NYSE MKT LLC
HEARING BOARD

Department of Market Regulation, on behalf of NYSE MKT LLC, Complainant, v. Lek Securities Corporation (CRD No. 33135), and Samuel Frederik Lek (CRD No. 1642936), Respondents.	Disciplinary Proceeding Nos. 20110297130-09 20120336673-01

COMPLAINT

The Department of Market Regulation of the Financial Industry Regulatory Authority ("FINRA"), on behalf of NYSE Regulation for NYSE MKT LLC[1] ("NYSE MKT" or the "Exchange"), alleges:

Summary

1. FINRA's Department of Market Regulation, on behalf of NYSE MKT (NYSE AMEX LLC prior to May 14, 2012), conducted investigations into Lek Securities Corporation ("LSCI" or the "Firm") and its CEO, Samuel Frederik Lek ("Lek"), who are in the business of providing direct market access and sponsored access (together "market access") to multiple

[1] The Department of Market Regulation at the Financial Industry Regulatory Authority ("FINRA") 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 MKT LLC, NYSE Regulation and FINRA, which became effective January 1, 2016.

exchanges, including the NYSE MKT Option marketplace, pursuant to NYSE MKT Rule 0(c) and Rule 1B and 2A.

2. Between August 1, 2012 and June 30, 2015 (the "Options Market Review Period"), LSCI and Lek provided direct market access to non-registered options market participants to multiple market centers, including NYSE MKT. While providing such access, LSCI and Lek aided and abetted manipulative options trading by "Avalon," a customer of the Firm whose master-sub account was known as "the Avalon account."

3. LSCI also aided and abetted Avalon in the operation of an unregistered broker-dealer.

4. 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, retention of electronic communications, accuracy of Central Registration Depository ("CRD") information, payments of transaction-based compensation to unregistered persons, and additional supervisory violations pertaining to review of electronic communications, outside business activities, and CRD information. 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. These violations also occurred on numerous exchanges, including NYSE MKT.

5. 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 periods. LSCI and Lek committed these violations 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 MKT and other exchanges.

Respondents and Jurisdiction

6. LSCI is a Delaware corporation headquartered in New York, NY, 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. LSCI is a member of NYSE MKT, NYSE Arca Inc. ("NYSE Arca"), NYSE LLC ("NYSE"), Bats BYX Exchange, Inc. ("BYX"); Bats BZX Exchange, Inc. ("BZX"); Bats EDGA Exchange, Inc. ("EDGA"); Bats EDGX Exchange, Inc. ("EDGX"); NASDAQ BX, Inc. ("BX"); NASDAQ PHLX, LLC; NASDAQ Stock Market LLC ("NASDAQ"), and International Securities Exchange, LLC ("ISE"). NYSE MKT has jurisdiction over LSCI because it is currently registered as an NYSE MKT-member firm, and it committed the misconduct at issue while a member.

7. 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. Lek became registered with NYSE MKT as a General Securities Representative with LSCI on May 2, 1996. Lek was registered in such capacity, as well as in other capacities, with LSCI during the relevant periods. He currently remains registered with NYSE MKT with LSCI. NYSE MKT has jurisdiction over Lek because he is currently associated with LSCI, a member firm of NYSE MKT, and committed the misconduct at issue while registered with said member.

STATEMENT OF FACTS
Master-Sub Account Structure

8. In a 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]

9. 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]

10. 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]

[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*.

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

Origins of the Avalon Account at LSCI

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

12. Pustelnik handled the Regency Capital ("Regency") account at Genesis, which was the 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."

13. 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.

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

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

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

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

18. 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.

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

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

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

22. Thus, Avalon, as referred to herein, is both a legal entity[5] and a group of traders trading through Avalon's account at LSCI.

23. 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; was expelled from BZX and BYX on May 14, 2012; and had 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.

24. 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-

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

dealers through master and subaccount arrangements at the firm, even though the firm and its CEO were aware that the subaccounts had different beneficial owners, that the master accounts charged the subaccounts transaction-based compensation, and that the master account profited by charging commission rates that were higher than the rates they paid to the firm.

25. 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 personal email account – an account he used for business purposes at LSCI – in response to a FINRA Market Regulation request in this matter.

26. 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.

Layering, Cross-Product Manipulation ("Mini-Manipulation"), and Spoofing

27. 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]

[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

28. The multiple limit 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.

29. 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.

30. "Cross-product manipulation," or "mini-manipulation," is a disruptive and manipulative practice whereby a trader engages in the manipulation of option prices through trading in the underlying equities in a short time period. A trader enters trades and ultimately effects transactions in equity securities to create a false, misleading, or artificial appearance in the price of the securities and options overlying those securities. Those transactions trigger activity and price movement in the equity securities, which in turn impacts the price of the overlying equity options and enables the trader to purchase or sell the equity options at more favorable prices than would have been available had the triggering transactions not been entered.

---

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*.

31. "Spoofing" is a form of manipulative trading that involves a market participant placing non-bona fide orders, generally inside the existing NBBO, with the intention of briefly triggering some type of response from another market participant, followed by cancellation of the non-bona fide order, and the entry of an order on the other side of the market.[7]

32. LSCI and Lek profited from the cross-product manipulation and spoofing schemes through receipt of commissions from Avalon's trading.

MANIPULATIVE OPTIONS TRADING IN THE AVALON ACCOUNT (CROSS-PRODUCT MANIPULATION AND SPOOFING)

Primary Securities Law Violations

33. During the Options Review Period, Avalon, as a customer of LSCI, in hundreds of instances, engaged in activity that constituted cross-product manipulation.

34. In these instances, Avalon engaged in a significant volume of equity trading on one side of the market in a short period of time, usually in less than three minutes.

35. Avalon's equity activity caused price movements in the equity and overlying options. Immediately after triggering this price movement, and within seconds of concluding the equity trades, the Avalon traders effected option transactions that were more favorably priced as a result of the traders' own prior equity trade activity.

36. Avalon's equity activity created a false, misleading or artificial appearance in the price of the securities and options overlying those equities.

[7] Dodd-Frank Wall Street Reform and Consumer Protection Act §747(5) states: "DISRUPTIVE PRACTICES.—It shall be unlawful for any person to engage in any trading, practice, or conduct on or subject to the rules of a registered entity that … (C) is, is of the character of, or is commonly known to the trade as, 'spoofing' (bidding or offering with the intent to cancel the bid or offer before execution)."

Trading in "DDDD"[8] Options (Cross-Product Manipulation)

37. As an example of the trading that constituted cross-product manipulation, on August 26, 2013, from 10:14:06 to 10:15:41, Avalon sold 22,616 equity shares of DDDD, representing approximately 47% of the total trading volume in that stock during that time period.

38. During that 95-second time window, the share price of DDDD decreased from $243.00 to $241.84. Avalon's selling was a significant factor that contributed to depressing the price of equity shares of DDDD, and had a corresponding impact on the price of the overlying options as a result.

39. Immediately beforeand during the time that Avalon was selling equity shares of DDDD, the NBBO of certain DDDD options series was as follows:

Option NBBO Time	Aug 30 2013/240 calls		Aug 30 2013/235 calls		Aug 30 2013/245 calls		Sep 13 2013/230 calls		Sep 6 2013/230 calls	
	NBB	NBO	NBB	NBO	NBB	NBO	NBB	NBO	NBB	NBO
10:13:57	5.50	5.65	9.00	9.25	2.93	3.10	15.30	15.60	14.25	14.55
10:14:06	5.50	5.60	8.95	9.25	2.92	3.05	15.30	15.55	14.20	14.55
10:14:29	5.05	5.35	8.45	8.90	2.69	2.87	14.80	15.20	13.70	14.15
10:15:00	4.85	5.15	8.30	8.60	2.62	2.76	14.65	15.00	13.55	13.90
10:15:41	4.70	4.90	8.00	8.35	2.46	2.59	14.30	14.65	13.25	13.55

40. Using the Sep 6 230 calls as reflected in the last column as an example, as Avalon sold DDDD equity shares, the National Best Offer ("NBO") decreased from $14.55 to $13.55.

41. Next, at 10:15:42, one second after its last sale of DDDD equity shares had been completed, Avalon effected the following DDDD options transactions:[9]

[8] The actual trading symbols are anonymized herein but set forth in the Notice of Aliases filed herewith.
[9] For sake of brevity, the activity does not show the NBBO of all 12 option series in which Avalon effected transactions during the trading sequence.

Avalon Transactions	Option NBBO Time	Aug 30 2013/240 calls		Aug 30 2013/235 calls		Aug 30 2013/245 calls		Sep 13 2013/230 calls		Sep 6 2013/230 calls	
		NBB	NBO	NBB	NBO	NBB	NBO	NBB	NBO	NBB	NBO
buy 33 Sep 13/230 calls @ $14.65	10:15:42							14.40	14.65		
buy 71 Oct 19/220 calls @ $26.615											
buy 63 Oct 19/225 calls @ $ 22.95											
buy 96 Sep 6/230 calls @ $13.55	10:15:42									13.15	13.55
buy 27 Sep 21 /230 calls @ $15.7											
buy 18 Oct 19/230 calls @ $19.55											
buy 172 Sep 6/235 calls @$9.75											
buy 8 Sep 13/235 calls @$11.05											
buy 1 Sep 21/235 calls @ $12.3											
buy 20 Aug 30/240 calls @ $4.9	10:15:42	4.75	4.90								
buy 36 Aug 30/235 calls @ $8.3	10:15:42			8.05	8.30						
buy 8 Aug 30/245 calls @ $2.58	10:15:42					2.47	2.58				

42. As set forth above, at 10:15:42, Avalon purchased 96 Sep 6 230 DDDD calls at $13.55, $1.00 less than the price of those call options prior to Avalon's equity sales.

43. This $1.00 decrease in the call price was, in large part, attributable to Avalon's concentrated sales activity (22,616 equity shares in the underlying stock) within a short period of time preceding its option activity.

44. In total, after Avalon sold 22,616 equity shares prior to 10:15:42, Avalon purchased 553 calls in 12 different DDDD options series, which represents approximately 40,891 equivalent equity shares.[10] While Avalon was selling the shares of DDDD, the NBO of all 12 DDDD option series showed a movement similar to the Sep 6 230 calls, in that the price declined, enabling Avalon to purchase the options at a more favorable price.

[10] Equivalent equity shares are based on the end of day option series as calculated by the Options Clearing Corporation.

45. Shortly after effecting these transactions, Avalon engaged in additional transactions that had the effect of reversing much of its prior DDDD activity. Between 10:33:46 and 10:36:27, Avalon purchased 7,703 equity shares of DDDD, representing approximately 18% of the total volume traded during that time period, and the price of equity shares of DDDD rose from $244.60 to $244.88.

46. Immediately before, and during the time that Avalon was purchasing equity shares of DDDD, the NBBO of certain DDDD options series was as follows:

Option NBBO Time	Aug 30 2013/240 calls		Aug 30 2013/235 calls		Aug 30 2013/245 calls		Sep 13 2013/230 calls		Sep 6 2013/230 calls	
	NBB	NBO	NBB	NBO	NBB	NBO	NBB	NBO	NBB	NBO
10:33:43	6.35	6.80	10.10	11.00	3.70	3.80	16.40	17.20	15.40	16.25
10:33:46	6.35	6.80	10.10	11.00	3.70	3.80	16.40	17.10	15.40	16.15
10:34:10	6.20	6.50	10.00	10.60	3.50	3.70	16.25	16.85	15.35	15.85
10:34:55	6.30	6.60	10.10	10.60	3.55	3.70	16.40	16.85	15.40	15.85
10:35:35	6.50	6.85	10.30	10.85	3.70	3.85	16.60	17.05	15.65	16.05
10:36:27	6.65	6.90	10.40	10.80	3.75	3.95	16.70	17.10	15.75	16.15

47. Again using the Sep 6 230 calls as an example, as Avalon was purchasing equity shares of DDDD, the National Best Bid ("NBB") increased from $15.40 to $15.75.

48. Next, at 10:36:30, three seconds after its last purchase of DDDD equity shares had been completed, Avalon effected the following DDDD options transactions:[11]

Avalon Transactions	Option NBBO Time	Aug 30 2013/240 calls		Aug 30 2013/235 calls		Aug 30 2013/245 calls		Sep 13 2013/230 calls		Sep 6 2013/230 calls	
		NBB	NBO	NBB	NBO	NBB	NBO	NBB	NBO	NBB	NBO
sell 33 Sep 13/230 calls @ $16.718	10:36:30							16.70	17.10		
sell 63 Oct 19/225 calls @ $24.85											
sell 96 Sep 6/230 calls @ $15.75	10:36:09									15.75	16.15
sell 27 Sep 21/230 calls @ $17.65											
sell 18 Oct 19/230 calls @ $21.30											
sell 172 Sep 6/235 calls @ $11.65											
sell 8 Sep 13/235 calls @ $12.931											
sell 16 Aug 30/240 calls @ $6.65	10:36:30	6.65	6.80								
sell 35 Aug 30/235 calls @ $10.48	10:36:30			10.45	10.80						
sell 2 Aug 30/245 calls @ $3.80	10:36:30					3.80	3.95				

49. In summary, as set forth above, at 10:36:30, Avalon sold 96 Sep 6 230 DDDD calls at $15.75, $0.35 higher than the price of those call options prior to the equity sales.

50. The $0.35 increase in the bid of the Sep 6 230 calls was, in large part, attributable to Avalon's concentrated purchase activity (7,703 equity shares in the underlying stock) within a short period of time preceding its option activity.

51. In total, after Avalon had purchased the 7,703 equity shares at 10:36:30, Avalon sold 470 calls in 10 different DDDD options series, which represents approximately 34,725 equivalent equity shares, offsetting almost all of the options purchases that it had effected at 10:15:42. While Avalon was purchasing equity shares of DDDD, the NBB of each DDDD option series shows a movement similar to the Sep 6 230 calls, in that the price increased, enabling Avalon to sell the options at a more favorable price.

[11] Again, for sake of brevity, the activity shown does not show the NBBO of all ten option series in which Avalon effected transactions during the trading sequence.

52. The options transactions effected in paragraphs 41 and 48 included transactions effected on NYSE MKT.

53. During the Options Market Review Period, in more than a hundred instances, Avalon also engaged in activity that constituted "spoofing."

54. In several instances, another customer of the Firm also engaged in this activity.

55. For example, Avalon entered one-lot contract option orders, which were cancelled prior to entering a larger options trade on the opposite side of the market.

56. In many instances, Avalon first entered one-lot orders electronically on several options exchanges, which typically had the effect of changing the NBBO, and of attracting other market participants.

57. The one-lot orders entered by Avalon created a false, misleading or artificial appearance in the price of the options, and would usually be cancelled before execution. After cancelling the orders, Avalon would enter larger orders on the opposite side of the market.

Trading in "FFFF" Options (Spoofing)

58. As an example of Avalon's spoofing activity, on February 26, 2014, at 12:24:04, Avalon entered 18 separate buy orders, each for one contract, across six FFFF options series, as follows:

Options Info	Order Price	NYSE MKT Order Size	CBOE Order Size	ISE Order Size	Feb 28 2014/103 calls		Mar 7 2014/102 calls		Mar 7 2014/103 calls		Mar 28 2014/103 calls		Mar 28 2014/104 calls		Mar 28 2014/105 calls	
					NBB	NBO	NBB	NBO	NBB	NBO	NBB	NBO	NBB	NBO	NBB	NBO
NBBO at 12:24:02					1.55	1.90	2.85	3.20	2.10	2.40	3.30	3.60	2.75	3.00	2.20	2.45
Feb 28 2014/103 calls	1.70	1	1	1	1.70	1.90										
Mar 7 2014/102 calls	3.00	1	1	1			3.00	3.20								
Mar 7 2014/103 calls	2.20	1	1	1					2.20	2.40						
Mar 28 2014/103 calls	3.40	1	1	1							3.40	3.60				
Mar 28 2014/104 calls	2.80	1	1	1									2.80	3.00		
Mar 28 2014/105 calls	2.25	1	1	1											2.25	2.45

59. In summary, at 12:24:04, Avalon entered 18 buy-side orders, each for one call contract across six options series and across three exchanges. Each of these orders raised the NBB in an amount ranging from $0.05 to $0.15. For example, after Avalon entered the three one-lot orders to buy the Feb 28 103 calls, the NBB of those options increased from $1.55 to $1.70.

60. Next, at 12:24:06, only two seconds after Avalon entered the orders, all 18 were cancelled.

61. Then, at 12:24:15, nine seconds after cancelling its buy-side orders, Avalon executed orders in which it sold a total of 986 option contracts across ten FFFF call option series, six of which were in the same series as the cancelled one-lot orders, as follows:

Option Contract	# of Contracts Executed	Execution Price
Feb 28 2014/103 calls	122	1.70
Mar 7 2014/102 calls	7	2.95
Mar 7 2014/103 calls	12	2.20
Mar 7 2014/ 104 calls	52	1.60
Mar 14 2014/ 102 calls	97	3.30
Mar 14 2014/ 103 calls	409	2.60
Mar 22 2014/ 105 calls	44	1.90
Mar 28 2014/103 calls	41	3.40
Mar 28 2014/104 calls	117	2.801
Mar 28 2014/105 calls	85	2.289

62. The options transactions effected in paragraph 61 included approximately 347 contracts executed on NYSE MKT.

63. Thus, when Avalon entered the orders to sell the FFFF call contracts, it was able to do so at an advantageous price, benefiting from the increase in the NBB from the entry of the one-lot buy orders. Although Avalon had cancelled its one-lot buy orders, market participants who joined in the new NBBO did not cancel their orders, enabling Avalon to benefit from the increased NBB. In the example of the Feb 28 103 calls, Avalon sold 122 contracts at $1.70, $0.15 higher than the NBB before Avalon entered the one-lot buy-side orders.

Manipulative Intent of Avalon

64. The nature of the cross-product and spoofing activity, and the frequency with which it occurred, and the lack of a legitimate economic purpose for such activity, shows manipulative intent by Avalon.

65. Avalon's website, as of March 2013, indicated Avalon's intent to permit its traders to engage in illict trading by implying that it was a safe haven for traders wishing to do so, 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."[12]

66. 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."

67. 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.

[12] http://www.avalonfaltd.com captured on the English version of the website 2013.03.21. The statement appears in the Professional Compliance section of the web page.

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

LSCI and Lek Provided Substantial Assistance

69. During the Options Market Review Period, both LSCI and Lek provided substantial assistance to Avalon's traders in furtherance of their manipulative activities by providing Avalon access to U.S. markets and permitting them to use an LSCI MPID to transmit orders to NYSE MKT and other exchanges.

70. LSCI and Lek further provided Avalon with 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 for Avalon. By providing such market access, office space, personnel, equipment and services, LSCI and Lek provided substantial assistance to Avalon traders in furtherance of their manipulative trading activity.

71. For more than two years after the start of the Options Market Review Period, LSCI and Lek continued to enable Avalon to trade directly on NYSE MKT and other exchanges despite numerous red flags that had specifically identified Avalon as having engaged in manipulative trading.

LSCI and Lek Acted With Scienter

LSCI and Lek Were Aware that Cross-Product Manipulation and Spoofing Constituted Manipulation

72. On September 13, 2010 – prior to the Avalon account being opened at LSCI – FINRA announced in a press release that it had censured and fined Trillium Brokerage Services, LLC ("Trillium") for engaging in an illicit high-frequency 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."[13]

73. 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 regulatory concern over cross-product trading strategies:

> 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…**FINRA also is concerned with abusive cross-product HFT strategies and other algorithms where stock transactions are effected to impact options prices and vice versa.** [emphasis added].

[13] 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").

74. 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 a 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.[14]

75. On September 25, 2012, Lek received notice of an SEC press release concerning 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 related FINRA announcement expressly defined both "spoofing" and "layering" as forms of manipulation.[15]

76. Subsequent communications from various exchanges provided further notice that layering constituted illegal manipulation and was, potentially, occurring at LSCI. For example, in

[14] 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."

[15] The press release stated:

> Generally, spoofing is a form of market manipulation which involves placing certain non-*bona fide* order(s), usually inside the existing National Best Bid or Offer (NBBO), with the intention of triggering another market participant(s) to join or improve the NBBO, followed by canceling the non-*bona fide* order, and entering an order on the opposite side of the market. Layering involves the placement of multiple, non-*bona fide*, limit orders on one side of the market at various price levels at or away from the NBBO to create the appearance of a change in the levels of supply and demand, thereby artificially moving the price of the security. An order is then executed on the opposite side of the market at the artificially created price, and the non-*bona fide* orders are immediately canceled.

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").

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.16 Finally, 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 Knew that FINRA Suspected Potential Cross-Product Manipulation Trading in the Avalon Account

77. Industry-wide notices and discussions between Lek and FINRA Staff put Lek and LSCI on notice that trading in the Avalon account potentially constituted cross-product manipulation, and posed regulatory and compliance risks. For example, FINRA's 2012 Annual Regulatory and Examination Priorities Letter (Jan. 31, 2012) set forth FINRA's concern with abusive cross-product high frequency trading strategies where stock transactions are effected to impact options prices.

78. FINRA Staff first discussed trading in the Avalon account with Lek on or about August 20, 2012, when they requested that he review the trading to determine whether it was manipulative.

79. Staff had follow-up discussions with Lek about the trading activity on or about November 27, 2012 and January 10, 2013, in which Staff articulated their concerns to the Firm that the trading by Avalon was potentially manipulative.

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

80. On multiple occasions in response to regulatory inquiries to LSCI about the trading, LSCI identified Avalon as the responsible customer.

81. Regulatory discussions with Lek, and inquiries that were sent to the Firm, put both Lek and LSCI on notice of the suspicious trading activity. Thus, Lek and LSCI knew that cross-product manipulative trading was suspected to be occurring in the Avalon account.

82. The manipulative trading activity by Avalon continued unabated despite LSCI's receipt of various regulatory inquiries that identified such activity as potentially violative.

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

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

84. 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.

85. 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.

86. 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 its 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.

87. 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.

88. 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.

89. Finally, on August 20, 2013, the Executive Vice President of FINRA Market Regulation, on behalf of FINRA and eight client exchanges, 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.]

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

90. 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" doesn't like it; and that they had a compliance team that would defend and promote such trading.

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

92. 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 Required Avalon to Pay the Firm's Legal Fees

93. 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.”

94. 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.

95. 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.

96. Thus, LSCI and Lek were aware that cross-product manipulation and spoofing constituted manipulation, that FINRA suspected such was occurring in the Avalon account and that the firm had a reputation for permitting such, while at the same time they disregarded red flags and regulatory inquiries that should have prompted further inquiry. Further, they required Avalon to pay the firm’s legal fees incurred as a result of such regulatory inquiries. Together, these facts indicate that LSCI and Lek acted knowingly or with extreme recklessness toward the trading activity occurring in the Avalon account.

97. In sum, because LSCI and Lek knowingly, or with extreme recklessness, rendered substantial assistance to Avalon in connection with its manipulative trading activity, LSCI and Lek aided and abetted the manipulation.

Avalon Acted as an Unregistered Broker-Dealer

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

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

100. 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.

101. 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.

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

103. 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.

104. 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 of this Complaint.

105. 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.

106. 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.

107. 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.

108. 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.

109. The Russian version touted a 1:20 buying power, *i.e.*, a margin requirement of only 5%, compared to 25% under FINRA rules,[17] and commissions as low as .00224 USD per share for Avalon Fund.

110. 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 Gmail account.

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

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

112. 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.

113. 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.

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

115. 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.

116. 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

117. 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.

118. 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

119. Because LSCI employees managed virtually all aspects of the Avalon account, 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.

120. 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."

121. 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.

122. 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

123. 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.

124. 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).

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

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

127. 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.

128. 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.

129. 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.

130. 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.

131. 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.

132. 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.

133. 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."

134. 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

135. NYSE MKT requires its member 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 and regulations, as well as applicable Exchange rules. Each member is further required to designate a partner, principal executive officer, or trustee to assume overall authority and responsibility for internal supervision and control of the organization and compliance with securities laws and regulations, as well as Exchange rules.[18] In order to accomplish such supervisory requirements, a member's WSPs must be tailored to supervise the types of business in which it engages.

136. 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.

137. 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

[18] NYSE MKT Rules 320 "Offices – Approval, Supervision and Control," NYSE MKT Rule 342 "Equities. Compliance Supervisors," and NYSE MKT Rule 3110 "Equities. Supervision" (effective Dec. 1, 2014).

customers, including but not limited to layering, spoofing, and cross-product manipulation. In addition, the Firm's WSPs did not provide for monitoring the use of, and payments to, putative foreign finders.

138. 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 and spoofing prior to February 1, 2013.

139. 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.

140. Further, the Firm had no controls specific to layering and spoofing 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.

141. 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.

142. 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

143. 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.

144. 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.

145. 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.

146. 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.

147. 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 CRD.

(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 emails 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 its WSPs

148. 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.

149. 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 prohibit the use of personal email accounts.

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

150. Under NYSE MKT Rules,[19] a 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, as well as Exchange rules. Further, a member is required to review the activities of each of its offices, including review of transactions and customer accounts.

[19] NYSE MKT Rules 320, 342 and 3110 (effective Dec. 1, 2014).

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

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

153. 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 was reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable rules of the Exchange.

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

154. 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.'"[20]

155. 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.[21]

[20] 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).

[21] 17 C.F.R. § 240.15c3-5(b).

156. 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.[22]

157. LSCI was required to comply with the Market Access Rule as of July 14, 2011.[23]

158. 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, spoofing, cross-product and other manipulative trading activity by its market access customers, including trading in 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.

159. 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.

160. 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

[22] *See* 17 C.F.R. § 240.15c3-5(c)-(d).

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

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.

161. 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.

162. 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.

163. 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.

164. 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.

165. For example, the Firm's WSP section 12.13.3.4 on "Market Manipulation," dated both February 2012 and September 2013, and in effect during the Options Market Review Period, merely identified the prohibition of a purchase or sale "designed to raise or lower the price of a security or to give the appearance of trading for purposes of inducing others to buy and sell." The only examples of such prohibited manipulative activities explicitly referenced were marking the close or open, prearranged trading, painting the tape, and wash sales.[24] WSP section 9.8.4 further states: "[p]atterns of orders that are potentially manipulative (i.e., orders at the close) are to be reviewed by the supervisor for corrective action."

166. Further, despite the previously referenced regulatory inquiries, the Firm's WSPs continued to lack provisions regarding surveillance for potential cross-product manipulation and the Firm continued to lack an electronic surveillance program to detect potential cross-product manipulation. Thus, neither LSCI nor Lek took reasonable action to prevent and detect instances of cross-product manipulation.

167. The Firm's system to detect layering and spoofing was limited to a comparison of the number of orders placed on one side of the market relative to the other side of the market. If

[24] In subsequent versions of the WSPs, dated December 22, 2014 and later, this section had been renumbered, and added the examples of matched trades, and "[c]irculating, or causing to be published any communication that purports to report any transaction as a purchase or sale of any security unless the trader believes that the transaction was a bona fide purchase or sale of the security."

the difference between the numbers exceeded a pre-set threshold, the order causing the threshold to be exceeded would not go through.

168. The Firm's system was not designed, however, to detect instances of spoofing and layering where the initial order was cancelled prior to entering an order on the opposite side of the market. Thus, the Firm's system failed to provide effective supervision.

169. 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 cross-product manipulation and spoofing.

LSCI Failed to Use Diligence as to the Avalon Account

170. NYSE MKT members are required to use due diligence to learn the essential facts relative to every customer and to every order or account accepted.[25]

171. 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.

172. 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

[25] NYSE MKT Rule 411 "Duty to Know and Approve Customers."

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.

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

174. 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.

175. Despite the available 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.

176. 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.

177. 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

178. NYSE MKT members are required to make and preserve books and records as the Exchange and Exchange Act may prescribe and that appropriate records be maintained evidencing

the carrying out of supervisory responsibilities.[26] Further, "[r]eviews of correspondence and internal communications must be conducted by a registered principal and must be evidenced in writing, either electronically or on paper."[27]

179. Section 2.16 of the Firm's WSPs provides that communications with customers were "permitted only through company-sponsored or alternative approved facilities" but failed 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.

180. 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.

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

182. Similarly, SVP turned over approximately 11,188 emails sent to or from her personal email account(s) that were 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.

[26] NYSE MKT Rule 440 "Equities. Books and Records" and NYSE MKT Rule 320, Commentary .06.

[27] NYSE MKT Rule 3110(b)(4).

183. 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 review those communications in accordance with applicable regulatory rules and Firm procedures.

LSCI Failed to Maintain and Supervise CRD Records

184. NYSE MKT 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.[28]

185. LSCI's employee profiles on 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.

186. Further, there were errors in the Forms U-4. Pustelnik's address on his form was incorrect and AL's form did not include any alternative spellings of his name, of which there were many. Finally, the Forms U-4 for both Pustelnik and AL did not indicate they were independent

[28] NYSE MKT Rule 341 "Approval of Registered Employees and Officers" and NYSE MKT Rule 345 "Equities. Employees – Registration, Approval, Records."

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].

187. 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.

188. 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

189. NYSE MKT Rules prohibit registered persons from any outside employment without prior written notice to, and consent from, the member.[29] LSCI's WSPs contained provisions for ensuring 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.

[29] NYSE MKT Rule 342 and NYSE MKT Rule 3270 "Equities. Outside Business Activities of Registered Persons." (Adopted March 28, 2011).

190. 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.

191. 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

192. NYSE MKT Rules required members to fully and timely comply with the Staff's requests for information in connection with its investigations to include, among other things, the Staff's requests to the Firm to provide electronic communications and other documents and information in writing.[30]

193. 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

[30] NYSE MKT Rule 31 "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 MKT pursuant to a Regulatory Service Agreement effective June 14, 2010. See also NYSE MKT Rule 476(a) "Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Principal Executives, Approved Persons, Employees, or Others."

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.

194. 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.

195. 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 in Options Trading Prohibited Under Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder and Section 9(a)(2) of the Exchange Act (Violation of NYSE MKT Rules 16)
(LSCI and Lek)

196. Market Regulation realleges and incorporates by reference all preceding paragraphs.

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

198. 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 of 1934 and Rule 10b-5 thereunder.

199. 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.

200. As set forth above, during the relevant period 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 the 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 MKT Rule 16.[31]

SECOND CAUSE OF ACTION
Aiding and Abetting the Operation of an Unregistered Broker-Dealer Prohibited Under Section 15(a)(1) of the Exchange Act
(Violation of NYSE MKT Rules 16 and 2010)
(LSCI)

201. Market Regulation realleges and incorporates by reference all preceding paragraphs.

202. 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).

[31] NYSE MKT Rule 16 "Business Conduct" requires adherence to principles of good business practice in the conduct of business affairs.

203. 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) of the Exchange Act.

204. Respondent LSCI knowingly or recklessly rendered substantial assistance to Avalon in connection with its operation as an unregistered broker-dealer during the relevant period. In so doing, LSCI aided and abetted the violations and thereby violated NYSE MKT Rules 16 and 2010.

THIRD CAUSE OF ACTION
Failure to Establish, Maintain, and Enforce Written Supervisory Procedures
(Violations of NYSE MKT Rules 16, 320, 2010 and 3110)
(LSCI and Lek)

205. Market Regulation realleges and incorporates by reference all preceding paragraphs

206. NYSE MKT Rule 320 requires each member to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NYSE MKT Equity and Option Markets.

207. As of December 1, 2014, NYSE MKT Rule 3110(b) imposed the same requirements.

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

209. 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.

210. 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.

211. 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.

212. In so doing, LSCI and Lek violated NYSE MKT Rules 16, 320, 2010 and 3110(b).

FOURTH CAUSE OF ACTION
Failure to Establish and Maintain a Reasonable Supervisory System
(Violations of NYSE MKT Rules 16, 320, 2010 and 3110)
(LSCI and Lek)

213. Market Regulation realleges and incorporates by reference all preceding paragraphs.

214. NYSE MKT Rule 320 requires each member firm to establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and NYSE MKT regulations.

215. As of December 1, 2014, NYSE MKT Rule 3110(a) imposed the same requirement.

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

217. 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.

218. In so doing, LSCI and Lek violated NYSE MKT Rules 16, 320, 2010 and 3110(a).

FIFTH CAUSE OF ACTION
Market Access Rule Violations
(Willful Violations of Section 15(c)(3) of Exchange Act and Rule 15c3-5 Thereunder, and Violations of NYSE MKT Rules 16, 320, 342, 2010 and 3110 (LSCI); Violation of NYSE MKT Rules 16 and 2010 (Lek))

219. Market Regulation realleges and incorporates by reference all preceding paragraphs.

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

221. 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.

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

223. 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.

224. 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.

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

226. That the manipulative trading activity continued throughout the review period notwithstanding all of the above demonstrates the inadequacies of such controls and procedures.

227. 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 (for misconduct beginning July 14, 2011), and violated NYSE MKT Rules 16, 320, 342, 2010 and 3110.

228. 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.

229. 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, cross-product manipulation 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 MKT Rules 16 and 2010.

SIXTH CAUSE OF ACTION
Failure to Use Due Diligence as to Accounts
(Violations of NYSE MKT Rules 16, 411 and 2010)
(LSCI)

230. Market Regulation realleges and incorporates by reference all preceding paragraphs.

231. NYSE MKT Rule 411 required LSCI, as a NYSE MKT member, to use reasonable 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.

232. During the relevant period, LSCI failed to know its customer, Avalon, by failing to use reasonable 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 structure and the terms of its operation, both in the course of on-boarding Avalon and in the maintenance of its account.

233. In so doing, LSCI violated NYSE MKT Rules 16, 411 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 MKT Rules 16, 440 and 2010)
(LSCI)

234. Market Regulation realleges and incorporates by reference all preceding paragraphs.

235. During the relevant period, NYSE MKT Rule 440 required that members make and preserve books and records as the Exchange may prescribe and as prescribed by Exchange Act Rules 17a-3 and 17a-4.

236. Under Exchange Act Rule 17a-4, every member subject to Rule 17a-3 is required to preserve originals of all communications sent (and any approvals thereof) by the member, broker or dealer (including inter-office memoranda and communications) relating to its business for a period of not less than three years.

237. During the relevant period LSCI employees and independent contractors were using non-firm, *i.e.*, personal, email accounts relating to 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.

238. 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(b)(4) thereunder, and also violated NYSE MKT Rules 16, 440 and 2010.

EIGHTH CAUSE OF ACTION
Failure to Supervise and Review Electronic Communications
(Violations of NYSE MKT Rules 16, 320, 342, 2010 and 3110)
(LSCI)

239. Market Regulation realleges and incorporates by reference all preceding paragraphs.

240. NYSE MKT Rule 320 requires that members establish, maintain enforce and keep current a system of supervisory controls reasonably designed to achieve compliance with applicable securities laws and regulations and Exchange rules, to include WSPs, and that "[a]ppropriate records should be maintained evidencing the carrying out of supervisory responsibilities."[32] NYSE MKT Rule 3110(b)(4)[33] also requires that "[r]eviews of correspondence and internal communications must be conducted by a registered principal and must be evidenced in writing, either electronically or on paper."

241. 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.

242. Further, FINRA Staff review of the electronic communications provided by LSCI revealed that its 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.

[32] Commentary .06.

[33] Effective Dec. 1, 2014.

243. In so doing, LSCI failed to adequately supervise its employees' electronic communications as certain business-related emails were outside its purview, in violation of NYSE MKT Rules 16, 320, 2010 and 3110.

NINTH CAUSE OF ACTION
Failure to Maintain Accurate CRD Information
(Violations of NYSE MKT Rules 16, 341, 440, 2010)
(LSCI)

244. Market Regulation realleges and incorporates by reference all preceding paragraphs.

245. NYSE MKT Rule 341[34] requires registration of representatives by the member electronically filing a Form U-4 with FINRA's CRD. NYSE MKT Rule 440 provides that members make and preserve books and records as prescribed by Exchange Act Rules 17a-3 and 17a-4.

246. 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 Form U-4s in CRD for each.

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

248. In so doing, 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 MKT Rules 16, 341, 440, and 2010.

[34] NYSE MKT Rule 341 "Approval of Registered Employees and Officers" requires registered representatives to be registered with, qualified by, and approved by the Exchange. Commentary .02 requires that the employer must electronically file an application on a Form U-4 and any amendment thereto with FINRA's CRD.

TENTH CAUSE OF ACTION
Failure to Supervise to Ensure Accurate CRD Information
(Violations of NYSE MKT Rules 16, 320, 2010 and 3110)
(LSCI)

249. Market Regulation realleges and incorporates by reference all preceding paragraphs.

250. Pursuant to NYSE MKT Rules 320 and 3110, member firms must identify a registered principal(s) or corporate officer(s) responsible for supervising CRD registration functions and ensure the accuracy of the information being submitted. No such person was identified.

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

252. 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 MKT Rules 16, 320, 2010 and 3110.

ELEVENTH CAUSE OF ACTION
Supervisory Violations Concerning Outside Business Activities
(Violations of NYSE MKT Rules 16, 320, 2010 and 3110)
(LSCI)

253. Market Regulation realleges and incorporates by reference all preceding paragraphs.

254. NYSE MKT Rules 342 and 3270[35] state that no employee of a member may be engaged in any other business or be an employee or compensated by any other person, or serve as an officer, director, partner, or employee of another business organization outside the scope

[35] NYSE MKT Rule 3270 was adopted on March 28, 2011.

of the relationship with his or her member firm, unless he or she has provided prior written notice to the member, in such form as specified by the member.

255. While LSCI's WSPs addressed outside business activity certifications, the Firm failed to distribute the 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.

256. In so doing, LSCI failed to enforce its WSPs regarding outside business activities in violation of NYSE MKT Rules 16, 320, 2010 and 3110.

TWELFTH CAUSE OF ACTION
Improperly Paying Transaction-Based Compensation to an Unregistered Person
(Violations of NYSE MKT Rules 16, 341, 353, and 2010)
(LSCI)

257. Market Regulation realleges and incorporates by reference all the preceding paragraphs.

258. NYSE MKT Rule 353[36] and NYSE MKT Rule 341 require all persons engaged in the securities business of a member, who function as representatives, to be registered.

259. During the relevant period, by paying transaction-related compensation to an unregistered person, namely, Pustelnik, when he was not eligible for foreign finder status because he was a U.S. citizen and should have been duly registered with his FINRA-employer firm, LSCI violated NYSE MKT Rules 16, 341, 353, and 2010.

[36] NYSE MKT Rule 353 "Amex Trading Permit Requirements."

THIRTEENTH CAUSE OF ACTION
Failure to Comply Fully and Timely With Information Requests
(Violations of NYSE MKT Rules 16, 31, 2010 and 8210)
(LSCI)

260. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

261. NYSE MKT Rule 31 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."

262. FINRA brings this action on behalf of NYSE MKT pursuant to a Regulatory Service Agreement effective June 14, 2010.

263. 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.

264. In so doing, LSCI impeded the ability of FINRA, NYSE MKT and other exchanges to investigate the serious misconduct at issue, thereby violating NYSE MKT Rules 16, 31, 2010 and 8210.

FOURTEENTH CAUSE OF ACTION
Failure to Comply with Standards of Commercial Honor and Principles of Trade
(Violations of NYSE MKT Rules 16 and 2010)
(LSCI and Lek)

265. Market Regulation re-alleges and incorporates by reference all preceding paragraphs.

266. NYSE MKT Rules 16 and 2010 require that a member adherence to principles of good business practice in the conduct of its business and observe high standards of commercial honor and just and equitable principles of trade.

267. By engaging in the conduct described in the paragraphs above, LSCI and Lek failed to observe high standards of commercial honor and just and equitable principles of trade, in violation of NYSE MKT Rules 16 and 2010.

RELIEF REQUESTED

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

A. Make findings of facts and conclusions of law that Respondents committed the violations charged and alleged herein, and therefore, subject to discipline pursuant to NYSE MKT Rules 8310;

B. order that one or more of the sanctions provided under NYSE MKT Rule 8310 be imposed, including that the Respondents be required to disgorge fully any and all ill-gotten gains, together with interest;

C. order that Respondents bear such costs of proceeding as are deemed fair and appropriate under the circumstances in accordance with NYSE MKT Rule 8330;

D. make specific findings that LSCI willfully violated Sections 15(c)(3) and 17(a) of the Exchange Act and Rules 15c3-5 and 17a-4 thereunder; and grant all further relief, legal or equitable, that is warranted under the circumstances; and

E. grant all further relief, legal or equitable, that is warranted under the circumstances.

FINRA DEPARTMENT OF MARKET REGULATION

On Behalf of NYSE Regulation

Date: 3/27/17

Robert A. Marchman, Executive Vice President
James J. Nixon, Chief Litigation Counsel
Eric S. Brown, Chief Counsel
Justin Chretien, Chief Counsel
Dawn E. Faris, Senior Counsel
Gary E. Jackson, Senior Counsel
Hollie Mason, Senior Counsel
Steven Tanner, Senior Counsel
John Warshawsky, Senior Counsel
9509 Key West Avenue
Rockville, Maryland 20850-3329
240-386-5061
justin.chretien@finra.org
marketreglitigation@finra.org