

SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934  
Release No. 82981 / April 2, 2018

Admin. Proc. File No. 3-17677

In the Matter of the Application of  
LEK SECURITIES CORPORATION  
For Review of Disciplinary Action Taken by  
FINRA

OPINION OF THE COMMISSION

REGISTERED SECURITIES ASSOCIATION — REVIEW OF DISCIPLINARY  
PROCEEDINGS

FINRA found that a member firm violated its rules by failing to establish and implement anti-money-laundering policies and procedures. *Held*, FINRA’s findings of violations and imposition of sanctions are *sustained*.

APPEARANCES:

*Kevin J. Harnisch* and *Ilana B. Sinkin*, Norton Rose Fulbright US LLP, for Lek Securities Corporation.

*Alan Lawhead*, *Megan Rauch*, and *Michael Garawski* for FINRA.

Appeal filed: November 15, 2016  
Last brief received: March 30, 2017

Lek Securities Corporation (“LSC”), a registered broker-dealer and FINRA member firm, appeals this FINRA disciplinary action. FINRA found that LSC violated NASD Rules 3011(a) and 2110 and FINRA Rules 3310(a) and 2010 by “fail[ing] to establish and implement Anti-Money-Laundering (‘AML’) policies, procedures, and internal controls that could be reasonably expected to detect and cause the reporting of suspicious transactions and that were reasonably

designed to achieve compliance with the Bank Secrecy Act (“BSA”).”<sup>1</sup> For these violations, FINRA censured LSC and fined it \$100,000. LSC challenges the findings of violations and the sanctions imposed. We affirm FINRA’s findings of violations and imposition of sanctions.

## **I. BACKGROUND**

### **A. LSC’s Business**

LSC’s business involves providing trade execution and clearing services for introducing brokers and institutional clients. During the time period at issue—January 2008 to October 2010—LSC processed hundreds of millions of electronic orders with a notional value of around \$1 trillion, and effected for clients approximately 174,000 transactions per day. LSC processed up to thousands of transactions each minute.

Samuel Lek is LSC’s founder, and at the time of the conduct at issue here was the firm’s Chief Compliance Officer and AML Officer. Most of the firm’s 20 employees worked out of one room, and Lek sat near his staff. Lek testified that LSC employees knew to “let [him] know” if they came across anything suspicious. During the period at issue, Lek delegated some responsibilities to LSC’s Compliance Officer.

LSC’s largest customer was Dimension Securities LLC (“Dimension”), a now-defunct introducing broker that cleared trades through LSC. Dimension accounted for nearly half of LSC’s trade volume. Dimension’s largest customer was Dimension Trading International LP (“DTI”), a foreign proprietary trading firm with significant ties to Dimension. DTI made up over 90 percent of Dimension’s business by trade volume, and as a result DTI was also responsible for close to half of LSC’s business by trade volume. Dimension’s owners had given an interest in their technology company—which in turn owned the software that Dimension used—to the owner of DTI’s general partner in return for DTI effecting its trades through Dimension.

### **B. LSC’s Written AML Policies and Procedures**

LSC’s AML compliance policies and procedures were set forth in its written supervisory procedures (“WSPs”) and in a separate AML policies and procedures manual (“AML Manual,” and together with the WSPs, the “written AML program”). The WSPs included an AML section explaining that LSC was required to file a suspicious activity report (“SAR”) “for transactions that may be indicative of money laundering.” This section identified “risk indicators” of money laundering and required employees to escalate suspected money laundering to the AML Officer. Of the risk indicators identified, only two related to securities trading—transactions inconsistent with investment strategy or business sense, or transactions involving certain securities (such as bearer bonds and penny stocks). The WSPs directed the AML Officer to “review[]” the

---

<sup>1</sup> *Lek Sec. Corp.*, Complaint No. 2009020941801, 2016 WL 8692364, at \*1 (FINRA NAC Oct. 11, 2016), [http://www.finra.org/sites/default/files/NAC\\_2009020941801\\_Lek\\_101116.pdf](http://www.finra.org/sites/default/files/NAC_2009020941801_Lek_101116.pdf).

escalated transaction and “determin[e] whether a report will be filed.” The WSPs separately set forth a list of prohibited transactions which included pre-arranged trading, wash trading, churning, parking securities, and cancelling orders at the open or close.

The AML Manual incorporated parts of FINRA’s AML Template for Small Firms. LSC’s AML Manual specified that the firm had an obligation to report transactions “that ha[ve] no business or apparent lawful purpose, or that [are] not the sort in which the customer normally would be expected to engage, particularly where [LSC] has no reasonable explanation for the transaction.” The AML Manual listed 45 “red flags.” Again, only two of the 45 red flags related to “suspicious trading”: transactions inconsistent with investment strategy or business sense, or transactions involving certain securities (such as bearer bonds and penny stocks). The rest related to concerns about a customer’s cash transaction practices, risk tolerance, or identity. LSC did not include the part of the AML Template for Small Firms that listed as red flags “pre-arranged or non-competitive trading” and “wash or cross trades.”<sup>2</sup>

The AML Manual directed staff to escalate suspicious activity to compliance. It provided that “the AML Officer/Compliance Department will investigate any and all reports of suspicious activities expeditiously and will document all steps taken and evidence considered in doing so.”

### **C. LSC’s Implementation of its Written AML Program**

Before summer 2009, LSC had no automated systems designed to monitor electronic order flow for AML compliance. Instead, LSC staff reviewed orders manually, in real time and on an *ad hoc* basis. LSC’s Compliance Officer was primarily responsible for monitoring and investigating transactions. She testified that neither she nor “anyone at the firm” was “monitoring trading activity for AML purposes.” Lek testified that he reviewed suspicious transactions escalated to him for AML purposes, but the record does not include documentation of his reviews.

LSC began receiving regulatory inquiries about suspicious trades in the spring and summer of 2009. In April 2009, NYSE Arca inquired about possible wash sales and trades potentially involving marking the close.<sup>3</sup> In June 2009, NYSE Regulation inquired about pre-market cancellations—orders placed and canceled on an exchange prior to its opening. Many of these pre-market cancellations involved Dimension and DTI. In an email to NYSE Regulation, LSC’s Compliance Officer responded that LSC had “reviewed the cancel orders” and

<sup>2</sup> *AML Template for Small Firms*, available at <http://www.finra.org/industry/anti-money-laundering-template-small-firms>.

<sup>3</sup> *See, e.g., Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 205 n.25 (1976) (wash sales are “transactions involving no change in beneficial ownership”); *Thomas C. Kocherhans*, Exchange Act Release No. 36556, 1995 WL 723989, at \*2 (Dec. 6, 1995) (marking the close involves “attempting to influence the closing price of a stock by executing purchase or sale orders at or near the close of the market”).

“determined that we do not consider [them] to be in violation of any Exchange rule.” She further opined that LSC did not consider pre-market cancellations “a clear violation” of Exchange rules.

In August 2009, NYSE Regulation inquired about a series of pre-market cancellations of orders of over 10,000 shares in different securities involving Dimension and DTI. Later that year, NYSE Regulation continued to inquire about trades executed by LSC that Dimension introduced. LSC responded to each of these inquiries by asking Dimension to investigate.

From August 2009 through March 2010, LSC developed a series of exception reports to monitor for marking the close, wash sales, and pre-market cancellations. Exception reports are surveillance tools widely used in the broker-dealer industry “to review for unusual activity in customer accounts.”<sup>4</sup> LSC already had some exception reports to identify orders with certain characteristics—such as those that exceeded credit or size limits.

LSC’s Compliance Officer had primary responsibility for reviewing exception reports. She usually relied on Dimension to review and investigate suspicious trades that it introduced to LSC, most of which involved DTI traders. To the extent she conducted her own investigation, her documentation of that review consisted of only a date and short description—almost always “reviewed and fine.” By September 2009, LSC’s Compliance Officer directed Dimension to stop processing pre-market cancellations larger than 1000 shares, but she knew that Dimension continued to process these cancellations, and LSC took no further action with respect to them.

Lek testified that he reviewed the exception reports. According to Lek, he “made no distinction” between “a potential [AML] violation or a potentially manipulative activity” as he investigated and determined whether to file a SAR. The AML Manual provided that Lek, as Chief Compliance Officer and AML Officer, would “document all steps taken and evidence considered” in his investigations, but Lek testified that instead he relied on his memory to monitor for “the same thing twice from the same guy.”

## II. PROCEDURAL HISTORY

FINRA’s Department of Enforcement (“Enforcement”) filed a complaint in February 2013, alleging that LSC violated NASD Rules 3011(a) and 2110 and FINRA Rules 3310(a) and 2010. After a five-day hearing, a FINRA Hearing Panel found LSC liable and imposed a censure and a \$100,000 fine. FINRA’s National Adjudicatory Council (“NAC”) found that LSC’s AML procedures “fell far below the minimum standard” and sustained the Hearing Panel’s findings of violation and imposition of sanctions. This appeal followed.

---

<sup>4</sup> *Books & Records Requirements for Brokers & Dealers under the Securities Exchange Act of 1934*, Exchange Act Release No. 44992, 2001 WL 1327088 (Oct. 26, 2001), 66 Fed. Reg. 55,818, 55,826 (Nov. 2, 2001) (describing adoption of 17 C.F.R. § 240.17a-4(e)(8), requiring broker-dealers to maintain copies of any “exception reports” that the broker-dealer creates).

### III. STANDARD OF REVIEW

Section 19(e)(1) of the Securities Exchange Act of 1934 governs our review. We will affirm the findings of violation if we determine that LSC engaged in the conduct that FINRA found, that such conduct violates FINRA’s rules, and that those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act.<sup>5</sup> We base our findings on an independent review of the record and apply the preponderance of the evidence standard.<sup>6</sup>

### IV. VIOLATIONS

NASD Rule 3011 and FINRA Rule 3310 set forth minimum standards for a FINRA member firm’s AML compliance program. Those rules provide that “[e]ach member shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member’s compliance with the requirements of the Bank Secrecy Act [(“BSA”)] (31 U.S.C. 5311, *et seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury.”<sup>7</sup> NASD Rule 3011 and FINRA Rule 3310 enumerate five minimum requirements for AML compliance programs.<sup>8</sup> Subsection (a) identifies one such minimum requirement: the firm must “[e]stablish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder.”<sup>9</sup>

The relevant regulation implementing the BSA<sup>10</sup> (the “broker-dealer SAR regulation”) requires broker-dealers to file SARs with FinCEN to report certain “suspicious transaction[s]

---

<sup>5</sup> 15 U.S.C. § 78s(e)(1).

<sup>6</sup> *Robert Marcus Lane*, Exchange Act Release No. 74269, 2015 WL 627346, at \*5 (Feb. 13, 2015).

<sup>7</sup> NASD Rule 3011; FINRA Rule 3310. NASD Rule 3011 was adopted without substantive change into the Consolidated FINRA Rulebook as FINRA Rule 3310, effective on January 1, 2010. *See Order Approving Proposed Rule Change*, Exchange Act Release No. 60645, 2009 WL 2915633 (Sept. 10, 2009), 74 Fed. Reg. 47,630 (Sept. 16, 2009); *SEC Approves New Consolidated FINRA Rules*, FINRA Regulatory Notice 09-60, 2009 WL 3336928, at \*1 (Oct. 15, 2009). LSC’s misconduct occurred when both rules were in effect.

<sup>8</sup> *See* NASD Rule 3011(a)-(e); FINRA Rule 3310(a)-(e).

<sup>9</sup> NASD Rule 3011(a); FINRA Rule 3310(a); *see also* 31 U.S.C. § 5318(g)(1) (authorizing “[t]he Secretary [to] require any financial institution, and any director, officer, employee or agent” thereof, “to report any suspicious transaction relevant to a possible violation of law or regulation”); *id.* § 5312(a)(2)(H) (“financial institution” includes a “broker or dealer”).

<sup>10</sup> *See* Currency and Financial Transactions Reporting Act of 1970, Pub. L. No. 91-508, 84 Stat. 1114 (1970) (codified at 31 U.S.C. §§ 5311 *et seq.*), as amended by the USA PATRIOT Act, Pub. L. No. 107-56, 115 Stat. 296 (2001).

relevant to a possible violation of law or regulation” conducted by, at or through their firms.<sup>11</sup> The broker-dealer SAR regulation defines such transactions to include those that have “no business or apparent lawful purpose or [are] not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for the transaction after examination of the available facts, including the background and possible purpose of the transaction.”<sup>12</sup> The SAR form applicable at the time to the securities and futures industry (the “SAR-SF”) identified 20 types of suspicious activities for broker-dealers to report, including securities transactions such as “securities fraud,” “market manipulation,” “prearranged or other non-competitive trading,” and “wash or other fictitious trading.”

**A. LSC failed to establish written AML policies and procedures that would be reasonably expected to detect and cause the reporting of suspicious transactions.**

We agree with the NAC that LSC’s written AML program violated NASD Rule 3011(a) and FINRA Rule 3310(a) because these policies and procedures did not address the AML risks related to the firm’s high-frequency securities business. As FINRA explained in *Domestic Securities, Inc.* (“Domestic Securities”), AML risk and compliance requirements extend to “market manipulation, prearranged or other noncompetitive trading, and wash or other fictitious trading.”<sup>13</sup> Although LSC’s business consisted of high-speed trade execution and clearing involving processing hundreds of trades per minute, its AML Manual focused on money-movement issues during “account opening” and placed almost no weight on suspicious securities transactions during “ongoing account activity.”

Only two of 45 red flags listed in the AML Manual related to “suspicious trading”: a customer engaging in transactions “that lack business sense or apparent investment strategy”; and a customer engaging in transactions “involving certain types of securities, such as penny stocks, [Regulation S] stocks, and bearer bonds.” The other red flags related to concerns about a customer’s cash transaction practices, risk tolerance, or identity.<sup>14</sup>

Lek testified that the AML Manual’s lack of focus on “suspicious trading” was purposeful because he viewed money movement as “specifically important to our firm” and added that discussing “manipulative trading” would “muck up” the AML Manual and “make [it] less clear.” But the written AML program’s red flags were underinclusive compared to LSC’s

---

<sup>11</sup> 31 C.F.R. § 103.19(a)(1)-(2) (2010), *renumbered* 31 C.F.R. § 1023.320(a)(1)-(2).

<sup>12</sup> 31 C.F.R. § 103.19(a)(2) (2010).

<sup>13</sup> *Domestic Sec., Inc.*, Complaint No. 2005001819101, 2008 WL 4490637, at \*5 (FINRA NAC Oct. 2, 2008).

<sup>14</sup> Indeed, LSC incorporated parts of FINRA’s AML Template for Small Firms but omitted the template’s inclusion of red flags that were relevant to its securities business, such as a customer who “engages in prearranged or other non-competitive trading, including wash or cross trades of illiquid securities.” *AML Template for Small Firms*, *supra* note 2.

securities-related AML risks. Additionally, the one red flag in the AML Manual which could encompass risks of market manipulation (*i.e.* a customers engaging in “transactions that lack business sense or apparent investment strategy”) lacked enough specificity to indicate to employees, who reviewed transactions, what types of transactions should be escalated to Lek as the AML Officer. Accordingly, we agree with the NAC’s finding that LSC’s written AML policies and procedures violated NASD Rule 3011(a) and FINRA Rule 3310(a) because LSC’s AML Manual could not be reasonably expected to detect and cause the reporting of transactions that would reasonably be expected to raise AML concerns.

LSC challenges this finding of violation on several grounds. First, LSC argues that its written AML policies and procedures reasonably omitted reference to high-speed order flow because manipulative trading is “not a function of trade speed.” Even if true, this is beside the point: LSC’s written AML policies and procedures were unreasonable because they focused on money movement issues and said little about potentially suspicious securities transactions—regardless of trade speed. The significance of this omission in relation to LSC’s operations is substantial—for example, LSC processed hundreds of trades per minute and about 174,000 transactions per day. Second, LSC contends that a firm of its relatively small size was not required to put all of its AML policies and procedures in a single manual, and it faults the NAC for considering its AML Manual and WSPs “in complete isolation of each other.” Even considering the written AML program as a whole—as we have—we find that it would not be reasonably expected to detect and cause the reporting of suspicious transactions. The section of the WSPs identifying prohibited securities transactions did not alert employees that the firm should be monitoring for, detecting, escalating, and potentially *reporting* suspicious transactions. Consequently, neither the WSPs nor the AML Manual reasonably informed employees that the prohibited transactions identified in the WSPs presented an AML risk and had to be escalated for the potential filing of a SAR.<sup>15</sup>

Finally, LSC cannot rely on the training that it provided staff or its use of an AML auditor. While LSC provided AML training, the limited evidence in the record of the content of the trainings confirms that LSC focused on monitoring and detecting money-movement issues. There is no evidence to suggest that LSC trained staff to monitor for, detect, and escalate suspicious securities transactions for potential reporting. Nor did it have its AML auditor interview Lek—who was supposed to be reviewing suspicious transactions escalated to him.

---

<sup>15</sup> See *Domestic Sec.*, 2008 WL 4490637, at \*5-6 (finding that to be considered as a component of a firm’s AML program, the firm’s warnings to its employees about manipulative trading practices must be specifically presented in the AML context, and rejecting the argument that a firm reasonably implemented written AML policies when “there was no expectation that the Firm’s employees, when faced with a potentially suspicious activity,” would reference two separate manuals’ discussions of manipulative trading and AML compliance).

Accordingly, the record does not establish that LSC relied on an AML auditor's advice after making a full disclosure to the auditor.<sup>16</sup>

**B. LSC failed to implement policies and procedures to detect and cause the reporting of suspicious transactions by means of a SAR.**

We also agree with the NAC that LSC's implementation of its AML program violated NASD Rule 3011(a) and FINRA Rule 3310(a). In light of the high volume of its electronic order flow, LSC's manual monitoring before summer 2009 would not be reasonably expected to detect and cause the reporting of suspicious transactions. LSC's Compliance Officer testified that she and other employees manually monitored order flow in real time, on an *ad hoc* basis, as transactions appeared on the firm's computer systems. But she also testified that neither she nor "anyone at the firm" was "monitoring trading activity for AML purposes." In any case, the firm processed more orders in a minute than could be thoroughly and reliably reviewed manually in real time.

In addition to reporting individual suspicious transactions, broker-dealers are required to report any "pattern of transactions of which the [suspicious] transaction is a part."<sup>17</sup> The pattern-reporting requirement "is intended to recognize the fact that a transaction may not always appear suspicious standing alone" and that "a broker-dealer may only be able to determine that a [SAR] must be filed after reviewing its records."<sup>18</sup> We find that LSC did not manually review a sufficient number of transactions to identify patterns of suspicious transactions.

Lek testified that he evaluated potentially suspicious trades that were escalated to him by relying on his memory to recall patterns of suspicious trades from the same trader. But it is unclear from the record what standards he applied to his review, and he failed to document his review despite the AML Manual's requirement that he do so. Lek's reliance on his memory to recall patterns of suspicious trades could not reasonably be expected to detect and cause the reporting of suspicious transactions given the high volume of transactions LSC processed.

LSC contends that its review before summer 2009 was not purely manual because it had adopted some exception reports by that time. The firm points to exception reports that could identify and halt orders that exceeded credit or size limits. LSC does not explain how it used these exception reports to determine whether to escalate transactions to Lek or to determine

---

<sup>16</sup> See *SEC v. Bankatlantic Bancorp.*, 661 F. App'x 629, 637 (11th Cir. 2016) (defendant must have "fully disclosed all relevant facts" to invoke reliance-on-professional-advice defense).

<sup>17</sup> 31 C.F.R. § 103.19(a)(2) (2010).

<sup>18</sup> FinCEN, *Amendments to Bank Secrecy Act Regulations—Requirement that Brokers or Dealers in Securities Report Suspicious Transactions*, 2002 WL 1400399, 67 Fed. Reg. 44,048, 44,051 (July 1, 2002).

whether to file a SAR, and the record does not support LSC's contention that it was using these exception reports for that purpose before summer 2009.

LSC's implementation of its AML program after summer 2009 also violated NASD Rule 3011(a) and FINRA Rule 3310(a). Although LSC adopted a wash sale exception report in August 2009, a pre-market cancellation exception report in October 2009, and a marking-the-close exception report in March 2010, the record establishes that LSC did not use these exception reports to monitor its order flow in a manner reasonably expected to detect and cause the reporting of suspicious transactions. LSC did not use the marking-the-close exception report to attempt to detect trading patterns at all and used its wash trade and pre-market cancellation exception reports mainly to identify trades that it would refer to Dimension, the source of the suspicious trades. Starting in February 2010, LSC's Compliance Officer noted that she began referring flagged wash sales to Dimension. She documented her review of pre-market cancellations in detail for only three weeks, before documenting only the date and a short description—almost always “reviewed and fine.” Lek and LSC's Compliance Officer did not otherwise document what they did to review and investigate trades. Other than LSC's deference to and reliance on Dimension, the record does not include evidence of how those reviews were conducted, the results of the reviews, or how that information was analyzed to determine that the trades were “fine.” Accordingly, we find that the exception reports were not used in a manner reasonably expected to detect and cause the reporting of suspicious transactions.

**C. LSC unreasonably relied on its introducing broker in an attempt to discharge its obligations.**

We agree further with the NAC that LSC violated NASD Rule 3011(a) and FINRA Rule 3310(a) when it relied on its introducing broker to investigate potentially suspicious transactions. The broker-dealer SAR regulation requires that “each broker-dealer involved in the transaction” retain an independent “obligation to identify and properly and timely to report a suspicious transaction”; accordingly, each must ensure that one of them identifies suspicious transactions and “properly and timely” files a SAR if required.<sup>19</sup> This is consistent with the Commission's longstanding policy that while clearing and introducing firms may allocate responsibilities between them, “no [such] contractual arrangement for the allocation of functions between an introducing and carrying organization can operate to relieve either organization from their respective responsibilities under the federal securities laws and applicable SRO rules.”<sup>20</sup> Indeed, in approving NASD Rule 3011(a), we noted NASD's statement that “each firm must have its own program designed to detect suspicious activity, and no broker-dealer may rely solely on a

---

<sup>19</sup> 31 C.F.R. § 103.19(a)(3) (2009) (“The obligation to identify and properly and timely to report a suspicious transaction rests with each broker-dealer involved in the transaction, provided that no more than one report is required to be filed by the broker-dealers involved in a particular transaction (so long as the report filed contains all relevant facts).”).

<sup>20</sup> *Order Approving Proposed Rule Change*, Exchange Act Release No. 18497, File No. SR-NYSE-81-19, 1982 WL 523464, at \*1 n.2 (Feb. 19, 1982).

program implemented by a firm with which it does business or has a business relationship.”<sup>21</sup> Under these standards, LSC’s reliance on Dimension was unreasonable.

LSC and Dimension allocated “initial[] and primar[y]” responsibility to Dimension to establish an AML program and to file SARs, and to LSC the responsibility to “provide [Dimension] data or exception reports” to assist Dimension’s SAR compliance. When LSC’s Compliance Officer detected potentially suspicious trades introduced by Dimension, she asked Dimension to investigate, did not conduct an independent investigation, and accepted Dimension’s conclusions at face value without documenting what Dimension reported to her.

This reliance was unreasonable under the circumstances. By September 2009, LSC had reason to suspect that Dimension was not reliably fulfilling its review obligations. Dimension had continued to process certain pre-market cancellations that had attracted regulatory scrutiny even after LSC asked it to stop doing so. Additionally, DTI made up over 90% of Dimension’s trade volume, and had an interest in the technology company that owned the software Dimension used. Accordingly, Dimension had a conflict of interest with respect to reviewing trades from DTI. In light of these circumstances, we find that LSC unreasonably relied on Dimension to investigate DTI’s trades because such reliance could not have been reasonably expected to detect and cause the reporting of suspicious transactions consistent with LSC’s independent obligation under the broker-dealer SAR regulation.

LSC disputes that it relied on Dimension and notes that Lek and LSC’s Compliance Officer spoke with Dimension regularly. But Lek testified that he viewed LSC’s role as providing Dimension with information because Dimension “was in a better position to do the investigation than we were.” Even on appeal, LSC continues to attempt to shift responsibility to Dimension, arguing that “[w]hile LSC would still need to follow up,” Dimension’s conclusion that “there were no indicia of manipulation” confirms that “LSC did not have a basis for disagreeing with [Dimension’s] explanations.” Accordingly, the record confirms that LSC relied on Dimension to investigate trades it introduced and that this reliance was unreasonable under the circumstances.

**D. LSC’s remaining arguments are not persuasive.**

LSC raises a number of related arguments that turn on its view that the firm complied with NASD Rule 3011(a) and FINRA Rule 3310(a) notwithstanding its written AML policies and procedures because Lek personally reviewed transactions escalated to him to determine whether to file a SAR. The NAC determined that this informal system—in which “Lek and his staff all sat closely in a single room,” staff would alert him to “what [they are] seeing,” and Lek would “shout out to [staff] to look out for certain trading activity”—“[fell] short of the

---

<sup>21</sup> *Order Approving Proposed Rule Changes Relating to Anti-Money Laundering Compliance Programs*, Exchange Act Release No. 34-45798, File Nos. SR-NASD-2002-24, 2002 WL 730731 (April 22, 2002), 67 Fed. Reg. 20,854, 20,857 (Apr. 26, 2002).

requirements of Rule 3310(a).” We agree and find that the record does not substantiate LSC’s claim that Lek’s review cured the deficiencies in LSC’s AML program.

To begin with, Lek only reviewed potentially suspicious securities transactions that were escalated to him. His participation in the review does not cure deficiencies in LSC’s policies and procedures. We have found that LSC’s policies and procedures were not tailored to its securities business or specific enough to indicate to employees what securities transactions should be escalated. We find nothing in LSC’s implementation of its policies and procedures that cured these deficiencies. Although the firm trained staff, the portion of the trainings about red flags focused on money-movement issues rather than on suspicious securities transactions, and we find that employees were not trained to escalate such transactions. Indeed, LSC’s Compliance Officer testified that nobody at the firm was reviewing trades for AML purposes.

In addition, neither the written AML program nor anything else in the record establishes the procedures or standards Lek used in evaluating trades escalated to him. Although the Hearing Panel credited Lek’s testimony that he evaluated transactions,<sup>22</sup> neither his testimony nor the remainder of the record establishes that he did so in order to determine whether the transactions met the requirements for filing a SAR. Finally, even though the AML Manual provided that Lek would “investigate . . . reports of suspicious activities . . . and . . . document all steps taken and evidence considered,” Lek did not document what he did to evaluate escalated transactions. Under the circumstances, Lek’s *ad hoc* review of transactions could not be reasonably expected to detect and cause the reporting of suspicious transactions.

LSC next argues that because FINRA did not introduce evidence of “a single instance” when the firm failed to detect or file a SAR as required, its AML policies and procedures could not have violated NASD Rule 3011(a) and FINRA Rule 3310(a). But LSC was not charged with failing to file a SAR as required, and a failure to do so is not an element of a violation of NASD Rule 3011(a) or FINRA Rule 3310(a). FINRA must show instead that the firm failed to establish and implement an AML program reasonably designed to detect and cause the reporting of suspicious transactions.<sup>23</sup> FINRA made that showing here.

---

<sup>22</sup> The Hearing Panel found that certain aspects of Lek’s testimony were “on their face . . . not credible,” and “damaged his credibility generally.” But it accepted his testimony regarding “what he and his staff did in setting up the DTI account, monitoring the trading, and establishing and modifying the exception reports.” We defer to a hearing panel’s credibility determinations absent substantial evidence to the contrary. See *John Edward Mullins*, Exchange Act Release No. 66373, 2012 WL 423413, at \*13 (Feb. 10, 2012).

<sup>23</sup> FINRA Rule 3110, which requires that members have a system to supervise the activities of its associated persons that is reasonably designed to achieve compliance with the securities laws, also does not require an underlying rule violation to find a supervisory violation. See, e.g., *Robert J. Prager*, Exchange Act Release No. 51974, 2005 WL 1584983, at \*12 & n.52 (July 6, 2005). Conversely, Commission administrative proceedings under Exchange Act Section

(continued . . .)

LSC's reliance on *Sterne, Agee & Leach, Inc.*,<sup>24</sup> a FINRA Hearing Panel decision, is misplaced. In *Sterne, Agee & Leach*, the firm's use of manual review was considered reasonable given its business: its *monthly* order flow was smaller than LSC's *daily* order flow; it had more staff than LSC manually monitoring the transactions; its written procedures identified with specificity red flags relevant to the firm's business risks, and explained to reviewing employees what to look for and when to escalate suspicious trades; and it assigned tasks that were "sufficiently well defined and within [staff's] specific areas of responsibility that they could be expected to spot suspicious activity."<sup>25</sup> The reasonableness of supervisory policies or procedures depends on the facts and circumstances.<sup>26</sup> LSC cannot establish the adequacy of its system by relying on the Hearing Panel's conclusion in *Sterne, Agee & Leach*.

Finally, LSC argues that pre-market cancellations can never be manipulative and that the firm did not need to monitor for them as part of its AML program. But regardless of whether pre-market cancellations can be manipulative, LSC was required to monitor for transactions that were suspicious. The broker-dealer SAR regulation covers transactions that are suspicious even if not facially manipulative.<sup>27</sup> Regulatory inquiries during summer 2009 confirmed that regulators considered certain patterns of pre-market cancellations to be potentially *suspicious*. In addition, LSC's own expert conceded at the hearing that it was "theoretically possible" for pre-market cancellations to be manipulative. We thus agree with the NAC that it was unreasonable for LSC to fail to address pre-market cancellations in establishing and implementing its AML compliance system.

---

(continued . . .)

15(b)(4)(E) authorize bars for supervisory violations only where there is an underlying violation of the securities laws, rules, and regulations. 15 U.S.C. § 78o(b)(4)(E).

<sup>24</sup> Complaint No. E052005007501, 2010 WL 3598592 (FINRA OHO Mar. 5, 2010).

<sup>25</sup> *Id.* at \*14; *see also id.* at \*5, 14-15.

<sup>26</sup> *La Jolla Capital Corp.*, Exchange Act Release No. 41755, 1999 WL 624046, at \*4 (Aug. 18, 1999) ("Whether a particular supervisory system or set of written procedures is in fact 'reasonably designed to achieve compliance' depends on the facts and circumstances of each case").

<sup>27</sup> *See* 31 C.F.R. § 103.19(a)(2)(ii) (extending to "transactions that are not the sort in which the particular customer would be expected to engage, and for which the broker-dealer knows no reasonable explanation after examining the relevant facts"); *see also Requirement that Brokers or Dealers in Securities Report Suspicious Transactions*, 2002 WL 1400399, 67 Fed. Reg. at 44,053-054 (provision covers "transactions that vary so substantially from normal practice that they legitimately can and should raise *suspensions of possible illegality*") (emphasis added).

**E. The rules that FINRA found LSC violated are, and were applied in a manner, consistent with the purposes of the Exchange Act.**

Having determined that LSC engaged in the conduct FINRA found and that that conduct violated NASD and FINRA rules, we must determine whether those rules are, and were applied in a manner, consistent with the purposes of the Exchange Act. Exchange Act Section 15A(b)(6) requires that FINRA design its rules to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.<sup>28</sup> NASD Rule 3011 and FINRA Rule 3310 are consistent with these purposes because the rules “assist members in identifying and preventing money laundering abuses that can affect the integrity of the U.S. capital markets.”<sup>29</sup> These rules likewise “accurately, reasonably, and efficiently implement the requirements of the PATRIOT Act as it applies to [FINRA] members.”<sup>30</sup> FINRA appropriately applied these rules given LSC’s failure to establish and implement reasonable AML policies and procedures. NASD Rule 3011 and FINRA Rule 3310 are, and were applied in a manner, consistent with the Exchange Act’s purposes.

FINRA also found that LSC violated NASD Rule 2110 and FINRA Rule 2010. Those rules require a FINRA member, “in the conduct of its business, [to] observe high standards of commercial honor and just and equitable principles of trade.”<sup>31</sup> We have held that “a violation of another Commission or NASD rule or regulation constitutes a violation of NASD Rule 2110” and thus also of identical FINRA Rule 2010.<sup>32</sup> We find that LSC violated NASD Rule 2110 and FINRA Rule 2010 by violating NASD Rule 3011 and FINRA Rule 3310.

Because Exchange Act Section 15A(b)(6) requires that FINRA design its rules to “promote just and equitable principles of trade,”<sup>33</sup> and because we have found that LSC’s failure to establish and implement adequate AML procedures was inconsistent with just and equitable principles of trade, we also find that NASD Rule 2110 and FINRA Rule 2010 are, and were applied in a manner, consistent with the Exchange Act’s purposes.

---

<sup>28</sup> 15 U.S.C. § 78o-3(b)(6).

<sup>29</sup> *Notice of Filing of Proposed Rule Change*, Exchange Act Release No. 60112, 2009 WL 1675252, at \*3 (June 15, 2009); *see also Order Approving Proposed Rule Change*, Exchange Act Release No. 60645, 2009 WL 2915633, at \*2 (Sept. 10, 2009).

<sup>30</sup> *Order Approving Proposed Rule Changes*, 2002 WL 730731, at \*7.

<sup>31</sup> NASD Rule 2110; FINRA Rule 2010.

<sup>32</sup> *William J. Murphy*, Exchange Act Release No. 69923, 2013 WL 3327752, at \*8 n.29 (July 2, 2013) (cleaned up). NASD Rule 2110 was renumbered FINRA Rule 2010 “with no changes.” *Notice of Filing of a Proposed Rule Change*, Exchange Act Release No. 59095, 2008 WL 2971979, at \*2 (July 3, 2008); *see also Order Adopting Proposed Rule Change*, Exchange Act Release No. 58643, 2008 WL 4468749, at \*5 (Sept. 25, 2008).

<sup>33</sup> 15 U.S.C. § 78o-3(b)(6).

## V. SANCTIONS

Exchange Act Section 19(e)(2) directs us to sustain FINRA’s sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive.<sup>34</sup> As part of our review, we consider any aggravating or mitigating factors.<sup>35</sup> We also consider whether the sanctions are remedial or punitive.<sup>36</sup>

LSC does not challenge the censure FINRA imposed but asserts that the \$100,000 fine is excessive and oppressive.<sup>37</sup> In imposing sanctions, FINRA relied on its Sanction Guidelines.<sup>38</sup> Although not binding on us, we have used the guidelines as a benchmark.<sup>39</sup>

As there is no specific Sanction Guideline for AML violations, the NAC considered applying the “Guidelines for deficient WSPs” but ultimately found it to be not “sufficiently analogous.”<sup>40</sup> Instead, the NAC considered certain of the Sanction Guidelines’ Principal Considerations that apply to all violations, including whether LSC’s misconduct (1) involved numerous acts and/or a pattern of misconduct; (2) occurred over an extended period of time; (3) resulted from an intentional act, recklessness, or negligence; and (4) occurred notwithstanding prior warnings from FINRA or another regulator that the conduct violated FINRA rules or applicable securities laws or regulations.<sup>41</sup> Applying these Principal Considerations from the Sanction Guidelines, the NAC found that LSC “engaged in a pattern of misconduct for an extended period of time,” and that it did so “reckless[ly].” The NAC found no mitigating factors,<sup>42</sup> specifically observing that “LSC did not acknowledge its misconduct to a regulator, voluntarily employ corrective measures, or reasonably attempt to remedy the misconduct.”

<sup>34</sup> *Id.* § 78s(e)(2). The record does not show, nor does LSC claim, that FINRA’s sanctions impose any unnecessary or inappropriate burden on competition. *Id.*

<sup>35</sup> *Saad v. SEC*, 718 F.3d 904, 906 (D.C. Cir. 2013).

<sup>36</sup> *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1065-66 (D.C. Cir. 2007).

<sup>37</sup> We find the censure in the public interest, not excessive or oppressive, and a remedial sanction because it will “serve to alert the public . . . of the unacceptability of [LSC’s] conduct.” *Philip L. Spartis*, Exchange Act Release No. 64489, 2011 WL 1825026, at \*13 (May 13, 2011).

<sup>38</sup> *FINRA Sanction Guidelines* (Mar. 2015), [http://www.finra.org/sites/default/files/2015\\_Sanction\\_Guidelines.pdf](http://www.finra.org/sites/default/files/2015_Sanction_Guidelines.pdf).

<sup>39</sup> *John Joseph Plunkett*, Exchange Act Release No. 69766, 2013 WL 2898033, at \*11 & n.68 (June 14, 2013).

<sup>40</sup> *See FINRA Sanction Guidelines* at 104 (providing for a fine between \$1,000 and \$37,000 for deficient written supervisory procedures).

<sup>41</sup> *See FINRA Sanction Guidelines* at 6-7.

<sup>42</sup> *See id.* at 6.

**A. The record establishes that LSC engaged in a pattern of misconduct over an extended period and did so recklessly.**

LSC engaged in a pattern of misconduct over an extended period. It violated NASD Rule 3011 and FINRA Rule 3310 in three different ways: it failed to adopt written AML policies and procedures that addressed the risks of its high-frequency securities trading business; it relied on *ad hoc* manual surveillance of that trading until summer 2009 and did not use the automated tools it adopted after summer 2009 to detect and cause the reporting of suspicious transactions; and it failed to carry out its independent obligation to investigate potentially suspicious trades. LSC engaged in this pattern of misconduct for nearly three years.

LSC's conduct was also reckless. Recklessness is an "extreme departure from the standards of ordinary care and which presents a danger . . . that is either known to the [actor] or is so obvious that the actor must have been aware of it."<sup>43</sup> In light of the nature of its business, including its high-speed and high-volume business model, LSC's predominantly manual, ad hoc review (involving substantial reliance on and deference to Dimension) was an extreme departure from the standards of ordinary care and presented an obvious risk that LSC would not be able to detect and cause the reporting of suspicious transactions.

We also reject LSC's argument that FINRA is attempting to sanction LSC twice for this misconduct given a fine ordered by NYSE in another proceeding against LSC for deficient supervisory procedures.<sup>44</sup> The two grounds for liability differ because the NYSE case does not involve the inadequacy of LSC's AML program.

**B. LSC does not establish the presence of mitigating factors.**

LSC's arguments on appeal do not warrant setting aside the fine. For the reasons stated above, we reject LSC's contention that the fine should be set aside because there was no evidence of suspicious transactions for which LSC failed to file a SAR. We also reject LSC's argument that FINRA increased the sanctions to penalize LSC for defending itself. LSC was entitled to present a vigorous defense of the charges. FINRA likewise was entitled not to credit LSC in *mitigation* for acceptance of responsibility when LSC did not acknowledge that its misconduct constituted a violation of the securities laws.<sup>45</sup>

---

<sup>43</sup> *SEC v. Steadman*, 967 F.2d 636, 641-42 (D.C. Cir. 1992).

<sup>44</sup> *See Lek Sec. Corp.*, NYSE Proceeding No. 20110270056 (NYSE Regulation Board Feb. 6, 2015), *appeal pending*, Admin. Proc. No. 3-16424.

<sup>45</sup> *Cf. Allen M. Perres*, Exchange Act Release No. 79858, 2017 WL 280080, at \*4 (Jan. 23, 2017) ("Without accepting responsibility for his violations, Perres cannot argue that he recognizes the wrongful nature of his misconduct and thus need not be sanctioned with additional non-financial remedies."), *petition denied*, 695 F. App'x 980 (7th Cir. 2017).

Nor was FINRA required to reduce the fine because LSC employed corrective measures. The NAC concluded that LSC did not voluntarily employ corrective measures “[p]rior to detection.”<sup>46</sup> We find that any mitigative value of LSC’s subsequent corrective measures is outweighed by the serious, prolonged, and reckless nature of its misconduct.<sup>47</sup>

Finally, we reject LSC’s contention that its AML training and reliance on an AML auditor should be mitigating. LSC has not explained how its trainings provided its staff with the information that the written AML program lacked or how trainings can cure deficient written policies and procedures. As for the AML auditor, the record does not establish that LSC relied on the auditor’s advice after making a full disclosure to the auditor.<sup>48</sup> The auditor did not interview Lek despite Lek’s insistence that because all AML issues would be escalated to him the written AML program did not need detailed instructions. In these circumstances, LSC’s reliance on an AML auditor was not mitigating.

**C. LSC does not establish that the fine is excessive or oppressive.**

LSC contends that the fine is excessive or oppressive compared with the \$10,000 fine in *Domestic Securities*. Because “[t]he appropriate sanction . . . depends on the facts and circumstances of each particular case,”<sup>49</sup> the sanctions determination in one NAC decision does not bind the Commission in a subsequent case. *Domestic Securities* applied the Sanction

---

<sup>46</sup> *FINRA Sanction Guidelines* at 6 (Principal Consideration No. 3) (providing for consideration of whether a “member firm respondent voluntarily employed subsequent corrective measures, prior to detection or intervention . . . by a regulator”).

<sup>47</sup> Although LSC offers the related argument that a fine is not an effective deterrent because it has already “enhanced” its surveillance, it has not established precisely how it has done so. In any case, we review the sanctions FINRA imposed with “due regard for the public interest and the protection of investors.” 15 U.S.C. § 78s(e)(2). “The public interest requires that appropriate sanctions be imposed to secure compliance with the rules, regulations, and policies of both [FINRA] and [the] SEC.” *Sisung Secs. Corp.*, Exchange Act Release No. 56741, 2007 WL 3254804, at 8 (Nov. 5, 2007) (quoting *Boruski v. SEC*, 289 F.2d 738, 740 (2d Cir. 1961)). Fines “enable [FINRA], after finding that a specific firm violated the securities laws, to deter that firm—and the responsible firm personnel—from committing future violations without imposing sanctions unnecessary to remedy the misconduct.” *Id.* This fine will protect investors by impressing on LSC the importance of complying with FINRA rules in the future. That the deterrent effect of this fine serves the public interest and the protection of investors, without resort to a more serious sanction such as suspension or expulsion of LSC from FINRA membership, bolsters our conclusion that this fine is neither excessive nor oppressive.

<sup>48</sup> See *Bankatlantic Bancorp.*, 661 F. App’x at 637 (defendant must have “fully disclosed all relevant facts” to invoke reliance-on-professional-advice defense).

<sup>49</sup> *Raghavan Sathianathan*, Exchange Act Release No. 54722, 2006 WL 3228694, at \*15 (Nov. 8, 2006).

Guideline for deficient WSPs because that case involved only the firm's failure to establish adequate written AML policies and procedures.<sup>50</sup> We agree with the NAC's conclusion here that the deficient WSP guideline is insufficiently analogous for LSC's violations. LSC's violations extend beyond deficient written AML policies and procedures to include the firm's failure to reasonably implement an AML program through its manual trade review and its unreasonable reliance on its introducing broker. In addition, LSC's misconduct continued after LSC received regulatory inquiries about potentially suspicious misconduct. We therefore find, having due regard for the public interest and the protection of investors, that the \$100,000 fine is neither excessive nor oppressive.

An appropriate order will issue.<sup>51</sup>

By the Commission (Chairman CLAYTON and Commissioners STEIN, PIWOWAR, JACKSON and PEIRCE).

Brent J. Fields  
Secretary

---

<sup>50</sup> See *Domestic Sec.*, 2008 WL 4490637 at \*5-7 & n.9.

<sup>51</sup> We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934  
Release No. 82981 / April 2, 2018

Admin. Proc. File No. 3-17677

In the Matter of the Application of  
LEK SECURITIES CORPORATION  
For Review of Disciplinary Action Taken by  
FINRA

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY FINRA

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by FINRA against Lek Securities Corporation is sustained.

By the Commission.

Brent J. Fields  
Secretary