exchange, effected, alone or with one or more persons, a series of transactions in securities creating actual or apparent active trading in such securities, or raising or depressing the price of such securities, for the purpose of inducing the purchase or sale of such securities by others, in violation of Section 9(a)(2) of the Exchange Act.

263. As set forth above, Respondents LSCI and Lek knowingly or recklessly rendered substantial assistance to Avalon in connection with the prohibited manipulative trading described

above. In so doing, Respondents LSCI and Lek aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Section 9(a)(2) of the Exchange Act, and thereby violated NYSE Rule 2010.

SECOND CAUSE OF ACTION
Aiding and Abetting the Operation of an Unregistered Broker-Dealer Prohibited Under Section 15(a)(1) of the Exchange Act
(Violations of NYSE Rule 2010)
(LSCI)

264. As set forth above, Avalon engaged in the activities of a broker-dealer operating in the United States during the relevant period but failed to register with the SEC or FINRA as a broker-dealer (or with any exchange).

265. In so doing, Avalon made use of the mails or a means or instrumentality of interstate commerce to effect transactions in securities without being duly registered, in violation of Section 15(a)(1) of the Exchange Act.

266. Respondent LSCI knowingly or recklessly rendered substantial assistance to Avalon in connection with its operation as an unregistered broker-dealer. In so doing, LSCI aided and abetted the violations of Section 15(a)(1) of the Exchange Act and thereby violated NYSE Rule 2010.

THIRD CAUSE OF ACTION
Failure to Establish, Maintain, and Enforce Written Supervisory Procedures
(Violations of NYSE Rules 342, 3110, 3120 and 2010)
(LSCI and Lek)

267. NYSE Rules require a member firm to establish, maintain, and enforce WSPs that will enable it to properly supervise the activities of its registered representatives, registered principals, and other associated persons and to assure compliance with applicable securities laws and regulations, and the applicable rules of NYSE. Each NYSE member also is required to designate a partner, officer, or manager in each office of supervisory jurisdiction, including the

main office, to carry out the written supervisory procedures and to review the activities of each office, including the periodic examination of customer accounts to detect and prevent irregularities or abuses.

268. As LSCI's CEO and CCO, Lek was ultimately responsible for the Firm's compliance with supervision requirements.

269. As set forth above, during the relevant period LSCI and Lek failed to establish required WSPs in numerous ways, including the failure to tailor the procedures to LSCI's business and to include sufficient procedures for the Firm's market access business.

270. Further, as set forth above, during the relevant period LSCI and Lek failed to maintain required WSPs in numerous ways, including by failing to designate a responsible person who was sufficiently informed to perform his duties and by maintaining WSPs that were inadequate, contained errors, or were at variance with steps actually performed.

271. In addition, as set forth above, during the relevant period LSCI and Lek failed to enforce the Firm's WSPs, including its procedures pertaining to outside business activities and accounts and adherence to the Firm's electronic communications policy.

272. In so doing, LSCI and Lek violated NYSE Rules 342, 3110(b), 3120[35] and 2010.

FOURTH CAUSE OF ACTION
Failure to Establish and Maintain a Reasonable Supervisory System
(Violations of NYSE Rules 342, 3110, 3120 and 2010)
(LSCI and Lek)

273. A NYSE member is required to properly supervise the activities of its associated persons through the establishment, maintenance, and enforcement of written procedures to assure their compliance with applicable securities laws and regulations, and the rules of NYSE, and to

[35] NYSE Rule 342 (pre-Dec. 1, 2014); NYSE Rules 3110 and 3120 (effective Dec. 1, 2014).

review the activities of each of its offices, including the periodic examination of customer accounts to detect and prevent irregularities or abuses.

274. As LSCI's CEO and CCO, Lek was ultimately responsible for the Firm's compliance with supervision requirements.

275. As set forth above, during the relevant period LSCI and Lek failed to establish and maintain the required system to supervise the activities of its registered representatives, registered principals, and/or associated persons, including but not limited to Pustelnik, AL, and SVP, notwithstanding numerous red flags suggesting closer supervision was warranted.

276. In so doing, LSCI and Lek violated NYSE Rules 342, 3110(a), 3120[36] and 2010.

FIFTH CAUSE OF ACTION
Market Access Rule Violations
(Willful Violations of Section 15(c)(3) of the Exchange Act and Rule 15c3-5 thereunder, and Violations of NYSE Rules 342, 3110, 3120 and 2010 (LSCI); Violation of NYSE Rule 2010 (Lek))

277. Lek was ultimately responsible for the Firm's risk management controls and supervisory system as the Firm's CEO and CCO.

278. LSCI and Lek failed to appropriately control the risks associated with providing its customers with market access during the relevant period so as not to jeopardize the Firm's and other market participants' financial condition and the integrity of the trading on the securities markets, as required by Rule 15c3-5 under Section 15(c)(3) of the Exchange Act.

279. LSCI and Lek failed to establish, document, and maintain a system of risk management controls and supervisory procedures during the relevant period reasonably designed

[36] NYSE Rule 342 (pre-Dec. 1, 2014); NYSE Rules 3110 and 3120 (effective Dec. 1, 2014).

to manage the financial, regulatory, and other risks of providing market access, as that term is defined in Rule 15c3-5, and as required in Rule 15c3-5(b).

280. LSCI and Lek failed to ensure, as required by Rule 15c3-5(c), that LSCI had in place appropriate regulatory risk management controls and supervisory procedures during the relevant period so as to: (i) prevent the entry of orders unless there was compliance with all regulatory requirements; (ii) prevent the entry of orders if the customer or trader is restricted from trading; (iii) restrict access to trading systems and technology to persons pre-approved and authorized by LSCI; and (iv) assure appropriate surveillance personnel receive immediate post-trade execution reports that result from market access.

281. LSCI and Lek also failed to ensure that LSCI's regulatory risk management controls and supervisory procedures were under LSCI's direct and exclusive control during the relevant period, as required by Rule 15c3-5(d). LSCI was not relieved of any of its obligations to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of market access.

282. LSCI and Lek also failed to establish, document and maintain a system for regularly reviewing the effectiveness of LSCI's risk management controls and supervisory procedures during the relevant period, as required by Rule 15c3-5(e).

283. As detailed above, by failing to establish, document and maintain a system of risk management controls and supervisory procedures reasonably designed to systematically manage the regulatory and other risks of providing market access, LSCI willfully violated Section

15(c)(3) of the Exchange Act and Rule 15c3-5 thereunder (beginning July 14, 2011), and violated NYSE Rules 342, 3110, 3120[37] and 2010.

284. Lek's statements to potential investors and regulators regarding layering, as well as his disregard of numerous red flags and inquiries about Avalon and its trading as he aided and abetted the misconduct, are consistent with, at the least, negligence or recklessness on his part with respect to LSCI's deficient market access controls.

285. By failing to ensure the Firm had controls and procedures reasonably designed to manage the financial, regulatory, or other risks of market access, including reasonable controls and procedures to detect and prevent layering and other manipulative trading activity, Lek caused the Firm's willful violations of Exchange Act Section 15(c)(3) and Rule 15c3-5 thereunder, in violation of NYSE Rule 2010.

SIXTH CAUSE OF ACTION
Failure to Use Due Diligence as to Accounts
(Violations of NYSE Rules 405 and 2010)
(LSCI)

286. Under NYSE Rule 405, LSCI was required to use due diligence to learn the essential facts relative to every customer, every order, every cash or margin account accepted or carried by such organization, and to supervise diligently all accounts handled by registered representatives of the organization use due diligence, in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer.

287. During the relevant period, LSCI failed to know its customer, Avalon, by failing to use due diligence to understand the origins of Avalon and the individuals behind it, as well as

[37] NYSE Rule 342 (pre-Dec. 1, 2014); NYSE Rules 3110 and 3120 (effective Dec. 1, 2014).

those who were trading in or through its master account and sub-accounts, and the reasons for its structure and the terms of its operation, both in the course of onboarding Avalon and in the maintenance of its account.

288. In so doing, LSCI violated NYSE Rules 405[38] and 2010.

SEVENTH CAUSE OF ACTION
Failure to Make and Preserve Email Books and Records
(Willful Violations of Section 17(a) of the Exchange Act and Rule 17a-4 thereunder, and Violations of NYSE Rules 440 and 2010)
(LSCI)

289. NYSE Rule 440 requires that members make and preserve books and records as the Exchange may prescribe and as prescribed by Exchange Act Rule 17a-3.

290. Section 17(a) of the Exchange Act and Rule 17a-4(b)(4) thereunder, applicable to members subject to Rule 17a-3, specifically require that copies of communications received and sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business, be preserved for a period of not less than three years.

291. During the relevant period LSCI employees and independent contractors were using non-firm, *i.e.*, personal, email accounts to conduct LSCI business. The Firm was on notice of such use as early as October 2010 and yet such use continued through at least December 2013. The Firm did not preserve records of these communications.

292. In so doing, LSCI failed to adequately make and preserve email business records of its employees and independent contractors and thereby willfully violated Section 17(a) of the Exchange Act and Rule 17a-4 thereunder, and also violated NYSE Rules 440 and 2010.

[38] Now NYSE Rule 2090.

EIGHTH CAUSE OF ACTION
Failure to Supervise Electronic Communications
(Violations of NYSE Rules 342, 3110, 3120 and 2010)
(LSCI)

293. The Firm's WSPs during the relevant period contained no provisions applicable to reviewing personal email accounts despite the fact its employees used personal email accounts to conduct Firm business activities.

294. Further, review of the electronic communications provided by LSCI revealed that employees were using personal email accounts to conduct Firm business; in fact, AS, identified by Lek as the person responsible for Firm WSPs and supervision, received business-related emails from employee personal email accounts yet failed to take steps to stop the practice.

295. In so doing, LSCI failed to adequately supervise its employee's electronic communications as certain business-related emails were outside its purview, in violation of NYSE Rules 342, 3110, 3120[39] and 2010.

NINTH CAUSE OF ACTION
Failure to Maintain Accurate CRD Information
(Violations of NYSE Rules 345 and 2010)
(LSCI)

296. NYSE Rule 345[40] prohibits member organizations from permitting natural persons to perform the duties customarily performed by a securities lending representative, a Securities Trader or a direct supervisor of such, unless such person is registered on CRD. Application for registration shall be submitted via Form U-4, which must be kept current.

[39] NYSE Rule 342 (pre-Dec. 1, 2014); NYSE Rules 3110 and 3120 (effective Dec. 1, 2014).

[40] NYSE Rule 345 "Employees—Registration, Approval, Records."

297. During the relevant period, AL, SVP, and Pustelnik were registered representatives or associated persons of the Firm. Accordingly, LSCI was required to file and maintain complete and accurate Form U-4s in CRD for each.

298. As set forth above, certain U-4 information specific to AL, SVP, or Pustelnik was incomplete or inaccurate during the relevant time period, including information related to outside business activities and addresses, including the address of Avalon Fund.

299. As a result, LSCI failed to adequately maintain its employees' CRD records, *i.e.*, the Firm submitted and maintained inaccurate and/or incomplete information in its registrants' profiles on the Forms U-4 in CRD, in violation of NYSE Rules 345 and 2010.

TENTH CAUSE OF ACTION
Failure to Supervise to Ensure Accurate CRD Information
(Violations of NYSE Rules 342, 3110, 3120 and 2010)
(LSCI)

300. Pursuant to NYSE Rules 342, 345, 3110 and 3120, in order to meet its obligations under the supervision requirements, member Firms must designate a partner(s) or corporate officer(s) responsible for supervision of its activities to assure compliance with applicable securities laws and regulations and Exchange rules, including supervising CRD registration functions and ensuring the accuracy of the information being submitted. No such person was identified.

301. Further, based upon its review of two of the Firm's employees' Forms U-4, FINRA Staff found six separate reporting inaccuracies.

302. In so doing, LSCI failed to establish, maintain and enforce a supervisory system, reasonably designed to ensure the accuracy of information submitted to CRD, in violation of

NYSE Rules 342, 3110, 3120[41] and 2010.

ELEVENTH CAUSE OF ACTION
Supervisory Violations Concerning Outside Business Activities
(Violations of NYSE Rules 342, 3110, 3120 and 2010)
(LSCI)

303. NYSE Rules 346[42] and 3270[43] state that no registered person may be an employee, independent contractor, sole proprietor, officer, director or partner of another person, or be compensated or have the reasonable expectation of compensation, from any other person as a result of any business activity outside the scope of the relationship with his or her member organization, unless he or she has provided prior written notice to the member organization, in such form as specified by the member organization.

304. While LSCI's WSPs addressed outside business activity certifications, the Firm failed to distribute Annual Certification forms to Pustelnik, AL and SVP in 2011, and produced only one executed form, by SVP, for 2012. During this period, Pustelnik was engaged in several outside business activities. The Firm was also unable to produce any Outside Business Activity Request forms from Pustelnik for the relevant period.

305. In so doing, LSCI failed to enforce its WSPs regarding outside business activities, in violation of NYSE Rules 342, 3110, 3120[44] and 2010.

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[41] NYSE Rule 342 (pre-Dec. 1, 2014); NYSE Rules 3110 and 3120 (effective Dec. 1, 2014).

[42] NYSE Rule 346 "Limitations—Employment and Association with Members and Member Organizations" (pre-Dec. 15, 2011 conduct).

[43] NYSE Rule 3270 "Outside Business Activities of Registered Persons" (effective Mar. 28, 2011).

[44] NYSE Rule 342 (pre-Dec. 1, 2014); NYSE Rules 3110 and 3120 (effective Dec. 1, 2014).

TWELFTH CAUSE OF ACTION
Improperly Paying Transaction-Based Compensation to an Unregistered Person
(Violations of NYSE Rules 345, 353 and 2010)
(LSCI)

306. NYSE Rule 345 requires all persons who perform regularly the duties customarily performed by a securities representative to be registered. Supplementary materials also provide that member organizations "shall thoroughly investigate the previous record of persons whom they contemplate employing…" In addition, NYSE Rule 353[45] prohibited a member, principal executive, officer or registered representative from rebating to any person any part of the compensation received for the solicitation of orders to purchase or sell securities.

307. By paying transaction-related compensation to an unregistered person, namely, Pustelnik, prior to his registration with LSCI, LSCI violated NYSE Rules 345, 353 and 2010.

THIRTEENTH CAUSE OF ACTION
Failure to Comply Fully and Timely with Information Requests
(Violations of NYSE Rules 8210 and 2010)

308. NYSE Rule 27 provides that the Exchange may enter into agreements with self-regulatory organizations such as FINRA for "the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and other regulatory purposes." NYSE Rule 8210[46] states that Exchange staff shall have the right to require a member organization or covered person to provide information orally, in writing, or electronically and to testify under oath, and to inspect and copy their books and records, with respect to any matter involved in the investigation, complaint, examination or proceeding, and that Exchange staff

[45] NYSE Rule 353 "Rebates and Commissions" (now NYSE Rule 2040).

[46] Effective July 1, 2013.

may enter into agreements with other SROs and regulators to exchange such information and other forms of material assistance.

309. FINRA brings this action on behalf of NYSE Regulation pursuant to a Regulatory Service Agreement effective June 22, 2010.

310. During the relevant period LSCI failed to fully and timely respond to the Staff's requests for information issued pursuant to FINRA Rule 8210 and various exchanges' analogous provisions. In particular—and to date—LSCI has failed to produce, despite repeated requests, all requested emails in response to FINRA's request and a privilege log for the thousands of documents it has withheld.

311. In so doing, LSCI impeded the ability of FINRA and other regulators to investigate the serious misconduct at issue, thereby violating NYSE Rules 8210 and 2010.

FOURTEENTH CAUSE OF ACTION
Failure to Comply with Standards of Commercial Honor and Principles of Trade
(Violations of NYSE Rule 2010)
(LSCI and Lek)

312. NYSE Rule 2010 requires that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

313. By engaging in the conduct described in paragraphs 1-311 above, LSCI and Lek failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of NYSE Rule 2010.

IV.

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

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

B. Imposing a permanent bar, in all capacities, against Samuel F. Lek;

C. Imposing on Lek Securities Corporation sanctions of a Censure, a fine of $900,000, of which $69,230.77 shall be paid to NYSE,[47] and the following equitable relief and undertakings:

1) **Business-Line Restrictions Regarding Foreign Intra-Day Trading**

a. ***Definitions.*** For purposes herein, the following definitions shall apply:

(i) ***"Affiliates of the Firm."*** The term "Affiliates of the Firm" includes Lek Securities U.K. Limited ("Lek UK"), Lek Holdings Limited ("Lek Holdings"), and any parent, subsidiary, predecessor, successor, entity owned or controlled by, or under common control with, the Firm, Lek UK, or Lek Holdings.

(ii) ***"Customer."*** The term "Customer" shall mean any individual or entity holding an account at or trading through the Firm.

(iii) ***"Foreign Customer."*** The term "Foreign Customer" shall mean any Customer who is not a citizen, national, or resident of the United States or its territories, or is not incorporated or domiciled in the United States or its territories. Any Foreign Customers of Affiliates of the Firm shall be treated as Foreign Customers of the Firm.

(iv) ***"Intra-Day Trading."*** The term "Intra-Day Trading" shall mean executing, through an account at the Firm, more than five buy and more than five sell orders in the same security (equity or option), within a single day.

[47] The remainder of the fine shall be paid to FINRA, NYSE Arca, NYSE American, Nasdaq, BX, PHLX, Cboe, BZX, BYX, EDGA, EDGX, and ISE.

b. **Business-Line Restrictions.**

(i) The Firm is restricted for a period of three years from the date of entry of the Offer of Settlement, from having Foreign Customers that engage in Intra-Day Trading. This shall be referred to as the "Foreign Intra-Day Trading Restriction."

(ii) The Foreign Intra-Day Trading Restriction does not apply where the Firm engages in the following limited non-executing prime brokerage functions: (1) post-execution clearing services; (2) settlement of securities; (3) custody services, including providing technical services necessary to the provision of such custody services; and (4) pre-execution credit checks conducted in connection with (1)-(3) above.

(iii) **Exceptions to the Foreign Intra-Day Trading Restriction.**

Trading Exceptions. Subject to the Time-Out Period described in section IV.C.1)b.(iv) below, the Foreign Intra-Day Trading Restriction shall not apply to the following types of trading by Foreign Customers:

(1) instances where the Monitor (defined below) determines that the Intra-Day Trading was solely to unwind specific positions in a single day due to news events, unique changes in market conditions, or to correct a bona-fide error; provided, however, that if the Firm or the Customer does not or cannot provide the Monitor with requested information to determine if the trading falls under this exception, then this exception shall not apply;

(2) instances where the Monitor determines that the Intra-Day Trading was related to hedging that is not part of a manipulative or illegal strategy; provided, however, that if the Firm or the Customer does not or cannot provide the Monitor with requested information to determine if the trading falls under this exception, then this exception shall not apply;

(3) instances where the Monitor determines that the Intra-Day Trading was related to stop loss orders that are not part of a manipulative or illegal strategy; provided, however, that if the Firm or the Customer does not or cannot provide the Monitor with requested information to determine if the trading falls under this exception, then this exception shall not apply;

Foreign Customer Exceptions. The Foreign Intra-Day Trading Restriction shall not apply to Foreign Customers in the following categories:

(4) institutional Customers with assets under management in excess of $50 million; or

(5) pension funds, broker dealers subject to comprehensive regulation in their local jurisdiction, licensed banks, and entities that meet the definition of foreign financial institutions under 26 U.S.C. §§ 1471(d)(4) and (d)(5) and that are subject to comprehensive regulation in their local jurisdiction by a regulatory body applicable to that type of entity.

(iv) ***Applicability of Exceptions.***

(1) **Existing Foreign Customers.** From the date of entry of the Foreign Intra-Day Trading Restriction until the later of (i) 120 days, or (ii) 3 days after the Monitor's first report ("Time Out Period"), the Exceptions to the Foreign Intra-Day Restriction set forth in section IV.C.1)b.(iii)(2)-(5) above shall be available only to existing Foreign Customers of the Firm. Attachment A hereto is a list of existing Foreign Customers of the Firm.

(2) **New Foreign Customers.** At the end of the Time Out Period, subject to review and approval by the Monitor, the Firm may begin excepting new Foreign Customers from the Foreign Intra-Day Trading Restriction pursuant to section IV.C.1)b.(iii)(2)-(5) above.

2) **Requirement to Terminate Certain Foreign Customers.** Foreign Customers of the Firm may be deemed Significant Compliance Risks and must be terminated as following:

a. **Significant Compliance Risk Designation.** A Foreign Customer is deemed a Significant Compliance Risk if:

(i) A Foreign Customer that does not fall within the exceptions in section IV.C.1)b.(iii)(4)-(5) above engages in Intra-Day Trading twice in a 30-day period; or

(ii) A Foreign Customer, regardless of whether it falls within any exception set forth in section IV.C.1)b(iii) above, engages in

potential manipulative trading or other market manipulation that is flagged by the Monitor, the SEC, FINRA, or another Self-Regulatory Organization ("SRO").

b. **Significant Compliance Risk Review.** The Firm must cause the Monitor to conduct a review of a Foreign Customer that has been deemed a Significant Compliance Risk within 30 days of the Foreign Customer being so designated, as set forth in section IV.C.3)h. below.

c. **Account Suspension.** The Firm must suspend all trading by the Foreign Customer that is deemed a Significant Compliance Risk during the Significant Compliance Risk review if the Monitor so recommends, as set forth in section IV.C.3)h. below.

d. **Termination.**

(i) The Firm must terminate a Foreign Customer that is deemed a Significant Compliance Risk if, after the Significant Compliance Risk review, the Monitor determines that the Foreign Customer should be terminated.

(ii) If the Firm or the Foreign Customer cannot or does not provide information requested by the Monitor to conduct the Significant Compliance Risk review, the Firm must terminate that Foreign Customer, as set forth in section IV.C.3)h. below.

3) **Retention of Monitor.** Within 30 days of the execution of this Offer of Settlement, retain an Independent Compliance Monitor (the "Monitor"), not unacceptable to FINRA, for a period of three years, to conduct a comprehensive and ongoing review of the Firm concerning the areas and subjects set forth below, and to carry out the tasks set forth herein. The Firm may apply to FINRA for an extension of that deadline before it arrives, and upon a showing of good cause by the Firm, FINRA, in its sole discretion, may grant such extension for a period of time it deems appropriate.

a. **Terms and Payment of Monitor**. The Monitor shall remain in place for a period of three years from the date of retention, provided, however, that if the Firm fails to implement the Monitor's recommendations and obtain the Monitor's certification of such implementation within that period, the Monitor will remain in place until the Firm complies with all recommendations and the Monitor certifies that such recommendations have been implemented. The Firm shall be solely responsible for payment of the Monitor's fees and expenses.

b. **Independence of Monitor.** The Firm shall require the Monitor to enter into an agreement that provides that for the period of engagement and for a

period of two years from completion of the engagement, the Monitor shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Firm or any of its present or former affiliates, directors, officers, employees, or agents acting in those capacities. The agreement will also provide that the Monitor will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Monitor in performance of his/her duties under this Offer shall not, without prior written consent of FINRA, enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Firm, or any of its present or former affiliates, directors, officers, employees, or agents acting in those capacities for the period of the engagement and for a period of two years after the engagement.

c. **Confirmation.** Within three (3) business days after retaining the Monitor pursuant to the above, the Firm must provide to FINRA a copy of the engagement letter detailing the Monitor's responsibilities.

d. **Cooperation.** The Firm will cooperate fully with the Monitor, including providing the Monitor with access to its files, books, records, and personnel (and the files, books, records, and personnel of Affiliates of the Firm), as reasonably requested for the tasks set forth herein, and the Firm will obtain the cooperation of its employees or other persons under its supervision or control.

e. **Account Information to Provide to Monitor.** In order to facilitate the Monitor's reviews and assessments that are to be performed hereunder, and in addition to any information required below, the Firm shall provide the Monitor with the following information and documents, within such time as the Monitor reasonably requires and on an ongoing basis if and as required by the Monitor:

   (i) The identity and full legal name of every Customer, including the account holder and every person authorized by the Firm to trade in the account.

   (ii) For each individual identified in subparagraph (i) above, a statement of whether the person is a citizen, national, or resident of the United States or its territories, and if so, identification of the location from which the individual does business, and a copy of the driver's license or U.S. passport of such individual.

   (iii) If the individual identified in subparagraph (i) above is not a citizen, national, or resident of the United States or its territories, a statement of the nationality, the location from which the individual does business, and a copy of government-issued identification.

(iv) For each entity identified in subparagraph (i) above, identification of the names of the entity's principals, and a statement of whether it is incorporated or domiciled in the United States or its territories, and if so, the state in which it is incorporated, and the state in which it has its principal place of business.

(v) If the entity identified in subparagraph (i) above is not incorporated or domiciled in the United States or its territories, identification of the country in which it is incorporated, and the country in which it has its principal place of business.

(vi) Such other information as the Monitor requests.

f. ***Monitor's Review, Assessment and Recommendations of the Firm's Compliance with Foreign Intra-Day Trading Restriction.***

(i) The Firm shall require the Monitor to review and assess on an ongoing basis whether the Firm is complying with the Foreign Intra-Day Trading Restriction. This shall include but not be limited to requiring the Monitor to: (i) review and assess all Intra-Day Trading by Foreign Customers who are not excepted from such restriction under section IV.C.1)b.(iii)(2)-(5) and (iv) above; (ii) review and assess the sufficiency and reasonableness of the Firm's systems, policies, and procedures related to Intra-Day Trading by Foreign Customers; (iii) review and assess the Firm's compliance with the Foreign Intra-day Trading Restriction; and (iv) conduct reviews and make recommendations pursuant to the Significant Compliance Risk provisions below.

(ii) In order to facilitate the Monitor's review required by this section and the Significant Compliance Risk provisions below, the Firm shall provide the Monitor with the following information for all Intra-Day Trading by Foreign Customers who are not excepted from such restriction under section IV.C.1)b.(iii)(2)-(5) and (iv) above:

(1) The date and time, security, quantity, price, and other details requested by the Monitor concerning orders placed and trades executed;

(2) For orders and trades identified under subparagraph (1) above, the identity and location of the Customer, sub-account, or trader who entered each order and trade; and

(3) Such other information as the Monitor requests, including but not limited to the information described in section IV.C.3)e. above.

(iii) The Firm shall make the information required by this section IV.C.3)f. available to the Monitor beginning no later than 30 days after the date of entry of the Foreign Intra-Day Trading Restriction, and then every 30 days thereafter, or at such other intervals as the Monitor may require.

(iv) The Firm shall require the Monitor to perform and complete the review, assessment and making of recommendations required by this section within 120 days of the date of the Monitor's appointment, and again by the end of each 120-day period thereafter, for so long as the Monitor is engaged.

(v) The Firm shall require the Monitor to submit a report to the Firm and to FINRA on the review, assessment and recommendations required by this section within 120 days of the date of the Monitor's appointment, and again by the end of each 120-day period thereafter, for so long as the Monitor is engaged. The report shall include information concerning review and recommendations regarding Intra-Day Trading by Foreign Customers.

g. **Monitor's Review, Assessment and Recommendations Regarding Firm Supervision and Controls.**

(i) The Firm shall require the Monitor to review and assess the reasonableness of the Firm's supervisory system, including its WSPs, with respect to the areas described in paragraphs 267-276 above, and to recommend actions to be taken by the Firm to ensure the reasonableness of its supervisory system, including its WSPs, to address the risks associated with trading by Foreign Customers, including trading through sub-accounts associated with Foreign Customers;

(ii) The Firm shall require the Monitor to review and assess the reasonableness of the Firm's supervisory system, including its WSPs, with respect to customer identification procedures, and to recommend actions to be taken by the Firm to ensure the reasonableness of its supervisory system, including its WSPs, to address the risks associated with opening or maintaining accounts for Foreign Customers, including sub-accounts associated with Foreign Customers;

(iii) The Firm shall require the Monitor to review and assess the reasonableness of the Firm's market access controls with respect to the areas described in paragraphs 277-285 above, to include but not limited to, credit limits, open order limits, and other pre-trade

controls, as well as post-trade controls and reviews, and to recommend actions to be taken by the Firm to ensure the reasonableness of its market access controls to address the risks associated with providing market access to Foreign Customers, including market access through sub-accounts associated with Foreign Customers.

(iv) The Firm shall require the Monitor to submit a report to the Firm and to FINRA on the review, assessment, and recommendations required by this section within 120 days of the date of the Monitor's appointment, and again by the end of each 120-day period thereafter, for so long as the Monitor is engaged. The report shall include information concerning the Monitor's review and recommendations regarding supervision, customer identification procedures, and market access controls. The Firm may apply to FINRA for an extension of the deadline for submitting a report before it arrives, and upon a showing of good cause by the Firm, FINRA, in its sole discretion, may grant such extension for a period of time it deems appropriate.

h. ***Monitor's Review and Recommendations Concerning Significant Compliance Risks and Termination.***

(i) The Firm shall require the Monitor to review, assess, and make recommendations on an ongoing basis concerning the Firm's compliance with the Requirement to Terminate Certain Foreign Customers provisions in section IV.C.2) above. This shall include but not be limited to requiring the Monitor to: (i) review and assess the sufficiency and reasonableness of the Firm's systems, policies, and procedures for identifying Foreign Customers as Significant Compliance Risks; (ii) review and assess the Firm's compliance with the Requirement to Terminate Certain Foreign Customer provisions in section IV.C.2) above; and (iii) conduct reviews and make recommendations where a Foreign Customer has been designated a Significant Compliance Risk.

(ii) Where a Foreign Customer has been designated a Significant Compliance Risk, the Firm shall require the Monitor to undertake reviews and recommendations as follows:

(1) Conduct a review within 30 days of the Foreign Customer being designated a Significant Compliance Risk ("Significant Compliance Risk Review") to determine whether the Foreign Customer has engaged in Intra-Day Trading not subject to the exceptions set forth in section IV.C.1)b.(iii) above or has

engaged in manipulative trading or other market manipulation.

(2) Recommend whether the Firm should suspend all trading by the Foreign Customer during the period of the Significant Compliance Risk Review.

(3) Determine whether the Firm and the Foreign Customer have provided all information requested to conduct the Significant Compliance Risk Review.

(4) Determine whether the Foreign Customer has engaged in Intra-Day Trading not subject to the exceptions set forth in section IV.C.1)b.(iii) above or has engaged in manipulative trading or other market manipulation.

(5) Make a recommendation regarding termination of the Foreign Customer based upon the Monitor's determinations under subparagraphs (3) and (4) above and the Requirement to Terminate Certain Foreign Customer provisions under section IV.C.2) above.

(iii) The Firm shall require the Monitor to perform this review, assessment, and making of recommendations on an ongoing basis for so long as the Monitor is engaged.

(iv) The Firm shall require the Monitor to submit a report to the Firm and FINRA on the review, assessment and recommendations required by this section within 120 days of the date of the Monitor's appointment, and again by the end of each 120-day period thereafter, for so long as the Monitor is engaged. The report shall include information concerning the Monitor's review and recommendations regarding any Foreign Customers identified as Significant Compliance Risks.

i. ***Monitor's Review and Assessment of Whether Samuel F. Lek Has Any Interest or Role in the Firm.***

(i) The Firm shall require that the Monitor review and assess the Firm's corporate governance structure, ownership, and management, so as to determine whether Samuel F. Lek has any legal or beneficial interest or role in the Firm.

(ii) The Firm shall require the Monitor to perform and complete this review and assessment within 120 days of the date of the Monitor's

appointment, and again by the end of each 120-day period thereafter, for so long as the Monitor is engaged.

(iii) The Firm shall require the Monitor to submit a report to the Firm and FINRA on the review, assessment, and recommendations required by this section within 120 days of the date of the Monitor's appointment, and again by the end of each 120-day period thereafter, for so long as the Monitor is engaged.

j. **Implementation of Recommendations.**

(i) Except as set forth in section IV.C.3)j.(ii)-(vii) below, the Firm shall have ninety (90) days from the date of receiving any recommendations from the Monitor to adopt and implement such recommendations. The Firm shall notify the Monitor and FINRA in writing when each such recommendation has been implemented.

(ii) Any recommendations that the Monitor makes regarding suspending all trading by the Foreign Customer during a period of Significant Compliance Risk Review must be implemented within one (1) business day of the Monitor's recommendation.

(iii) Any recommendations that the Monitor makes regarding termination of a Foreign Customer must be implemented within two (2) business days of the Monitor's recommendation.

(iv) If the Firm considers any recommendation unduly burdensome, impractical, or costly, or inconsistent with applicable law or regulation, the Firm need not adopt that recommendation at that time, but may submit in writing to the Monitor and FINRA within fifteen (15) days of receiving the recommendation, an alternative policy, procedure, or system designed to achieve the same objective or purpose. This provision shall not apply, however, to recommendations that the Monitor makes regarding (i) suspending all trading by the Foreign Customer during a period of Significant Compliance Risk Review, or (ii) termination of a Foreign Customer.

(v) If the Firm considers any recommendation relating to (i) suspending all trading by the Foreign Customer during a period of Significant Compliance Risk Review, or (ii) termination of a Foreign Customer, to be unduly burdensome, impractical, or costly, or inconsistent with applicable law or regulation, the Firm shall adopt the recommendation at that time, but may submit in writing to the Monitor and FINRA within fifteen (15) days of

receiving the recommendation, an alternative policy, procedure, or system designed to achieve the same objective or purpose.

(vi) In the event that the Firm and the Monitor are unable to agree on an acceptable alternative proposal under sections (iv) and (v) above, the Firm shall promptly notify FINRA. The Firm must abide by the Monitor's ultimate determination with respect to any such disputes. Pending such ultimate determination, the Firm shall not be required to implement any contested recommendation(s) except, as set forth above, recommendations regarding (i) suspending all trading by the Foreign Customer during a period of Significant Compliance Risk Review, or (ii) termination of a Foreign Customer.

(vii) With respect to any recommendation that the Monitor determines cannot reasonably be implemented within ninety (90) days after receiving it, the Monitor may extend the time period for implementation, so long as FINRA does not object.

k. **Providing Information to FINRA and other SROs.** For the period of the Monitor's engagement, the Firm shall provide FINRA and other affected SROs[48] with any information reasonably requested by FINRA or the SROs pertaining to the subject matter of this Offer of Settlement. The Firm shall require that the Monitor provide FINRA and the SROs with any information that FINRA or the SROs request regarding such matters, including but not limited to the Monitor's review, assessments, recommendations, and any communications and interactions between the Monitor and the Firm.

l. **Requirements Hereunder Do Not Supplant Other Legal Requirements.** The prohibitions and obligations set forth herein do not supplant any obligations that the Firm has under the law or under the rules of any self-regulatory organization or exchange of which the Firm is a member. No determinations by the Monitor, and no provisions herein, shall preclude FINRA or any self-regulatory organization from bringing actions against Respondents.

m. **Certification by the Firm.** Within thirty (30) days after the date of implementation of any recommendation herein, the Chief Executive Officer of the Firm shall certify to the Monitor and FINRA, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance.

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[48] See SROs listed in Sec. III, para. 3, *supra.*

FINRA may make reasonable requests for further evidence of compliance, and the Firm agrees to provide such evidence.[49]

Additionally, acceptance of this Offer is conditioned upon acceptance of parallel settlement agreements in related matters between Respondents and the following SROs: FINRA, NYSE Arca, NYSE American, Nasdaq, BX, PHLX, Cboe, BZX, BYX, EDGA, EDGX, and ISE.

The Firm agrees to pay the monetary sanction upon notice that this Offer has been accepted and that such payment is due and payable. The Firm has submitted a Method of Payment Confirmation form showing the method by which it will pay the fine imposed.

The Firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The Firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that the Firm pays pursuant to this Offer, regardless of the use of the fine amounts. The Firm further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that the Firm pays pursuant to this Offer, regardless of the use of the fine amounts.

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

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[49] In determining the above sanctions, NYSE has taken into account the monetary sanctions imposed by the SEC in its parallel action against the Firm and Samuel Lek for, *inter alia*, aiding and abetting fraudulent trading of Avalon FA Ltd, Nathan Fayyer, and Serge Pustelnik, in violation of Sections 9(a)(2) and 10(b) of the Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and Section 17(a) of the Securities Act of 1933 (*see S.E.C. v. Lek Secs. Corp.*, No. 17 Civ. 1789 (DLC)(S.D.N.Y.)). As such, the monetary sanctions herein are imposed solely for violations of the Third through Fourteenth Causes of Action herein, not the First or Second, which allege aiding and abetting activity similar to the allegations in the SEC action.

V.

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

A. Any right to a hearing before an Adjudicator (as defined in NYSE Rule 9120(a)), and any right of appeal to NYSE's Board of Directors, the SEC, or the U.S. Court of Appeals, or any right otherwise to challenge or contest the validity of the Order issued, if the Offer and the Order are accepted;

B. Any right to claim bias or prejudgment by the Chief Regulatory Officer of the NYSE; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC"), and Committee for Review ("CFR"); any Director, DAC member, or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE employee; or any Regulatory Staff as defined in NYSE Rule 9120 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 acceptance or rejection of this Offer; and

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

VI.

Respondents understand that:

A. The Order will become part of Respondents' permanent disciplinary records and may be considered in any future actions brought by NYSE, or any other regulator against Respondents;

B. The NYSE shall publish a copy of the Order on its website in accordance with NYSE Rule 8313;

C. The NYSE may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Rule 8313;

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

E. This settlement includes a finding that the Firm willfully violated the following sections of the Securities Exchange Act of 1934: Section 15(c)(3) and Rule 15c3-5 thereunder, and Section 17(a) and Rule 17a-4 thereunder. Pursuant to Sections 3(a)(39)(f) and 15(b)(4)(D) of the Securities Exchange Act of 1934, this makes the Firm subject to a statutory disqualification with respect to membership.

Samuel F. Lek further understands that:

A. If I am barred or suspended from associating with any NYSE member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any NYSE member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. *See* NYSE Rules 8310 and 8311.

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

Separately, Lek certifies that he has read and understands all of the provisions of this Offer and has been given a full opportunity to ask questions about it; that he has agreed to its provisions voluntarily; and that no offer, threat, inducement or promise of any kind or nature, other than the terms set forth herein, has been made to induce him to submit it.

Date: 10-23-19

Respondent
Lek Securities Corporation

By: _____
Name Charles Lek
Title Chief Executive Officer

Respondent
Samuel Frederik Lek

By: _____
Samuel Frederik Lek

Reviewed by:

_____
Kevin Harnisch
Counsel for Respondents
Norton Rose Fulbright US LLP

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

Separately, Lek certifies that he has read and understands all of the provisions of this Offer and has been given a full opportunity to ask questions about it; that he has agreed to its provisions voluntarily; and that no offer, threat, inducement or promise of any kind or nature, other than the terms set forth herein, has been made to induce him to submit it.

Date: 10-23-19

Respondent
Lek Securities Corporation

By: _____
Name Charles Lek
Title Chief Executive Officer

Respondent
Samuel Frederik Lek

By: _____
Samuel Frederik Lek

Reviewed by:

_____
Kevin Harnisch
Counsel for Respondents
Norton Rose Fulbright US LLP

ATTACHMENT A

REDACTED