UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19798

In the Matter of

SERGEY PUSTELNIK a/k/a
SERGE PUSTELNIK,

Respondent.

DIVISION OF ENFORCEMENT'S
MOTION FOR SUMMARY DISPOSITION

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I. INTRODUCTION

Pursuant to Rule 250 of the Securities and Exchange Commission's Rules of Practice, the Division of Enforcement ("Division") respectfully moves for summary disposition against Respondent Sergey Pustelnik ("Respondent" or "Pustelnik") and for entry of an order (1) barring him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and (2) barring him from participating in the offering of any penny stock.

Pustelnik was a registered representative associated with Lek Securities Corporation ("Lek Securities"). Pustelnik was also an undisclosed control person of Avalon FA Ltd ("Avalon"), a foreign trading firm based in Kiev, Ukraine, and customer of Lek Securities. In November 2019, following a three-week trial, a federal jury found that Pustelnik had violated, and aided and abetted the violation of, several anti-fraud and anti-manipulation provisions of the Securities Exchange Act of 1934 ("Exchange Act") and Securities Act of 1933 ("Securities Act"). In April 2020, the U.S. District Court for the Southern District of New York entered a final judgment permanently enjoining Respondent from violating those provisions of the federal securities laws, and ordering other relief. The district court amended the final judgment in February 2021, once again enjoining Respondent from violating the same provisions of the federal securities laws, and ordering him to pay civil money penalties of $7.5 million.

There is no genuine issue with respect to any fact that is material to this proceeding. Respondent, a former registered representative, has been permanently enjoined from violating the securities laws. Respondent's injunctions were the result of his participation in two egregious market manipulation schemes that he executed with a high-level of scienter over a period of more

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than five years. To this date, Respondent refuses to recognize the wrongfulness of his behavior and has failed to provide assurances against future misconduct. Respondent abused his position in the securities industry and is not fit to be associated with securities industry-related entities.

II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND

a. The District Court Litigation

In March 2017, the SEC filed *SEC v. Lek Securities Corp., et al*, Civil Action No. 17-cv-1789 (S.D.N.Y.), alleging that Respondent, acting with others, perpetrated two manipulative trading schemes over a period of more than five years (hereafter "the District Court Litigation"). Ex. 1 (Complaint).[1] On November 12, 2019, following a three-week jury trial, a jury unanimously found Respondent and co-defendants Avalon and Nathan Fayyer ("Fayyer") liable on all counts against them in the SEC's Complaint. Ex. 2 (Special Verdict Form ("Verdict")).[2] Specifically, the jury found that Respondent directly violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 17(a)(1) and 17(a)(3) of the Securities Act; that he knowingly or recklessly provided substantial assistance to his co-defendants' violations of Sections 9(a)(2) and 10(b) of the Exchange Act, Rule 10b-5 thereunder, and Section 17(a)(1) and (3) of the Securities Act; and that he was further liable for co-defendant Avalon's violations as a control person under Section 20(a) of the Exchange Act. *Id.* at 2-5, 7.

[1] Under Commission Rule of Practice 323, notice may be taken in this proceeding of "any material fact which might be judicially noticed by a district court of the United States . . . ." 17 C.F.R. § 201.323. The Commission therefore may take notice of its own public official records and of the docket reports, pleadings, court orders, and other filings by the parties in the civil action. Accordingly, the Division respectfully requests judicial notice be taken of Exhibits 1 through 11 listed in the Index of Exhibits to this motion and filed herewith.

[2] The SEC's Complaint also charged Lek Securities and its Chief Executive Officer, Samuel Lek ("Sam Lek"), for their role in the manipulative trading schemes. Lek Securities and Sam Lek settled with the Commission shortly before trial, admitting that Avalon's trading activity through Lek Securities violated the securities laws. In connection with the settlement, Sam Lek consented to the entry of associational and penny stock bars against him, with a right to reapply for reentry after 10 years. *See* Exs. 3 (Lek Final Judgment), 4 (Sam Lek Final Judgment), and 5 (Sam Lek Settled OIP).

Based on the Verdict, the district court entered a final judgment on April 14, 2020 ("Final Judgment") and an amended final judgment on February 9, 2021 ("Amended Final Judgment") permanently enjoining Respondent from future violations of Section 17(a) of the Securities Act and Sections 9(a)(2) and 10(b) of the Exchange Act and Rule 10b-5 thereunder. Exs. 6 (Final Judgment) and 7 (Amended Final Judgment).[3]

b. Conduct Underlying The Injunction

At trial, the SEC presented evidence that Respondent, along with co-defendants Fayyer and Avalon, perpetrated two manipulative trading schemes for more than five years, from 2012 through 2016. The manipulative trading schemes were carried out through Avalon, a foreign trading firm with traders mainly based in Asia and Eastern Europe. Ex. 8 (3/20/20 Opinion and Order from District Court Litigation re Remedies, hereafter "Remedies Op.") at 3, 6; Ex. 1 (Compl.) ¶¶ 26, 30. Fayyer was the disclosed principal of Avalon, and Pustelnik was an undisclosed control person of Avalon. Ex. 8 (Remedies Op.) at 3; Ex. 1 (Compl.) ¶¶ 19-21; Ex. 2 (Verdict) at 8. Avalon's manipulative trading was executed and facilitated by Lek Securities, a U.S. broker-dealer. Pustelnik was a registered representative at Lek Securities working on the Avalon account from March 2011 through January 2015, during which a large portion of the manipulative trading occurred. Ex. 9 (Answer) at 2; Ex. 8 (Remedies Op.) at 3. In January 2015, the Financial Industry

[3] The Final Judgment also ordered Respondent to pay civil money penalties of $5 million and held him jointly and severally liable with his co-defendants for $4,495,564 in disgorgement and $131,750 in prejudgment interest. Respondent appealed the Final Judgment to the Court of Appeals for the Second Circuit. The SEC then requested a limited remand from the Second Circuit to the district court to address the impact on the ordered remedies, if any, of the Supreme Court's decision in *Liu v. SEC*, 140 S. Ct. 1936 (2020). On remand, the District Court entered the Amended Final Judgment again enjoining Respondent from violating certain provisions of the securities laws, increasing civil money penalties against Respondent and his co-defendants from $5 million each to $7.5 million each, and eliminating disgorgement and prejudgment interest. Respondent has appealed the Amended Final Judgment to the Second Circuit.

Regulatory Authority ("FINRA") barred Respondent from associating with any FINRA member in any capacity. Ex. 10 (Pustelnik AWC).

The first manipulative trading scheme perpetrated by Respondent and his co-defendants is known as "layering" and involved manipulating the markets of U.S. stocks. Ex. 8 (Remedies Op.) at 5. Layering involves placing multiple orders to buy (or sell) stock, typically at increasing (or decreasing) levels in order to create the false appearance of demand (or supply), without actually intending for those orders to be executed. *Id*; Ex. 11 (3/26/19 Opinion and Order from District Court Litigation denying Lek Securities' Motion for Summary Judgment, hereafter "MSJ Op.") at 2-3. A trader does this to create an artificial appearance of demand (or supply) in order to sell (or buy) on more favorable terms (*e.g.*, at a better price) on the opposite side of the market. Ex. 8 (Remedies Op.) at 5; Ex. 11 (MSJ Op.) at 2-3. The trader then cancels the buy (or sell) orders that were designed to artificially affect prices. Ex. 8 (Remedies Op.) at 5. Avalon's traders engaged in more than 675,000 instances of layering and generated more than $21 million in revenues from that trading. *Id.* at 6.

The second manipulative trading scheme perpetrated by Respondent and his co-defendants is referred to as the "Cross-Market Strategy" and involved trading in stock to influence the prices of corresponding options. Ex. 8 (Remedies Op.) at 5-6; Ex. 11 (MSJ Op.) at 3. In this scheme, the trader would buy (or sell) stock, causing the price of the option to rise (or fall). Ex. 8 (Remedies Op.) at 5-6. The trader would then buy (or sell) the option at the more favorable price he had just created. *Id.* at 6. The trader then reversed his stock position, causing the option price to revert back toward its original price, and unwound his options position to take advantage of the price movement he had created. *Id.* While the trader typically lost money on his stock transaction, those losses were far outweighed by the large profits generated by buying and selling options at the

artificial prices he had created. *Id.* at 6. Avalon engaged in 668 instances of the Cross-Market Strategy and generated more than $8 million in revenue from that trading. *Id.* at 5-6.

Respondent played a central role in carrying out both manipulative schemes and was instrumental to their success. As an undisclosed control person of Avalon, Pustelnik recruited Avalon traders specifically to engage in the manipulative trading and created technological infrastructure to ensure the effectiveness of the strategies. Ex. 8 (Remedies Op.) at 18; *see also* Ex. 1 (Compl.) ¶¶ 54(a), 84. As the registered representative assigned to the Avalon account, Pustelnik facilitated the manipulation from within Lek Securities, assuring others at Lek Securities that Avalon's traders were not engaged in manipulation and encouraging the relaxation of controls designed to detect the violative behavior. Ex. 8 (Remedies Op.) at 18*; see also* Ex. 1 (Compl.) ¶¶ 84(a)-(f), 108-109. During a period when Lek Securities' technology was not adequate to execute the Cross-Market strategy effectively, Pustelnik moved the strategy to another trading firm and provided extensive technological assistance to set up the trading at that other firm. Ex. 1 (Compl.) ¶¶ 110-116.

After consideration of the evidence, the jury found that Avalon had engaged in both layering and the Cross-Market Strategy and that these schemes constituted manipulation of the securities markets. Ex. 2 (Verdict) at 9. The jury further found that Respondent directly violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 17(a)(1) and (3) of the Securities Act, that he "knowingly and recklessly provided substantial assistance" to Fayyer and Avalon in connection with their violations of Sections 9(a) and 10(b) of the Exchange Act and Rule 10b-5 thereunder and Sections 17(a)(1) and (3) of the Securities Act, and that he was a control person of Avalon and thus liable for Avalon's violations of those same provisions. *Id.* at 1-6, 8.

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c. The Follow-On Administrative Proceeding

On May 13, 2020, the Commission issued an order instituting this administrative proceeding ("OIP") against Respondent. The OIP is a follow-on action based on the injunction entered against Respondent in the District Court Litigation. Pustelnik was served with the OIP on May 14, 2020. Thereafter, the Division made documents available to Pustelnik pursuant to Commission Rule of Practice 230(a)(1), and on August 6, 2020, a scheduling order was entered.

Pustelnik answered the OIP on July 28, 2020. In his answer, Pustelnik admitted certain key allegations of the OIP, including: (1) that he was a registered representative associated with Lek Securities between March 2011 and January 2015; (2) that a jury found for the Division on all counts alleged in the Commission's Complaint against him; and (3) that an injunction has been entered against him.

On September 21, 2020, at the request of Respondent, the Commission entered an order suspending this proceeding pending a decision on the Motion to Remand in the District Court Litigation. The Motion to Remand was subsequently resolved in February 2021 with the district court's entry of the Amended Final Judgment. On March 8, 2021, the Division filed a motion with the Commission to amend the OIP to add a reference to the Amended Final Judgment. The Commission granted that motion on March 24, 2021, and further stated that Respondent was not required to file an amended answer and the parties need not conduct an additional prehearing conference, and set a schedule for the current Motion for Summary Disposition.

III. ARGUMENT

a. Summary Disposition Is Appropriate

Rule 250(b) of the SEC's Rules of Practice provides that a motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making

the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b). "The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction." *See Jeffrey L. Gibson*, Exchange Act Release No. 57266 (Feb. 4, 2008), *Gibson v. SEC,* 561 F.3d 548 (6th Cir. 2009) *petition for review denied*.

Section 15(b) of the Exchange Act, as amended by Section 925(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"), provides that the Commission may bar a person from being associated with a "broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock," if the Commission finds, on the record after notice and opportunity for a hearing, that such person was associated at the time of the alleged misconduct, that such a bar "is in the public interest," and that the person is enjoined from certain violations of the federal securities laws, including, for the purposes of this proceeding, violations of the anti-fraud provisions. *See* 15 U.S.C. § 78o(b).

Accordingly, to prevail on this proceeding, the Division must establish that: (i) Pustelnik was associated with a broker dealer at the time of the misconduct; (ii) Pustelnik has been enjoined from violating the federal securities laws; and (ii) it is in the public interest to impose bars against him. There is no dispute that Respondent was associated with Lek Securities for much of the time period of the misconduct and that he has been permanently enjoined from violating the anti-fraud and anti-manipulation provisions of the securities laws. As discussed in more detail below, it is in the public interest to impose full permanent collateral bars on Respondent.

b. Respondent Cannot Relitigate The District Court Litigation

Respondent seeks to relitigate the facts at issue in the District Court Litigation, including the jury's findings that he was a control person of Avalon and that the layering and cross-market schemes were manipulative. Ex. 9 (Answer) at 2, 4-8. But the Commission "has repeatedly held that a respondent in a follow-on proceeding may not challenge the findings made by the court in the underlying proceeding." *In re Phillip J. Milligan*, Exchange Act Rel. No. 61790, at 6-7 (Mar. 26, 2010) (Comm. Op.); *see also In re James E. Franklin*, Exchange Act Rel. No. 56649 (Oct. 12, 2007) (Comm. Op.), at 6 ("doctrine of collateral estoppel precludes the Commission from reconsidering the injunction as well as factual and procedural issues that were actually litigated and necessary to the court's decision to issue the injunction."); *Peter J. Eichler, Jr.*, Init. Dec. Rel. No. 1032, at 2 (July 8, 2016) ("It is well established that the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent, whether resolved by summary judgment, consent, or after a trial.") (collecting cases). Findings in the District Court Litigation can only be challenged through the appellate process. *Franklin*, Exchange Act Rel. No. 56649, at 6.[4]

Because no genuine issue of fact exists as to Respondent's association with a broker or dealer and as to the injunction issued against him, the only consideration is the appropriate sanction that should be imposed against Respondent. Violations of the anti-fraud provisions of the federal securities laws merit the severest of sanctions under the securities laws. *See In re Edward Tamimi*, Sec. Exch. Act Rel. No. 63605 (Dec. 23, 2010). "[O]rdinarily, and in the absence of evidence to

[4] The Respondent is appealing the decision in the District Court Litigation. The pending appeal does not warrant relief or delay from a finding in a follow-on proceeding. *See Milligan,* Exchange Act Rel. No. 61790, n. 14; *see also* Division's Opposition to Respondent's Motion to Adjourn. If the injunction entered by the district court were overturned on appeal, the appropriate course of action would be to seek to vacate any order based on that injunction in the administrative proceeding. *Id.*

the contrary, it will be in the public interest to revoke the registration of, or suspend or bar from participation in the securities industry, or prohibit from participation in an offering of penny stock, a respondent who is enjoined from violating the antifraud provisions." *In re Marshall E. Melton*, 80 SEC Docket 2258, 2003 WL 21729839, *9 (July 25, 2013).

c. Respondent Should Be Permanently Barred from the Securities Industry

In determining what remedial actions are appropriate in the public interest, the Commission should consider:

1. the egregiousness of the respondent's actions;
2. the isolated or recurrent nature of the infraction;
3. the degree of scienter involved;
4. the sincerity of the respondent's assurances against future violations;
5. the respondent's recognition of the wrongful nature of his conduct; and
6. the likelihood that the respondent's occupation will present opportunities for future violations.

See Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff'd on other grounds*, *Steadman v. SEC,* 450 U.S. 91 (1981); *see also Milligan*, Exchange Act Rel. No. 61790, at 8. The facts and circumstances here strongly weigh in favor of finding that it is in the public interest to enter permanent collateral bars against Respondent.[5]

[5] In holding that third-tier penalties were appropriate against Respondent and his co-defendants in the District Court Litigation, the Court found that their conduct was egregious, they acted intentionally with scienter, their conduct resulted in substantial losses to other market participants, and their conduct was recurrent. Ex. 8 (Remedies Op.) at 18-20. Such findings of the district court should be considered in determining the appropriate sanctions. *See Milligan*, Exchange Act Rel. No. 61790, at 8 ("The district court's numerous detailed findings with respect to factors similar to the Steadman factors inform our consideration of the public interest.").

i. Respondent's Actions Were Egregious

Respondent, along with his co-defendants, "engaged in market manipulation on a massive scale." Ex. 8 (Remedies Op.), at 18. Respondent perpetrated two distinct schemes intended to manipulate the securities markets: layering and the Cross-Market Strategy. *Id.* at 12. The schemes were complex, involved hundreds of thousands of instances of manipulative trading, and were carried out over a period of many years. *See id.* at 6, 12-13, 18. The manipulative schemes that Respondent orchestrated resulted in more than 675,000 instances of layering and 668 instances of Cross-Market trading. *Id.* at 6-7. In total, the schemes generated more than $29 million in revenue, of which Respondent and his co-defendants retained approximately $4.5 million. *Id.* As the district court observed, Respondent's and his co-defendants' "malfeasance resulted in substantial losses to other market participants who traded at unfavorable prices due to the manipulative practices." *Id.* at 20.

The egregiousness of Respondent's conduct is also evident from the expansive and varied roles that he played in executing both schemes. Respondent recruited and organized traders to engage in layering. Ex. 8 (Remedies Op.). at 18; *see also* Ex. 1 (Compl.) ¶¶ 81-82. He established himself as the inside man at Lek Securities to oversee the Avalon account through which the layering was conducted, and assured Lek Securities that Avalon's traders were not engaged in layering. Ex. 8 (Remedies Op.) at 3, 19; *see also* Ex. 1 (Compl.) ¶¶ 84(a)-(f). Respondent was instrumental in setting up technology to assist in the manipulation, and he assisted traders in circumventing controls that the broker-dealer put into place to stop layering. Ex. 8 (Remedies Op.) at 18; *see also* Ex. 1 (Compl.) ¶¶ 84, 105-107. In short, Respondent and his co-defendants were not "bit players in the schemes," but rather "coordinated nearly every facet of the plan to manipulate the market." Ex. 8 (Remedies Op.) at 18.

The egregiousness of Respondent's actions are also evident in his attempts to conceal and misrepresent the extent of his involvement in the manipulation. Respondent's duplicity began during his tenure at Lek Securities, when he concealed his role in Avalon from his employer, and "assured Lek that [Avalon's traders] were not engaging in layering, even while recruiting traders to do just that." *Id.* at 18-19. Respondent's efforts to conceal his wrongdoing continued through the SEC investigation and ensuing litigation. After observing Respondent's testimony and reviewing the evidence, the district court explicitly found that "Pustelnik gave false testimony under oath during the SEC investigation and at trial." *Id.* at 19. Respondent continues to repeat falsities in his Answer in the current proceeding, arguing that he was never a control person of Avalon and deflecting blame for any manipulative trading to Lek Securities. Ex. 9 (Answer) at 2, 6-7. The evidence is "more than sufficient to demonstrate that [Respondent's] conduct was egregious." Ex. 8 (Remedies Op.) at 18.

ii. Respondent's Conduct was Recurring and Widespread

Respondent's conduct was not isolated, but continued for a period of many years. "The evidence adduced at trial demonstrated [Respondent and his co-defendant's] widespread and longstanding use of layering and the Cross-Market Strategy." Ex. 8 (Remedies Op.), at 6. The schemes that Respondent perpetrated resulted in more than 675,000 instances of layering and 668 instances of Cross-Market trading and, in total, generated more than $29 million in revenue. *Id.* at 6-7. Each instance of layering and Cross-Market trading involved the entry of multiple orders and executions to achieve the goal of manipulating the market. *Id.* at 12. The conduct "was not intermittent; it was recurrent behavior meant to cheat the market." *Id.* at 20. The schemes that Respondent engaged in "distorted the market and caused significant losses for other traders." *Id.* at 17.

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iii. Respondent Exercised a High Degree of Scienter

A jury unanimously found that Respondent violated scienter-based anti-fraud provisions of the federal securities laws. Ex. 2 (Verdict). Respondent played an instrumental role in the manipulation and his conduct was intentional. Ex. 8 (Remedies Op.), at 17. Respondent, as an undisclosed control person of Avalon and a registered representative of Lek Securities, had a unique role in ensuring the success of the manipulative schemes. Respondent was aware as early as September 2012 that FINRA was inquiring into Avalon's trades through Lek Securities. *Id.* at 18. Respondent and his co-defendants used this knowledge to help Avalon's traders avoid detection, "assur[ing] Lek that they were not engaging in layering, even while recruiting traders to do just that." *Id.* 18-19.

Respondent's high degree of scienter is further demonstrated by his efforts to conceal the manipulative nature of the trading and his involvement in the schemes throughout the pendency of the SEC investigation and litigation of the underlying matter. Respondent withheld incriminating evidence, falsely represented that he was not a control person of Avalon, and attempted to present the trading as legitimate. *Id.* at 19-20. As the district court observed, "Defendants' specious attempts to excuse their behavior continued at trial, where Fayyer and Pustelnik testified that they thought layering was merely the legal practice of trading on both sides of the market. That contention was transparently wrong and is also belied by Defendants' written statements to their traders." *Id.* at 20.

Respondent's scienter is further demonstrated by the duration and pervasiveness of the manipulative activity. Respondent and his co-defendants continued the schemes for years, and the conduct continued well after regulators had detected and begun investigating the conduct.

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Pustelnik's brazenness in carrying out the scheme and clear disregard, despite his status as a registered person, for the federal securities laws underscores the need for permanent bars.

iv. Respondent Has Made No Assurances Against Future Violations, Has Not Recognized the Wrongful Nature of His Conduct, and Presents a Likelihood for Future Violations

As noted, Respondent continued to minimize and misrepresent the extent of his wrongdoing throughout the SEC's investigation and District Court Litigation. Respondent echoes these sentiments in this proceeding, continuing to deny that he was a control person of Avalon (Ex. 9 (Answer) at 1-2), shifting the blame for the manipulative trading to Lek Securities (*id.* at 3-4, 6-7), and claiming that the trading at issue is not manipulative (*id.* at 6-8). Respondent's failure to recognize and take responsibility for his misconduct demonstrates the importance of permanent collateral bars to prevent Respondent from again engaging in such actions in the future.

Respondent has given no assurances that he will not engage in such behavior in the future.[6] On the contrary, his continued insistence that his activities are legitimate and his disregard for the securities laws make clear that if he is permitted to operate in the securities industry, he presents a real risk of future violations. Exacerbating this concern is the brazenness with which Respondent concealed information and made misrepresentations in the SEC investigation and District Court Litigation.

The relevant factors support a finding that it is in the public interest to impose full collateral bars against Respondent. "The Commission has long held that fraudulent conduct threatens the integrity of the securities markets and is therefore subject to the severest of sanctions under the

[6] Respondent's current activities are largely unknown to the Division. Respondent represents that he "ha[s] not been in the financial industry for over five years." Ex. 9 (Answer) at 17. A recent press release indicates that Respondent is involved in fundraising in the cryptocurrency space. Ex. 12 (Press Release).

securities laws. In fact, 'ordinarily, and in the absence of evidence to the contrary,' a bar from the securities industry will be in the public interest when a respondent has been enjoined from violating antifraud provisions." *In re George Charles Cody Price*, Exchange Act Rel. No. 4631, 2017 WL 405511, *3 (Jan. 30, 2017) (Comm. Op.) (finding that it was in the public interest to impose industry bar against unregistered investment adviser involved in fraudulent scheme); *see also In re Peter J. Eichler,* Init. Dec. Rel. No. 1032 (July 8, 2016), at 8 ("The Commission considers an antifraud injunction to be especially serious and to subject a respondent to the severest of sanctions... Indeed, from 1995 to the present, there have been over thirty-five litigated follow-on proceedings based on antifraud injunctions in which the Commission issued opinions, and all of the respondents were barred ...") (internal citations omitted).[7]

Respondent argues that he should not be subject to full industry and penny stock bars because he was never associated with an investment adviser, municipal securities dealer, transfer agent, or nationally recognized statistical rating organization, and has not engaged in penny stock offerings. Ex. 9 (Answer) at 8-9. But after Dodd-Frank, it is unnecessary to show association

[7] In his Answer, Respondent cites various SEC settlements in an attempt to show that permanent bars are not appropriate. Ex. 9 (Answer) at 9-10. But at least two of those matters involve permanent bars of individuals whose conduct was less egregious than Pustelnik's, both in terms of the role of the individual at issue, the brazenness and extent of the conduct, and the involvement of only one manipulative trading scheme. *See In re Biremis Corp., et al.*, Exchange Act Rel. No. 68456 (Dec. 18, 2012) (permanent bars for two individuals who failed to supervise foreign traders engaged in layering scheme); *In re Visionary Trading LLC, et al.*, Exchange Act Rel. No. 71871 (Apr. 4, 2014) (permanent bar for firm owner engaged in layering scheme; two-year bars for other firm owners and employees who failed to supervise and/or engaged in other misconduct). As to the other layering settlements cited by Pustelnik, the matters involved conduct of a more limited scope and time duration and individuals with more limited roles than Pustelnik had in the fraud at hand here. *See In re Hold Brothers On-Line Investment Services, LLC, et al*, Exchange Act Rel. No. 67924 (Sept. 25, 2012) (settled administrative proceeding involving layering occurring between January 2009 and September 2010 and barring various individuals associated with the scheme for three and two years); *In re Wedbush Securities Inc., et al*, Exchange Act Rel. No. 73654 (Nov. 20, 2014) (settled administrative proceeding involving imposing no bars on compliance personnel involved in failures to implement controls to detect and establish systems to prevent potentially manipulative trading). Moreover, in the context of those settled cases, the respondents were not actively refusing to accept responsibility for their wrongdoing, as Respondent here is doing. In short, the settled matters cited by Respondent do not establish the limits on appropriate relief in this case.

with a specific type of investment entity; rather, "association with a broker, dealer, or investment adviser makes the entire range of collateral bars applicable where it is found to be in the public interest." *In re Omar Ali Rizvi*, Init. Dec. Rel. No. 479, at 9 (Jan. 7, 2013) (imposing full collateral bars where unregistered investment adviser misrepresented material facts in securities offerings). Here, Respondent's long-running fraudulent conduct and blatant disregard for the integrity of the securities markets demonstrates that full collateral bars are necessary to protect the public interest.

The securities industry "relies on the fairness and integrity of all persons associated with each of the professions covered by the collateral bar to forgo opportunities to defraud and abuse other market participants." *John W. Lawton*, Investment Adviser Act Rel. No. 3513, 2012 WL 6208750, at *11. As a registered representative, Pustelnik was a gatekeeper who should have ensured the integrity of the markets by preventing his customers from engaging in manipulative trading. Instead, he abused his position of trust to further the manipulative schemes, and in doing so caused substantial harm to the market. Respondent's conduct was egregious and involved a high degree of scienter. He has shown no remorse for his behavior, nor provided assurances that he will not commit future violations. The facts and circumstances in this case strongly weigh in favor of barring Pustelnik from association with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization and from participating in an offering of penny stock.

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IV. CONCLUSION

For the foregoing reasons, the Division respectfully requests that its motion for summary disposition be granted.[8]

Date: April 23, 2021

/s/ Sarah S. Nilson

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[8] Counsel for the Division certifies that this motion does not exceed 9,800 words as required by the Commission's Rule of Practice 250(e).

OS Received 04/23/2021

Certificate of Service

I certify that on April 23, 2021, I caused to be served the foregoing DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION on the following persons in the manner indicated:

By email per stipulation:
Sergey Pustelnik
Serge.Pustelnik@gmail.com

/s/ Sarah S. Nilson

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19798

In the Matter of

SERGEY PUSTELNIK a/k/a
SERGE PUSTELNIK,

Respondent.

DIVISION OF ENFORCEMENT'S INDEX OF EXHIBITS
TO MOTION FOR SUMMARY DISPOSITION

Exhibit	**Description**
1	Complaint filed in *SEC v. Lek Securities Corp., et al*, Civil Action No. 17-cv-1789 (S.D.N.Y.)
2	Special Verdict Form from *SEC v. Lek Securities Corp., et al*
3	Final Judgment Entered Against Lek Securities in *SEC v. Lek Securities Corp., et al*
4	Final Judgment Entered Against Sam Lek in *SEC v. Lek Securities Corp., et al*
5	Order Instituting Administrative Proceedings Against Sam Lek
6	Final Judgment Entered Against Avalon, Fayyer, and Pustelnik in *SEC v. Lek Securities Corp., et al*
7	Amended Final Judgment Entered Against Avalon, Fayyer, and Pustelnik in *SEC v. Lek Securities Corp., et al*

OS Received 04/23/2021

8	Opinion and Order re Remedies from *SEC v. Lek Securities Corp., et al*
9	Pustelnik's Answer to OIP
10	FINRA Letter of Acceptance, Waiver, and Consent No. 20110297130-03 *In the Matter of Serge Pustelnik*, January 21, 2015
11	Opinion and Order re Motion for Summary Judgment from *SEC v. Lek Securities Corp., et al*
12	Press Release, Immersive Network Partners With BlockChain Mega-Platform Starport To Connect Entertainment and Crypto Communities

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By email per stipulation:
Sergey Pustelnik
Serge.Pustelnik@gmail.com

/s/ Sarah S. Nilson

OS Received 04/23/2021

EXHIBIT 1

JUDGE COTE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

17 CV 1789

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **LEK SECURITIES CORPORATION, SAMUEL LEK, VALI MANAGEMENT PARTNERS dba AVALON FA LTD, NATHAN FAYYER, and SERGEY PUSTELNIK a/k/a SERGE PUSTELNIK,** **Defendants.**	**17-CV-____ (__)** **COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiff Securities and Exchange Commission (the "Commission") files this Complaint against Defendants Lek Securities Corporation ("LEK"), Samuel Lek ("Sam Lek"), Vali Management Partners dba Avalon FA Ltd ("Avalon"), Nathan Fayyer ("Fayyer"), and Sergey Pustelnik a/k/a Serge Pustelnik ("Pustelnik"), and alleges as follows:

SUMMARY

1. This case involves two schemes to manipulate the securities markets perpetrated by Avalon, a foreign trading firm. Fayyer (Avalon's disclosed principal) and Pustelnik (an undisclosed control person of Avalon and a former registered representative at LEK) directly participated in and assisted the manipulative schemes. The schemes were made possible through and with the participation and assistance of LEK, a U.S. broker-dealer based in New York, and Sam Lek, LEK's Chief Executive Officer ("CEO"). LEK and Sam Lek provided Avalon with

access to the U.S. securities markets to execute the schemes, and otherwise assisted in carrying out the schemes.

2. The first manipulative trading scheme, known as "layering," involved manipulating the markets of U.S. stocks. Under this scheme, Avalon placed "non-bona fide orders"—in other words, orders that Avalon did not intend to execute and that had no legitimate economic reason—to buy or sell stock with the intent of injecting false information into the marketplace about supply or demand for the stock. Avalon did this to trick and induce other market participants to execute against Avalon's bona fide orders (*i.e.*, orders that Avalon did intend to execute) for the same stock on the opposite side of the market. By placing the non-bona fide orders, Avalon was able to manipulate the market for the stocks and thereby obtain more favorable prices on the executions of its bona fide orders than otherwise would have been available. Avalon engaged in hundreds of thousands of instances of layering in numerous securities from approximately December 2010 through at least September 2016, and Avalon made millions of dollars in profits from the scheme.

3. The second manipulative trading scheme is referred to herein as the "cross-market manipulation," "cross-market scheme" or "cross-market strategy." In this scheme, Avalon bought and sold U.S. stock at a loss for the purpose of moving the prices of corresponding options, so that Avalon could make a profit by trading those options at artificial prices that they would not have been able to obtain but for the manipulation. Avalon's stock trades had no legitimate economic reason, and were intended to inject into the market false information about supply and demand in order to move the prices of corresponding options to artificial levels. Although the strategy involved taking a loss on the stock transactions, such losses were far outweighed by Avalon's significant profits from trading the corresponding options whose prices

Avalon had manipulated. Avalon engaged in hundreds of instances of cross-market manipulation involving numerous stocks and options from at least August 2012 through at least December 2015, and Avalon made millions of dollars in profits from that scheme.

4. Together, the layering and cross-market manipulation schemes orchestrated by Avalon through LEK generated illicit profits of more than $28 million.

5. Fayyer, as a principal of Avalon, participated in and substantially assisted those schemes, as detailed more fully below.

6. The schemes were made possible through the participation and substantial assistance of LEK and Sam Lek, the majority owner and CEO of LEK, and of Pustelnik, an undisclosed control person of Avalon who also served as a registered representative of LEK for much of the relevant period. LEK, as a registered broker-dealer, provided Avalon with direct access to the U.S. securities markets and, along with Sam Lek as CEO, approved, permitted and facilitated Avalon's schemes even though they knew or were reckless in not knowing that Avalon was engaging in market manipulation.

7. LEK and Sam Lek had ample motive to assist and allow Avalon's manipulative trading. Between 2012 and 2016, Avalon was LEK's highest producing customer in terms of commissions and fees and rebates generated. LEK made significant profits from commissions and other amounts it earned from Avalon's layering and cross-market manipulation.

8. Beginning in late 2010, Pustelnik embedded himself at LEK, first as a foreign finder and then as a registered representative, thus enabling him to facilitate Avalon's manipulative trading through LEK. Pustelnik received a share of Avalon's profits directly from Avalon, including profits from the layering and cross-market manipulation. Moreover, as a registered representative at LEK who handled the Avalon account, Pustelnik received

commissions and other payments from the manipulative trading by Avalon, and thereby increased his share of illicit profits beyond what he received as a control person of Avalon.

9. Pustelnik played a central role in ensuring the success of the layering and cross-market schemes. Pustelnik recruited Avalon traders for the purpose of carrying out the schemes and worked closely with LEK to ensure the success and effectiveness of the strategies. When Avalon encountered technical or other difficulties in carrying out the cross-market manipulation through LEK, for example, Pustelnik arranged for the Avalon traders who executed the trading in the cross-market manipulation to conduct the scheme through an investment management firm ("Investment Management Firm") that traded through a different broker-dealer ("Other Broker-Dealer"). When the Other Broker-Dealer observed the manipulative nature of the cross-market scheme and objected to it, Pustelnik arranged to move the scheme back to LEK. Throughout, Pustelnik used his position at LEK to facilitate and further the cross-market scheme.

10. By engaging in the conduct alleged herein, Avalon, Fayyer, LEK, Sam Lek, and Pustelnik violated and are liable for the violations of the securities laws identified in the Claims for Relief section below.

11. Based on the Defendants' violations, the Commission seeks: (1) entry of a permanent injunction prohibiting the Defendants from further violations of the relevant provisions of the federal securities laws; (2) disgorgement of ill-gotten gains, plus pre-judgment interest; (3) the imposition of civil monetary penalties; and (4) such other and further relief as the Court deems just and proper.

JURISDICTION AND VENUE

12. The Commission brings this action pursuant to Sections 15(b), 20(b) and 20(d) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77o(b), 77t(b) and (d)] and Sections

20(a), 20(e), 21(d)(1), 21(d)(3) and 21(d)(5) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78t(a), 78t(e), 78u(d)(1), 78u(d)(3), and 78u(d)(5)].

13. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. §§ 77v(a)] and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa].

14. Venue is proper in this district pursuant to Sections 20(b) and 22 of the Securities Act [15 U.S.C. §§ 77t(b) and 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa], because certain acts, practices, transactions, and courses of business constituting the violations occurred in the Southern District of New York.

15. Defendants, directly or indirectly, made use of the means or instrumentalities of interstate commerce or the mails, or a facility of a national securities exchange, in connection with the conduct alleged herein.

16. Unless enjoined, the Defendants are reasonably likely to again engage in the securities law violations alleged herein, or in similar conduct that would violate the federal securities laws.

DEFENDANTS

17. **Lek Securities Corporation** is a broker-dealer based in New York, New York and is registered with the Commission. LEK provides market access to its customers, including Avalon and other foreign trading firms. LEK markets itself as the "Gateway to the Markets" by providing access to exchanges and other trading venues. LEK has previously been sanctioned by the Financial Industry Regulatory Authority ("FINRA") and the New York Stock Exchange ("NYSE") for failing to identify, prevent, or stop manipulative trading.

18. **Samuel Lek**, age 65, founded LEK in 1990. He indirectly owns almost 70% of LEK. Sam Lek exercises overall and day-to-day control over LEK's operations as its CEO, Secretary, sole Director, Chief Compliance Officer, and Anti-Money Laundering Compliance Officer. Sam Lek holds Series 3, 7, 8, 14, 24, 53, and 63 licenses in the securities industry and is an experienced options trader. Sam Lek supervised LEK registered representative Pustelnik at all times while he was associated with LEK, and Sam Lek also supervised any other registered representatives assigned to the Avalon account.

19. **Vali Management Partners dba Avalon FA Ltd** is a Seychelles-incorporated entity with headquarters in Kiev, Ukraine. It is not registered with the Commission in any capacity. Corporate documents state that Fayyer is its sole owner and director. Pustelnik is an undisclosed control person of Avalon and shares in its revenue or profits with Fayyer. Avalon operates as a day-trading firm and uses mostly foreign traders in Eastern Europe and Asia to conduct its trading. The layering scheme discussed herein was conducted through Avalon's account at LEK. Except as noted below, the cross-market manipulation scheme discussed herein was conducted through Avalon's account at LEK.

20. **Sergey Pustelnik,** a/k/a Serge Pustelnik, age 35, is an undisclosed control person of Avalon. He is a close friend of Fayyer's. Pustelnik was initially a foreign finder for LEK between October 2010 and March 2011, after which he became a registered representative at LEK. Pustelnik remained a registered representative of LEK until January 2015, when he agreed to be permanently barred from being associated with any FINRA member rather than produce email from his personal email account to FINRA in connection with a FINRA investigation. Pustelnik held Series 7, 24, 55, and 63 licenses in the securities industry. Pustelnik was born in

Ukraine and is now a U.S. citizen. Pustelnik maintains residences in New Jersey and Massachusetts, where he currently is a second-year law student.

21. **Nathan Fayyer**, age 34, is the sole owner and director of Avalon according to Avalon corporate documents. Fayyer handles day-to-day and back-office functions for Avalon. Fayyer is also the owner (along with his wife) of Avalon Fund Aktiv, LLC, a New Jersey entity that operates as the U.S. arm of Avalon, and was the owner of San Fleur Ltd dba Blaise Greys Partners, an entity described further below. Fayyer was born in Moldova and is now a U.S. citizen. Fayyer maintains residences in and splits his time between New Jersey and Kiev, Ukraine.

RELATED PERSONS AND ENTITIES

22. **Avalon Fund Aktiv, LLC** ("Avalon Fund") is a limited liability company incorporated in New Jersey and owned by Fayyer. It operates as the U.S. arm of Avalon. Among other things, it is used to pay Fayyer a salary and other expenses associated with Avalon's operations. Fayyer became an owner of Avalon Fund in 2010.

23. **San Fleur Ltd dba Blaise Greys Partners Ltd ("Blaise Greys")** is a Seychelles-incorporated entity that, according to corporate documents, Fayyer owned. In 2013, Pustelnik used Blaise Greys as part of a scheme to execute the cross-market manipulation through accounts held in the name of Investment Management Firm at Other Broker-Dealer.

TERMS USED IN THIS COMPLAINT

24. The terms *call* and *put* options, as used herein, refer to contracts that give their holders the right, but not the obligation, to buy (a call option) or sell (a put option) a fixed number of shares of the underlying security at a specific price—called the strike or exercise

price—until the expiration date. Each contract in a given put or call option series represents 100 shares of the underlying security.

25. The term *national best bid* ("NBB"), as used herein, means the highest price a buyer is willing to pay to buy a security. The term *national best offer* ("NBO"), as used herein, means the lowest price that a seller is willing to accept to sell a security. Collectively, the NBB and NBO are referred to as the "NBBO." The mid-point of the NBBO is the price between the NBB and NBO.

FACTS

A. Avalon and Its Formation by Pustelnik and Fayyer

26. Pustelnik and Fayyer created Avalon in 2010 after disbanding another day-trading firm that they controlled. Pustelnik and Fayyer each contributed $100,000 to fund Avalon's trading account at LEK.

27. During the relevant period, Avalon was primarily a foreign day-trading firm that employed overseas traders, most of whom were based in Asia and Eastern Europe. Avalon entered into agreements with trade groups comprised of individual traders who traded for Avalon's account. The traders traded Avalon funds, using margin lending provided by LEK to Avalon, through sub-accounts within Avalon's master account at LEK. The traders acted as agents of Avalon in all of their trading and the conduct described herein. Avalon trade groups received access to the U.S. securities markets through Avalon's account at LEK. By reason of the foregoing, Avalon is liable for all of the trading and conduct of its traders and trade groups alleged herein.

28. Profits from the manipulative trading described herein flowed directly to Avalon, less commissions and fees charged by Lek.

29. At all relevant times, Fayyer was a principal of Avalon and handled its day-to-day operations. Among other things, Fayyer oversaw Avalon's trade groups and had the authority to restrict, place limitations on, or terminate their trading in Avalon's account at LEK. Accordingly, Avalon is liable for all of Fayyer's conduct alleged herein.

30. At all relevant times, Pustelnik was significantly involved in Avalon's management and operations, including but not necessarily limited to the following activities. Pustelnik—who was listed as an "Exec" in internal Avalon documents—at times instructed and directed Fayyer's actions concerning the management of Avalon and its communications with third parties. Pustelnik also received a share of Avalon's trading profits and held an Avalon Fund credit card, which he freely used and which was paid by Avalon. Pustelnik personally conducted substantial work for Avalon, including preparing accounting statements, developing and managing the risk management program used by Avalon's traders, providing technology services and support for its back-office operations, including maintaining Avalon's server at his personal residence, and recruiting and meeting with Avalon traders. Pustelnik communicated directly with various Avalon traders and with LEK about Avalon's trading strategies (including the layering and cross-market manipulation schemes at issue in this complaint), and Pustelnik engaged in other activities related to Avalon's manipulative trading, as further described below. Accordingly, Avalon is liable for Pustelnik's conduct alleged herein.

B. Relationship Among Avalon, Pustelnik, and LEK

31. In late 2010, Pustelnik contacted Sam Lek to discuss a proposed business arrangement. Pustelnik and Sam Lek reached an agreement in which Pustelnik, acting as a foreign finder, would bring high-volume, high-commission customers to LEK in exchange for

50% of commissions generated by these foreign customers. Avalon was one of the customers that Pustelnik referred to LEK in his role as a foreign finder.

32. Pustelnik used his relationship with LEK and Sam Lek to facilitate Avalon's trading schemes. For example, Pustelnik caused LEK to hire personnel whose interests were aligned with Avalon. In late 2010, Pustelnik asked Sam Lek to hire his brother-in-law—who was affiliated with Avalon Fund—as a registered representative to oversee the Avalon account at LEK ("Avalon Rep 2"). LEK complied, and by December 2010, Avalon Rep 2 had become associated with LEK. LEK paid Avalon Rep 2 a portion of Pustelnik's share of Avalon's commissions in an amount determined by Pustelnik on a monthly basis. Like Pustelnik, Avalon Rep 2 used his position as a LEK registered representative to further Avalon's interests.

33. Also in late 2010, at Pustelnik's request, LEK hired an independent contractor ("Administrative Assistant") to handle administrative functions related to both Avalon and Pustelnik's other customers at LEK. The Administrative Assistant previously had been employed by Avalon and also used her position at LEK to further Avalon's interests. The Administrative Assistant conducted work for Avalon directly from her desk at LEK, including keeping an Avalon Fund checkbook on her desk that she used to pay Avalon expenses, executing and processing documents for Avalon and Fayyer, and communicating directly with Avalon traders. A portion of her salary was deducted from Pustelnik's compensation. Avalon then reimbursed Pustelnik for that amount, thereby effectively paying the salary of someone ostensibly working for LEK.

34. In March 2011, after LEK discovered that Pustelnik did not qualify as a "foreign finder" under FINRA rules because he was a U.S. citizen, Pustelnik agreed to become a LEK registered representative based upon assurances from Sam Lek that he would have few

responsibilities and would not be required to work from LEK's offices. Pustelnik kept Avalon and the other customers referred by him at LEK, but negotiated even higher profits: 50% of commissions *and* trading rebates (which were significant) generated by Avalon and his other customers. From March 2011 to January 2015, Pustelnik was a registered representative associated with LEK. He served as one of the registered representatives on the Avalon account, and held the title "managing director" of LEK. At all times when Pustelnik was associated with LEK, Sam Lek was Pustelnik's supervisor, had the ability to direct his actions with respect to the Avalon account and his role as a LEK registered representative, and had the authority to hire, fire, and discipline him. LEK is liable for the actions of Pustelnik described herein.

C. Avalon's Layering Scheme

1. Description of the Layering Scheme

35. From approximately December 2010 through at least September 2016, Avalon repeatedly manipulated the markets of U.S. stocks by engaging in a manipulative trading strategy typically referred to as "layering" or "spoofing" (hereafter, "layering"). Avalon's layering yielded profits of more than $21 million.

36. Layering refers to the use of multiple non-bona fide orders in a particular security in order to manipulate the market for that security and obtain a more favorable execution of bona fide orders on the opposite side of the market (*e.g.*, the use of non-bona fide buy orders to obtain a more favorable execution of bona fide sell orders for the same security, and vice versa). The term "non-bona fide orders," as the term is used herein, refers to orders that a trader does not intend to have executed and that have no legitimate economic reason. The non-bona fide orders are intended to inject false information into the marketplace about supply or demand for the security at issue and thereby to induce other market participants to execute against the trader's

bona fide orders (*i.e.*, orders that the trader intends to have executed) for the same security on the opposite side of the market at an artificial price.

37. Layering is typically accomplished by entering non-bona fide orders at successive levels (or "layers") of price – either increasingly higher levels (if the non-bona fide orders are being placed on the buy side) or decreasing levels (if on the sell side). In other instances, layering involves placing multiple non-bona fide orders at the same or varying prices across multiple exchanges or other trading venues.

38. By entering non-bona fide orders on one side of the market (for example, to buy), the trader is able to trick and induce market participants to provide the trader with better execution of the trader's bona fide orders on the other side of the market (for example, to sell). The false appearance of supply or demand created by the trader's non-bona fide orders 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. The manipulation that results from placement of the non-bona fide orders enables the bona fide orders to execute profitably, on average, and makes the bona fide orders more profitable than they would have been absent the manipulation.

39. Once the trader's bona fide orders are executed, the trader typically cancels the non-bona fide orders promptly. By that time, the non-bona fide orders have fulfilled the trader's illicit purpose of manipulating supply and demand for that particular security to receive more favorable execution of the bona fide orders. Layering typically occurs over very short time frames, often just seconds.

40. In some instances, Avalon's layering involved placing non-bona fide orders on the buy side, and bona fide orders on the sell side, while in other instances it involved placing

non-bona fide orders on the sell side, and bona fide orders on the buy side. The manner in which Avalon conducted layering varied by trader and over time, often in ways apparently intended to avoid detection both by regulators and by other market participants who might modify their behavior in response to the layering. Despite these variations, the trading had a similar theme: create a false impression of supply or demand to trick and induce others to trade so that Avalon could obtain a more favorable execution.

41. As noted, Avalon varied the specific method of its layering. But the following is a typical illustration of Avalon's layering scheme:

(a) First, Avalon placed multiple, and increasingly higher, non-bona fide orders to buy a particular stock – while nearly simultaneously placing bona fide order(s) (*i.e.*, orders that Avalon *did* intend to have executed) on the opposite side of the market to sell the same stock. Avalon's non-bona fide orders were much higher in number of orders and shares than its bona fide orders; this imbalance contributed to Avalon's creation of a false appearance of demand for the stock.

(b) In this example, the purpose of the non-bona fide buy orders was to create a false appearance of buying interest and thus to trick and induce other market participants (often relying on algorithms to interpret changes in apparent supply and demand for a security) to conclude that there was increased buying interest and that the price of the stock was more likely to rise.

(c) The false indication of buying interest that resulted from Avalon's non-bona fide buy orders tricked and induced other market participants to enter their own buy orders, some of which executed against Avalon's bona fide sell orders at better prices for Avalon than would have been available without the manipulation.

(d) Once the bona fide sell orders were executed, Avalon promptly cancelled all of its outstanding non-bona fide buy orders. In short, the non-bona fide orders had no purpose other than to make it possible for Avalon to receive more favorable prices for the bona fide orders.

(e) After obtaining favorable execution of its bona fide sell orders, Avalon often repeated the manipulation in the opposite direction through a second instance of layering to close out the position (*i.e.*, by using non-bona fide sell orders to obtain a more favorable execution of its bona fide buy orders). In short, these instances of layering enabled Avalon to manipulate the market so that it could reap profits by buying low and selling high at artificial prices.

42. By engaging in the pattern of layering described above, Avalon and its traders knew or were reckless in not knowing that they were engaged in manipulative and fraudulent conduct because their non-bona fide orders had no legitimate economic reason, were intended to inject into the market false information about supply and demand, and were entered for the purpose of moving the prices of the securities to artificial levels.

2. Examples of Layering by Avalon

July 20, 2015 Layering in CAB

43. On July 20, 2015, Avalon trader 128_102 engaged in two consecutive instances of layering in Cabela's Incorporated ("CAB"). First, Avalon used non-bona fide buy orders to manipulate the price of CAB up and then sold short at a higher price. Second, after establishing the short position, Avalon reversed course and used non-bona fide sell orders to manipulate the price of CAB down and then bought at a lower price, and thus profitably covered Avalon's short

position. Thus, Avalon bought at an artificially low price and sold at an artificially high price, making approximately $230 in about one minute.

44. At 9:34:32, Avalon began the first instance of layering in CAB stock in order to obtain a better sales price. At that time, the NBB for CAB (*i.e.*, the highest price a market participant was willing to pay for the security) was $51.09. Over the next 21 seconds, Avalon entered 16 non-bona fide orders to buy a total of 3,500 shares at generally increasing prices. Only one of those orders for 100 shares executed. Avalon then entered two bona fide orders to sell short a total of 1,600 shares at $51.23. Avalon's non-bona fide buy orders created a false appearance of demand, which led other market participants to place higher priced buy orders that executed against Avalon's bona fide short sale orders. Avalon thus sold short 1,400 shares of CAB at $51.23, which was $0.14 higher than the NBB before Avalon placed its non-bona fide buy orders. Avalon then cancelled all outstanding orders.

45. Avalon then reversed direction and engaged in the second instance of layering to buy CAB at artificially depressed prices, allowing it to profitably cover its short position. At this time, 9:35:10, the NBO for CAB (*i.e.*, the lowest price at which a market participant was willing to sell the security) was $51.23. Over the next 24 seconds, Avalon entered 13 non-bona fide sell orders totaling 3,500 shares at generally decreasing prices. During that time period, Avalon entered one bona fide buy order for 400 shares at $51.07, which executed. At 9:35:34, Avalon entered two more bona fide buy orders for a total of 1,400 shares at $51.04. Avalon's non-bona fide sell orders created a false appearance of supply, which led other market participants to place lower priced sell orders that executed against Avalon's bona fide buy orders. Avalon thus bought an additional 1,000 shares of CAB at $51.04, which was $0.19 lower than the NBO before Avalon placed its non-bona fide sell orders. Avalon then cancelled all outstanding orders.

Through these two instances of layering, Avalon bought 1,400 shares of CAB at an average price of $51.05 and sold those shares at $51.23.

May 20, 2013 Layering in IBM

46. On May 20, 2013, Avalon trader 208_101 held 730 shares of International Business Machines Corporation ("IBM") and, over a three second period, engaged in layering to manipulate the price of IBM up and enable Avalon to sell the 730 shares at a higher price. At 10:33:20, when Avalon began the layering, the NBB for IBM (*i.e.*, the highest price a market participant was willing to pay for the security) was $208.47. Over the next two seconds, Avalon placed 18 non-bona fide buy orders for a total of 1,800 shares at generally increasing prices. Avalon then placed one bona fide sell order for 730 shares of IBM at $208.54. Avalon's non-bona fide buy orders created a false appearance of demand, which led other market participants to place higher priced buy orders that executed against Avalon's bona fide sell order. Avalon thus sold a total of 730 shares of IBM at $208.54, which was $0.07 higher than the NBB before Avalon's non-bona fide orders. Avalon then cancelled all outstanding orders.

November 1, 2012 Layering in CERN

47. On November 1, 2012, Avalon trader 188_102S held a short position of 1,100 shares of Cerner Corporation ("CERN"), and, over a twenty-three second period, engaged in layering to manipulate the price of CERN down and buy to cover its short position. At 12:50:52, the NBO for CERN (*i.e.*, the lowest price at which a market participant was willing to sell the security) was $77.18. Over seventeen seconds, Avalon entered 67 non-bona fide sell orders, in quantities of 100 shares each, at generally decreasing prices. Only one sell order for 100 shares executed. During that time, at around 12:51:00, Avalon placed a bona fide order to buy 1,200 shares of CERN at $77.07, which was not executed and subsequently cancelled. Avalon then

placed another bona fide order to buy 1,200 shares of CERN at $77.10. Avalon's non-bona fide sell orders created a false appearance of supply, which led other market participants to place lower priced sell orders that executed against Avalon's bona fide buy order. Avalon thus bought 1,200 shares at an average price of $77.08, which was $0.10 lower than the NBO before Avalon's non-bona fide orders. Avalon then cancelled all outstanding orders.

3. Avalon's Layering Was Pervasive and Profitable

48. Avalon repeatedly and systematically manipulated the U.S. stock markets by engaging in layering. Between December 2010 and at least September 2016, Avalon engaged in hundreds of thousands of instances of layering, involving hundreds of securities traded on numerous U.S. exchanges and other trading venues. Although Avalon's profit on any single instance of layering might have been small, when multiplied by the hundreds of thousands of instances of layering in which Avalon engaged, the profits totaled many millions of dollars.

49. Avalon profited from the layering by retaining a portion of the profits and charging its traders commissions and other fees on each trade. As described below, Avalon believed and represented that it was one of the few places where traders could continue to engage in layering. As a result, Avalon explicitly charged higher commissions and provided lower payouts for layering than for other trading strategies.

50. Avalon's layering through LEK garnered gross profits in excess of $21 million.

4. Avalon and Fayyer Knowingly or Recklessly Engaged in the Layering Scheme

51. In engaging in the layering scheme described herein, Avalon and Fayyer knew or were reckless in not knowing that Avalon—by placing non-bona fide orders for certain securities—was injecting false information into the market about the supply of or demand for

those securities, that it was manipulating the market for those securities, and that it was thereby engaged in a scheme to defraud.

52. In May 2012, an individual who shortly thereafter became an Avalon trade group leader ("Avalon Trade Group Leader 1") sent Sam Lek an email describing in detail the layering scheme:

> Layering trading is a special trading stratyge [sic]. For example, the bid and ask of symbol X is 90.09 and 90.14, we put buy orders in 90.10, 90.11, 90.12, 90.13 and so on, then push the price to 90.20, right now the bid and ask is 90.20 and 90.21, we put a big size short order in 90.20 to get a short position, then we cancel all of the buy orders in 90.10, 90.11, 90.12 and so on. And we put sell orders in 90.20, 90.19, 90.18, 90.17 and so on, to push the price to 90.05, then put a big size buy order in 90.05 to cover position, and cancel all of the sell orders . . *so we will put hundre[d]s of orders to push stock price and then cancel them.*

(emphasis added).

53. Within a month of sending this email, in June 2012, Avalon Trade Group Leader 1 opened sub-accounts through Avalon's account at LEK and began layering through its account. Indeed, a sub-account associated with Trade Group Leader 1 engaged in the November 1, 2012 layering in CERN described above.

54. Avalon and Fayyer knew or were reckless in not knowing that Avalon's traders were engaged in layering. Indeed, Avalon (acting through Fayyer) touted itself as a destination for traders who wanted to engage in layering, emphasizing in multiple communications that Avalon was one of the few trading firms that permitted layering:

(a) In January 2013, Fayyer emailed a prospective Avalon trade group leader ("Avalon Trade Group Leader 2"), stating: "My name is Nathan and I received your contact information from Serge [Pustelnik]. . . He told me that you had a group of traders and were interested in setting up some accounts for layering and other strategies . . . If

you are still interested in this, this is definitely something I can help you with . . . I am one of the very few places that still allow layering."

(b) In March 2013, Fayyer emailed Avalon Trade Group Leader 2: "For none [sic] layering orders you can send as many as you want. For layering, you can send 50-100 at a time on different ECN's."

(c) In July 2013, Fayyer emailed another Avalon trade group leader ("Avalon Trade Group Leader 3"), stating: "We allow layering and these sort of strategies only for intra day use . . ."

(d) Until at least early 2013, Avalon's website contained the frequently-asked question "Do you offer Multi-Key Capability and Allow this type of trading?," and answered "Yes. You can use multi-key type orders and our compliance has full backing of traders utilizing this sort of strategy." Avalon and its trade groups commonly referred to the layering strategy as "multi-key" trading.

55. Avalon also touted its relationship with one of the only brokers (*i.e.*, LEK) that permitted layering. For example:

(a) In March 2013, Fayyer emailed Avalon Trade Group Leader 2: "the broker is not a cheap one, but this is because they do tolerate and protect us from many issues such as multi-key trading, which is not allowed anywhere pretty much anymore, and other dark pool and scalping strategies which can be described as wash orders by many other firms. So you get what you pay for here."

(b) In October 2013, Fayyer emailed Avalon Trade Group Leader 1: "They are talking about the new rule 15-C [sic], of the SEC, I know It very well. They want to

forbid any layering or permit any wash sales between the same company user accounts . . . looks like LEK is the only solution for now."

56. Avalon charged its traders higher fees for layering through Avalon because of the legal perils that layering created. For example:

(a) In March 2013, Fayyer emailed Avalon Trade Group Leader 2: "For layering strategy, the payout is what I have written below. It is a set schedule as costs to protect layering are very high these days from our legal team. Also, there are almost no places that allow this."

(b) In March 2013, Fayyer emailed Avalon Trade Group Leader 2: "layering [] is a bit more costly [than non-layering] as we pay very big legal bills every month to be protected."

(c) In April 2013, Fayyer emailed Avalon Trade Group Leader 2: "It costs a lot of money for legal expenses to keep this going these days as no other firms allow this."

(d) In May 2013, Fayyer emailed another Avalon trade group leader ("Avalon Trade Group Leader 4"): "commission is standard, layering is VERY expensive now, and we pay very big legal bills to protect this. A lot of firms don't have this ability and kick traders out. we do. so the commission schedule is standard."

57. Avalon and Fayyer closely monitored trading activity by its traders to ensure that Avalon collected higher fees for layering. For example, in April 2013, Fayyer emailed Avalon Trade Group Leader 2: "We know this business very well and we will see right away if you are layering. Even if it is dark pool layering, we know all these strategies."

58. LEK deducted 50% of the legal expenses it incurred due to regulatory inquiries and investigations concerning Avalon's trading from Pustelnik's LEK compensation. Avalon then reimbursed Pustelnik in full for the deducted legal expenses.

59. Fayyer and Pustelnik each received a share of Avalon's profits from the manipulative trading. In addition, Pustelnik received a share of LEK's commissions and other fees and rebates from the manipulative trading.

D. LEK and Sam Lek Knowingly or Recklessly Participated In and Substantially Assisted the Layering Scheme

1. LEK and Sam Lek Knew or Were Reckless in Not Knowing that Avalon Was Layering Through LEK, and that the Layering Was Manipulative and Fraudulent

60. LEK and Sam Lek knew or were reckless in not knowing that Avalon was engaged in layering, that it was thereby manipulating the markets, and thus committing fraud, but LEK and Sam Lek nevertheless participated in and substantially assisted the scheme.

61. As discussed above, in May 2012, Avalon Trade Group Leader 1 described the specifics of the layering scheme in an email to Sam Lek. As Trade Group Leader 1 phrased it, "*so we will put hundre[d]s of orders to push stock price and then cancel them.*" (emphasis added).

62. Sam Lek responded to Avalon Trade Group Leader 1's email by stating, "regulators have argued that your trading strategy 'layering' is manipulative and illegal. This is of concern to us even though I do not agree with their position." Trade Group Leader 1 replied, "[w]e know it's illegal to trading 'layering', but it is not absolute . . . The most important is our lay[er]ing str[ategy] is softly compared to before.."

63. Although LEK was already on notice through regulatory inquiries that layering was occurring in Avalon's account, in September 2014, Sam Lek learned that the specific traders

associated with Avalon Trade Group Leader 1 had opened sub-accounts with Avalon in or around June 2012 (within a month of the above communication) and begun trading through Avalon's account at LEK. Despite this notice, LEK and Sam Lek took no action to restrict or terminate trading by Avalon Trade Group Leader 1's traders. Those traders engaged in thousands of additional instances of layering through Avalon's account at LEK in 2015 and 2016.

64. Beginning at least as early as 2012, regulators, exchanges, and other market participants repeatedly notified LEK and Sam Lek that layering was occurring in the Avalon account, in multiple instances providing LEK and Sam Lek with detailed descriptions of the layering that was occurring and describing the manipulative effects, as reflected in the following examples:

(a) In July 2012, a broker-dealer informed LEK that FINRA had identified order flow from LEK as potentially manipulative, provided the specific dates and securities of the conduct, and explained that it "shows a series of transactions where a large trade is entered on one side of the market, then a series of orders are placed on the opposite side of the market that appeared to narrow the bid or offer. The large trade then executes, and then the smaller orders on the opposite side of the market are cancelled." The trading identified in this communication included actual instances of layering by Avalon through LEK.

(b) In September 2012, FINRA contacted LEK and informed it that trading activity by Avalon through LEK "appears consistent with a manipulative practice called layering." FINRA encouraged LEK to review FINRA's settlement with Trillium, which

described layering in detail.[1] The trading identified by FINRA in this communication included actual instances of layering by Avalon through LEK.

(c) In December 2012, Bats Global Markets exchange ("Bats Exchange") brought possible layering through LEK to LEK and Sam Lek's attention, and advised them to look for "any types of patterns. . . where they're putting a tremendous amount of size on one side of the market or the other, and it looks like potentially they could be inducing or tricking somebody into trading [with their] hidden order [on the other side of the market]."

(d) In July 2013, Bats Exchange informed LEK and Sam Lek that it was seeing a "clear cut cross-market layering strategy" by Avalon coming through LEK, including "1,700 instances [of layering] over the last two days." Bats Exchange described the strategy in detail: "we see a concentrated number of orders come in on one side of the market and the market moves in a downward motion, and then we see immediate deletion of those orders. And then when we do a cross-market analysis to see what happened in between the time the order book was filled to the time that all the orders were removed to see if anyone was executing to take advantage of that activity, we're seeing the concentration where Lek's CRD number is on the other side of those contra-side executions." Bats Exchange subsequently sent LEK a letter identifying specific instances of layering by Avalon through LEK. Following these communications, LEK stopped sending Avalon's orders to Bats Exchange and instead routed Avalon's

[1] *See Trillium Brokerage Services, LLC*, FINRA Letter of Acceptance, Waiver and Consent, No. 2007007678201 (August 5, 2010).

orders only to other exchanges and venues. The trading flagged by Bats Exchange included actual instances of layering by Avalon through LEK.

(e) In November 2013, Direct Edge exchange called LEK and, in the words of Sam Lek when he later described the call to Fayyer, "expressed great concern about some of the trading that Avalon has been doing through our firm. They told us that Avalon appears to be conducting manipulative trading strategies, such as wash sales and layering, by placing certain trades through our firm and other related trades through one or more broker-dealers."

(f) In November 2013, a NYSE Hearing Board found that LEK had violated various exchange rules by, among other things, failing to supervise and implement adequate risk controls for spoofing (which includes layering), wash trading, and marking the close.

(g) In July 2014, FINRA notified LEK and Sam Lek that it believed that they had failed to adequately monitor trading activity by Avalon and failed to implement procedures and systems designed to monitor and surveil for manipulative trading.

(h) In April 2015, FINRA again alerted LEK and Sam Lek that Avalon might be engaged in manipulative trading through LEK, and that LEK and Sam Lek's conduct may have aided the manipulative trading.

(i) From at least March 2016 through September 2016, FINRA advised LEK on a monthly basis that it continued to see substantial layering activity through LEK.

65. LEK and Sam Lek received numerous additional inquiry letters from regulators asking it to provide information on Avalon's trading, often asking for an explanation of the

trading strategy and how it was legitimate. Nonetheless, Avalon's layering through LEK persisted.

2. *LEK and Sam Lek Participated in and Provided Substantial Assistance to Avalon's Layering By Engaging in Acts or Omissions that Facilitated and Permitted the Layering*

66. LEK and Sam Lek participated in and provided substantial assistance to Avalon's layering in several ways, including but not necessarily limited to providing Avalon with access to the markets that only a registered broker-dealer such as LEK could provide, implementing ineffective controls for layering and then relaxing even those controls as needed in order to permit Avalon to continue its layering, and failing to implement any reasonable controls to prevent or detect layering.

67. As a registered broker-dealer, LEK was able to provide traders and trading firms with access to the markets, including the various exchanges and other venues.

68. LEK, under Sam Lek's direction and with his consent, provided Avalon with market access to conduct trading—including the layering activity described herein—even though LEK and Sam Lek knew or were reckless in not knowing that Avalon was engaged in layering, and that Avalon's layering activity was manipulative and fraudulent.

69. LEK and Sam Lek claimed that they took steps to attempt to prevent layering through the firm. But in fact, as described below, LEK's and Sam Lek's supposed efforts to prevent layering were mere window-dressing, and they knew or were reckless in not knowing that these purported efforts were not preventing layering and that layering was continuing on a massive scale.

70. In February 2013, LEK implemented a supposed layering control through a portion of its proprietary Q6 program (hereafter "Q6 Control"). Sam Lek made all relevant

decisions concerning the design and implementation of the Q6 Control. The purported purpose of the Q6 Control was to prevent layering from occurring by blocking trading that fit a certain pattern. The Q6 Control was triggered in certain instances when a trader traded or attempted to trade on both sides of the market and did so with a disproportionate number of orders on one of those sides. Q6 counted the number of buys and sells, and blocked additional buys or sells if the difference in number of orders between the two (referred to as "delta") met a certain threshold set by LEK.

71. As LEK and Sam Lek knew or were reckless in not knowing, the Q6 Control was insufficient to prevent layering in the Avalon account, and Avalon engaged in hundreds of thousands of instances of layering for years *after* LEK implemented its Q6 Control.

72. LEK's Q6 Control failed to prevent layering for two primary reasons:

(a) First, the Q6 Control only blocked non-bona fide orders when the trader had already placed a resting bona fide order; the Q6 Control was not triggered if the non-bona fide orders were placed before the bona fide order. Avalon could thus easily evade the Q6 Control simply by placing non-bona fide orders before entering any bona fide order(s). Indeed, the May 2012 email from Avalon Trade Group Leader 1 to Sam Lek, cited above, described layering as first placing non-bona fide orders to "push the price" and then entering the bona fide order. LEK and Sam Lek thus knew or were reckless in not knowing that layering would occur despite the Q6 Control, yet failed to modify the Q6 control to make it effective or to otherwise use any effective system to monitor for layering.

(b) Second, in response to requests and complaints from Avalon, Fayyer, Pustelnik, and Avalon Rep 2, LEK quickly relaxed the threshold for Avalon's accounts to

levels at which layering could continue to occur more widely. The Q6 Control initially allowed a delta of 10. LEK, Sam Lek, and Pustelnik caused this number to be relaxed for Avalon specifically. Within one week of implementing the control, LEK moved the delta for the Avalon account to 100. At all times thereafter, the delta for the account was between 50 and 100, and, except for a three-month period in 2013, was above the threshold level of 10 for Avalon sub-accounts. Indeed, Fayyer reassured Avalon's traders that they could continue to layer after LEK relaxed the delta for the Q6 Control.

73. As detailed below, Pustelnik, as a LEK registered representative and for whose conduct LEK is responsible, encouraged LEK to relax the Q6 Control delta for Avalon, falsely representing that Avalon was not engaged in layering. Pustelnik knew or was reckless in not knowing that Avalon was engaged in layering, and Pustelnik's advocacy for a less stringent threshold in the Q6 Control was part of Pustelnik's participation in and substantial assistance to Avalon's layering scheme.

74. Sam Lek authorized modification of the Q6 Control specifically for Avalon.

75. By relaxing the Q6 Control for Avalon's accounts, and despite repeated inquiries from regulators about Avalon's manipulative trading, LEK and Sam Lek allowed Avalon to continue engaging in layering and substantially assisted Avalon in carrying out its manipulative layering scheme. Despite Avalon's and Pustelnik's denials that Avalon was engaged in layering, LEK and Sam Lek knew, or were reckless in not knowing, that Avalon was engaged in layering and thus manipulating the markets. LEK and Sam Lek knew or were reckless in not knowing that relaxing the threshold levels in the Q6 Control facilitated and permitted Avalon's layering.

3. LEK and Sam Lek Took No Adequate Steps to Monitor For and Prevent the Layering

76. Despite the fact that they knew or were reckless in not knowing that Avalon was conducting layering through its account at LEK, LEK and Sam Lek did not implement adequate systems or procedures to monitor and surveil for layering. For example, despite repeated notice from regulators and others that Avalon was engaged in manipulative layering through LEK, at no time did LEK and Sam Lek implement an exception report or any other device through which they reasonably could have expected LEK personnel to identify potential layering or to ensure that the Q6 Control was working. LEK personnel did not monitor Avalon's trading beyond sometimes purportedly viewing Avalon's trading in "real-time." Given the number of trades and orders placed through LEK and the speed at which orders were placed and cancelled, monitoring for layering in real-time would have been an impossible task without systematic surveillance reports or similar tools, and Sam Lek could not reasonably have expected such efforts to be a meaningful way to detect layering. Sam Lek himself conducted occasional ad hoc reviews of trading identified as layering in regulatory inquiries, but he attempted to justify the trading to regulators and permitted it to continue, even though he knew or was reckless in not knowing that such trades were manipulative.

77. LEK and Sam Lek did not add layering to LEK's internal Written Supervisory Procedures as conduct that the firm prohibited, nor did they provide LEK employees with training on layering, even after regulators, exchanges, and other market participants repeatedly notified LEK and Sam Lek that layering was occurring in the Avalon account.

78. LEK profited from the layering scheme through its receipt of commissions, trading rebates and fees from Avalon's trading.

E. Pustelnik Knowingly or Recklessly Participated In and Substantially Assisted the Layering Scheme

1. Pustelnik Knew or Was Reckless in Not Knowing That Avalon Was Engaged in Layering and Thereby Manipulating the Market and Engaging in Fraud

79. Pustelnik knew or was reckless in not knowing that Avalon was engaged in layering, that Avalon was thereby injecting false information into the market, that it was manipulating the market for the securities that were the targets of its layering scheme, and that it was thereby engaged in a scheme to defraud, and which operated as a fraud. Pustelnik also knew or was reckless in not knowing that his actions described herein facilitated and substantially assisted the fraud.

80. As both a LEK registered representative and as an undisclosed control person of Avalon, Pustelnik had a significant financial interest in Avalon's trading on multiple levels. Avalon was Pustelnik's largest client at LEK, and as the registered representative, he earned millions of dollars in commissions and other rebates from Avalon's trading between 2011 and 2015. Pustelnik also had direct financial ties to Avalon. Pustelnik provided Avalon with $100,000 to fund its account at LEK in 2010, which Avalon repaid with interest. Avalon's internal records show that it allocated a substantial share of its profits to Pustelnik.

81. Pustelnik was instrumental in bringing traders to Avalon to conduct layering through LEK. For example, in August 2011, Avalon Trade Group Leader 2, who was looking for a firm through which he could engage in layering, sent a chat message to Pustelnik asking "Do u know where can trade lawyering [sic] strategy." Between August 2011 and January 2013, Pustelnik discussed with Avalon Trade Group Leader 2 the possibility of moving his traders to LEK. Finally, in January 2013, Fayyer emailed Avalon Trade Group Leader 2, stating: "My name is Nathan and I received your contact information from Serge [Pustelnik]. . . He told me

that you had a group of traders and were interested in setting up some accounts for layering and other strategies . . ."

82. A December 2012 email chain among Fayyer, Pustelnik and another Avalon trade group leader ("Avalon Trade Group Leader 5") includes an email from Avalon Trade Group Leader 5 stating:

> Serge introduce me to you and that is where it all began . . . I called thinking that there may be mutual business that we can do and NOT just layering. Also layering it is just one part of business what I was offering we do."

Fayyer replied to Avalon Trade Group Leader 5, with a copy to Pustelnik, stating, "$ is $."

83. Pustelnik was also aware that regulators had characterized Avalon's trading as layering. Sam Lek and others at LEK informed Pustelnik of a number of the communications from FINRA and others expressing concern about manipulation of the market through layering by Avalon. For example:

(a) On September 13, 2012, Sam Lek sent Pustelnik a FINRA inquiry concerning certain trading by Avalon and requesting, "[a] more fulsome explanation from Lek (or its customer, Avalon FA, LTD) as to what type of trading strategy is being employed and how this trading activity is not in any way manipulative or otherwise consistent with the manipulative practice commonly referred to as Layering."

(b) On September 23, 2013, another LEK official sent Pustelnik an email concerning "16 cases involving Avalon" and attaching detail on those matters, including one concerning layering.

2. *Pustelnik Participated in and Substantially Assisted the Layering Scheme*

84. Pustelnik participated in and substantially assisted the layering scheme in various ways, including but not necessarily limited to recruiting Avalon traders for the purpose of layering, falsely denying that Avalon was engaged in layering, and encouraging LEK to relax the Q6 Control, its sole system that supposedly was designed to prevent layering. Indeed, Pustelnik was instrumental in causing LEK to increase the delta threshold so that Avalon could more freely engage in layering. For example:

(a) On February 1, 2013, in connection with LEK's introduction of the Q6 Control, Pustelnik emailed a LEK officer, stating that LEK's Q6 Control should ignore market on open and market on close orders. The LEK officer agreed and said, "[a]nything else you can think of?" Pustelnik replied: "They'll come up with time. Ave [Avalon] got really hurt by this today. We are on it." The LEK officer responded: "That's why I wanted you to test drive it . . . As discussed with Nathan [Fayyer], if you come up with explanation of the strategy and why it's not layering, I am happy to increase the threshold."

(b) On February 6, 2013, Pustelnik emailed a LEK officer, urging him to increase the Q6 Control delta to 75 for Avalon's accounts. In the email, Pustelnik included a message from an Avalon trade group leader ("Avalon Trade Group Leader 6") to Pustelnik stating: "so, can you solve the problem? Or it will happen everyday????? We really can't go on to be like this, we get a lot loss because this." Sub-accounts associated with Avalon Trade Group Leader 6 had engaged in thousands of instances of layering through Avalon's accounts at LEK up to the date of Pustelnik's email. Following the

relaxation of the Q6 Control, sub-accounts associated with Avalon Trade Group Leader 6 engaged in tens of thousands of additional instances of layering.

(c) Also on February 6, 2013, another LEK officer sent Fayyer and Pustelnik an email with a list of trades from the Q6 Control along with a note: "Please address Layering Detection issues with your Traders." Pustelnik responded "Nothing to address with the traders. Its not Layering."

(d) Pustelnik knew or was reckless in not knowing that Avalon was engaged in layering, and through his efforts to persuade other LEK personnel that layering was not occurring, Pustelnik participated in and substantially assisted the scheme.

(e) In response to Pustelnik's and Avalon's pleas to relax the Q6 Control delta, on or about February 13, 2013, LEK relaxed the delta for Avalon's account by increasing it from 10 to 100, and set the deltas for Avalon's sub-accounts at 20. These relaxed thresholds allowed Avalon's layering to continue.

(f) After these changes, from February 13, 2013 through September 2016, Avalon engaged in hundreds of thousands of additional instances of layering through its account at LEK.

85. Pustelnik profited from the continuation of the layering scheme by his receipt of profits from Avalon, and his receipt of commissions and other fees and rebates from LEK.

F. Avalon's Cross-Market Manipulation

1. Description of the Cross-Market Scheme

86. Between at least August 2012 and December 2015, Avalon engaged in a cross-market manipulation scheme whereby Avalon bought and sold U.S. stock at a loss for the purpose of artificially moving the prices of corresponding options, so that Avalon could

profitably trade those options. Avalon engaged in this strategy hundreds of times, reaping millions of dollars in profits from doing so.

87. The cross-market scheme worked as follows:

(a) Avalon employed the cross-market strategy by engaging in a series of transactions in stocks and corresponding options whose prices Avalon could significantly impact through its stock trading, such that Avalon's stock trades could and would artificially move the price of the stock and corresponding options.

(b) Avalon began by buying or selling stock, not for any legitimate purpose but instead for the purpose of pushing the price of the stock higher (by buying) or lower (by selling). In fact, Avalon's trades did move the price of the stock.

(c) Avalon's stock trades caused the price of corresponding options in that security also to move significantly, so that Avalon could take advantage of that change in the price of the options. For example, buying the stock would cause the price of the stock to rise, which would in turn cause the price of corresponding put options to decrease.

(d) Avalon then bought or sold large quantities of the options at the artificially more favorable price that Avalon's stock trades had just caused. For example, when Avalon bought the stock in a particular security, it pushed the price of the stock up, and made the put options for that security cheaper. Avalon then bought large quantities of put options at a price lower than would have been available absent Avalon's stock trades.

(e) After Avalon completed its initial, manipulative stock trades to push the price of the stock to artificial levels, as expected, the price of the stock generally moved back toward its original price level. This increased the profitability of Avalon's option position. For example, when Avalon bought stock and thereby pushed the stock price up

(and the corresponding put options price down), the price of the stock thereafter generally moved back down toward its original level (and the corresponding put options price moved up), thereby increasing the value of Avalon's large position in put options.

(f) As Avalon further anticipated, planned and intended, in response to Avalon's large options purchases, (i) market makers for those options would typically hedge their risk in response to Avalon's large options trades by trading in the corresponding stock, and (ii) this stock trading impacted the stock price and thus resulted in pushing the price of the options further in a favorable direction for Avalon. For example, when Avalon had purchased large quantities of put options, market makers typically hedged by selling the corresponding stock, which further pushed the price of the stock down, and pushed the price of the put options up.

(g) Avalon then further manipulated the price of the options by unwinding its own position in the stock (for example, selling stock if it had bought originally). Avalon did this as part of its manipulative strategy to further push the price of the options it had purchased in a more favorable direction. For example, after Avalon purchased put options at an artificially cheaper price caused by its purchase of stock, Avalon then sold its stock position, which pushed the price of the stock down further and pushed the price of the put options up. Indeed, Avalon sold the stock at a ***loss*** (*i.e.*, sold it for less than Avalon paid for it), but that loss was more than overcome by the substantial profits it made in trading in the options (see next subparagraph).

(h) Avalon then unwound its option positions at more favorable prices, for a significant profit that resulted from its manipulative actions described above. For example, in instances in which Avalon bought stock (pushing the price of put options

down), then bought a larger position of the options at a cheaper price, then sold the stock (pushing the price of the options back up), Avalon would then sell the options at the higher price caused by Avalon's manipulation of the prices.

(i) The examples described in the above subparagraphs involved instances in which Avalon carried out the scheme by initially purchasing and later selling stock in order to manipulate the prices of put options. Avalon carried out the scheme in varied ways through combinations of buying and selling stock and corresponding put and call options. But whatever the combination of purchases and sales of stock and options by Avalon, the fundamentals of the cross-market manipulation were the same: Avalon made purchases and sales of stock for the purpose of manipulating prices of options so that Avalon could buy options at lower prices and sell them at higher prices than if Avalon had not engaged in the manipulative stock transactions.

88. By engaging in the cross-market manipulation, Avalon and its traders knew or were reckless in not knowing that they were engaged in manipulative and fraudulent conduct because Avalon's stock trades had no legitimate economic reason, Avalon intended them to inject into the market false information about supply and demand for the purpose of tricking and inducing other market participants to enter into transactions based on that false information, and for the purpose of moving stock and corresponding options prices to artificial levels.

2. Example of Cross-Market Manipulation by Avalon

89. The cross-market manipulation is illustrated by Avalon's trading in Deckers Outdoor Corporation ("DECK") stock and put options on October 3, 2014:

(a) Avalon began buying DECK stock at 12:56:25 p.m., when the midpoint of the NBBO for DECK stock was $94.36. By 1:04:57 p.m., Avalon had accumulated a position of 32,549 shares.

(b) Between 12:56:25 and 1:04:57 p.m., Avalon's purchases accounted for approximately 69.5% of the trading volume in DECK and the NBBO midpoint of DECK stock rose from $94.36 to $95.135, an increase of 0.82%. There were no material news events relevant to DECK during this period that would have caused the price increase. The artificial increase in the stock price of DECK caused the price of put options for DECK stock to decrease artificially (because the value of a put—the right to sell shares at a specific price—declines in value as the underlying stock price increases).

(c) At 1:04:57 p.m., shortly after its stock position reached its maximum during the manipulation of 32,549 shares and the NBBO midpoint of DECK had reached its maximum during the manipulation of $95.135, Avalon purchased 951 put options, the equivalent of 95,100 shares. Avalon's purchases of DECK put options were at artificially low prices as a result of Avalon's prior stock trade purchases.

(d) After Avalon purchased the puts, the NBBO midpoint of DECK stock fell from $95.135 to $94.72 between 1:04:57 and 1:08:14 p.m. (which would be the normal and expected result of the price moving back toward to its original level and market makers' hedging by selling stock in response to Avalon's options purchases). The decline in the stock price resulted in an increase in the value of the related put options (because, as the price of the stock declines, the put option to sell shares at a specific price increases).

(e) At 1:08:14 p.m., Avalon started selling shares to liquidate its long stock position, and completed liquidating its stock position by 1:48:00 p.m. During this period, Avalon's sales of DECK shares accounted for 26.1% of the total trading volume of 127,697 shares, and the price of DECK further declined from $94.72 to $93.98, or by -0.79%. There were no material news events relevant to DECK shares during this period to cause the decline. The stock price decline resulted in an increase in the related put options price during the same time period.

(f) Avalon sold 14 puts shortly after it began liquidating its stock position and then acquired an additional 68 puts at various times between 1:16:28.203 and 1:30:20.620, ending up with a position of 985 puts by 1:30:20.620. Avalon then sold the put options for a profit.

(g) In sum, in this trading example, Avalon purchased 1,019 puts at an average price of $2.513 per contract, and sold the same number of puts within 30 minutes at average price of $3.049 per contract, for an average profit of $0.536 per contract and a total profit of $54,640. Avalon generated these profits by (1) using stock trades to artificially depress the price of the corresponding put options contracts; (2) buying the put options at the artificially deflated price; (3) unwinding the stock trades which, combined with other anticipated and expected market maker activity described above, increased the price of the options contracts; and (4) selling the options contracts at a profit. Avalon's DECK stock trades resulted in a loss of $29,707 in this example, a loss that was outweighed by its $54,640 profits from the options trades. Avalon's net gross profits in this cross-market manipulation of DECK stock and options were $24,933.

3. Avalon Repeatedly Manipulated the Prices of Securities and Induced Others to Trade at Artificial Prices Through the Cross-Market Manipulation

90. Avalon executed the cross-market manipulation through Avalon's account at LEK over 600 hundred times between August 2012 and December 2015. The cross-market manipulation scheme generated profits for Avalon of more than $7 million. The cross-market scheme was carried out primarily if not exclusively by a particular Avalon trade group identified as the number 038 sub-account.

91. Through the cross-market manipulation, Avalon engaged in a series of transactions in securities that had the effect of creating actual or apparent volume or raising or depressing prices with the specific intent or purpose to induce others to trade in the security. In doing so, Avalon knowingly and intentionally injected false information into the market and interfered with market forces.

4. Avalon and Fayyer Knowingly or Recklessly Engaged in the Cross-Market Manipulation Scheme

92. In engaging in the cross-market manipulation scheme described herein, Avalon and Fayyer knew or were reckless in not knowing that Avalon was injecting false information into the market about the supply of or demand for those securities, that it was manipulating the market for those securities, and that it was thereby engaged in a scheme to defraud.

93. Avalon and Fayyer knew that Avalon's traders were engaged in the cross-market manipulation. Fayyer (acting on behalf of Avalon) took steps including but not limited to approving the execution of the cross-market manipulation strategy through Avalon's account, communicating and negotiating with the Avalon traders engaged in the strategy, and urging LEK to undertake technological upgrades to increase the effectiveness and profitability of the strategy. Fayyer understood that the strategy involved trading stocks and options and taking a loss on one

of those positions for the purpose of obtaining a profit on the other position, and knew of regulatory inquiries regarding Avalon's cross-market manipulation.

94. Avalon provided millions of dollars in trading capital to carry out this scheme. Avalon also paid tens of thousands of dollars to obtain logistical support and technology necessary for the execution of the strategy.

95. Fayyer and Pustelnik each received a share of Avalon's profits from the manipulative trading. In addition, Pustelnik received a share of LEK's commissions from the manipulative trading.

G. LEK and Sam Lek Knowingly or Recklessly Participated In and Substantially Assisted Avalon's Cross-Market Manipulation Scheme

1. LEK and Sam Lek Knew or Were Reckless in Not Knowing that Avalon Was Engaged in the Cross-Market Strategy Through LEK, and that the Cross-Market Strategy Was Manipulative and Fraudulent

96. Avalon conducted the cross-market scheme through its account at LEK during most of the period from August 2012 through approximately December 2015.

97. LEK and Sam Lek knew or were reckless in not knowing that Avalon was executing the cross-market manipulation through LEK. Sam Lek was personally aware that Avalon was employing the cross-market strategy, and he observed Avalon executing the stock and options trades to carry out the cross-market strategy through LEK's trading system. Thus, LEK and Sam Lek knew or were reckless in not knowing how Avalon was carrying out the cross-market manipulation and that the strategy was manipulative and fraudulent. In addition, Pustelnik, as a LEK registered representative acting on LEK's behalf, knew or was reckless in not knowing that Avalon was engaged in the cross-market manipulation scheme and that the trading was manipulative and fraudulent.

98. Shortly after Avalon began the cross-market strategy in or about August 2012, LEK and Sam Lek began to receive notice from regulators and others that the strategy was occurring through LEK and was manipulative or otherwise improper, including but not limited to the following notices:

(a) Within a week after Avalon began executing the cross-market strategy in August 2012, FINRA staff contacted LEK and Sam Lek, requested additional information about the trading, and advised LEK and Sam Lek that FINRA viewed the trading as potentially manipulative. LEK and Sam Lek reviewed the trading, and, after doing so, expressly approved Avalon's continued execution of the cross-market manipulation through LEK.

(b) In August and September 2012, a broker-dealer to which LEK routed orders flagged Avalon's trading as potentially manipulative and requested that LEK shut off order flow from the Avalon account.

(c) Over the next six months, FINRA followed up with additional inquiries and, in January 2013, met with LEK and Sam Lek and again expressed its views that the trading was manipulative.

(d) LEK and Sam Lek were aware that FINRA reached a settlement with HAP Trading (on behalf of multiple exchanges) in May 2014 based on a substantially similar strategy.[2] In June 2014, FINRA again requested that LEK "continue to review activity [of the cross-market strategy] and address any potential manipulative activity involving

[2] *See In re HAP Trading, LLC, et al.*, NYSE ARCA, Inc. Proc. No. 20100233913-02 (May 12, 2014).

both option and stock trading in the same underlying effected by the same account holder."

(e) FINRA also included such behavior in its annual Regulatory and Examination Priorities Letters for every year between 2013 and the present, which LEK and Sam Lek purported to review and disseminate to LEK's registered representatives.

2. LEK and Sam Lek Participated and Substantially Assisted Avalon in Implementing the Cross-Market Strategy

99. Instead of taking steps to halt the cross-market strategy, LEK and Sam Lek in fact participated in the scheme and provided substantial assistance to Avalon in ways including but not limited to providing technology and other services needed to increase the effectiveness, and profitability, of the strategy.

100. For example, throughout at least 2013 and 2014, at Avalon's request, LEK undertook significant work and expense to decrease latency (the time between the traders entering the order on the trading platform and the order arriving at the exchange) in trading options through LEK, which was crucial to the success of the strategy. LEK's actions included upgrading its options gateways; providing a dedicated server for Avalon's sole use to route the trades; housing and maintaining Avalon servers that acted as a gateway for the strategy; moving the location of its servers to a proximity that allowed quicker connections for the options strategy, allowing Avalon a more direct route to exchanges and thereby reducing latency; and paying monthly fees for special options ports. These actions were taken by LEK at the urging of Avalon, Fayyer, and Pustelnik, and were approved and authorized by Sam Lek.

101. LEK and Sam Lek at all times had the authority and ability to terminate or restrict Avalon's execution of the cross-market manipulation through LEK's systems, but instead expressly approved the cross-market manipulation, and continued to provide market access and

margin lending that made it possible for Avalon to execute the strategy, even though LEK and Sam Lek knew or were reckless in not knowing that the strategy was manipulative and fraudulent. LEK and Sam Lek's actions and the assistance they provided made the strategy possible and increased its effectiveness and profitability. As described in more detail below, Pustelnik, as a LEK registered representative and for whose conduct LEK is responsible, participated in and took additional acts to assist the cross-market manipulation.

102. LEK profited from the cross-market scheme through its receipt of commissions, trading rebates and fees from Avalon's trading.

H. Pustelnik Knowingly or Recklessly Participated in and Substantially Assisted the Cross-Market Manipulation

1. Pustelnik Knew or Was Reckless in Not Knowing That the Cross-Market Manipulation Scheme Was Fraudulent

103. Pustelnik knew or was reckless in not knowing that the cross-market manipulation scheme was manipulative and fraudulent. Pustelnik discussed the strategy directly with the Avalon traders who carried out the cross-market strategy, including but not limited to discussions in August 2012, after Pustelnik learned that FINRA had flagged the trading as manipulative. Pustelnik understood and had ample knowledge of how the strategy worked. Indeed, Pustelnik knew that there was no economic rationale for the stock trades other than to manipulate and move the prices of the stock and corresponding options and that the strategy almost always involved taking a loss on the stock trades, in order to obtain a profit on the options trades that was greater than the loss on the stock trades.

104. Pustelnik served as the go-between for LEK and the Avalon traders who carried out the cross-market strategy. Pustelnik met with those traders more than a dozen times. Pustelnik explained the strategy to Sam Lek and other LEK officers at various times throughout

the relevant period, particularly in response to regulatory inquiries about the strategy directed to LEK, and he assured them it was not manipulative, even though he knew or was reckless in not knowing that it in fact was. Pustelnik enlisted LEK's and Sam Lek's help in improving LEK's technology to accommodate the strategy and maximize its effectiveness.

2. Pustelnik's Role in the Cross-Market Manipulation Through LEK

105. Pustelnik played a central role in bringing the cross-market manipulation to LEK and ensuring its success. The cross-market manipulation scheme was carried out by two particular Avalon traders primarily located in Moscow. Pustelnik recruited those traders in June 2012, at which time Pustelnik touted the speed of LEK's trading technology, and by August 2012, the traders began executing the strategy through Avalon and LEK.

106. Pustelnik helped LEK develop and institute the technological changes to its systems that were necessary for the cross-market manipulation to work, and continued to work with LEK throughout the relevant time period to improve its systems to increase the effectiveness of the strategy. The cross-market manipulation required high speed for entry and display of orders. Pustelnik—who has boasted of having considerable expertise in the relevant technology—worked with LEK to institute technology sufficient to accommodate the cross-market manipulation. Throughout late 2012 and early 2013, Pustelnik urged LEK to improve its options trading technology so that Avalon would continue to trade the cross-market strategy through LEK. In fact, Pustelnik personally paid a portion of the monthly cost of LEK's options ports to facilitate entry of Avalon's options orders.

107. Pustelnik provided on-site technological assistance to the traders at their Moscow office and at Avalon's Kiev office, where they sometimes came to trade.

108. Through Pustelnik's role as a registered representative of LEK and the relationships he had with LEK employees, he aggressively encouraged and advocated for the cross-market strategy.

109. After FINRA questioned the strategy as being potentially manipulative in August 2012, and again met with LEK to express its concerns about the strategy in January 2013, Pustelnik provided LEK with a written description of the strategy, representing that he had concluded that it was not manipulative after studying the strategy and speaking directly with the traders. Pustelnik knew or was reckless in not knowing that this purported conclusion was false, because the cross-market strategy was inherently manipulative and fraudulent.

3. Pustelnik Moved the Cross-Market Manipulation to Investment Management Firm and Other Broker-Dealer

110. Pustelnik actively took steps, including but not necessarily limited to those described below, to ensure the continued success of the cross-market strategy, even when faced with regulatory inquiries and technological constraints, and even though he knew or was reckless in not knowing that the strategy was manipulative.

111. In approximately February 2013, after FINRA had contacted LEK and raised concerns about the strategy, and in the midst of negotiating with LEK for technological improvements to facilitate the strategy, Pustelnik—rather than being deterred, and without informing LEK—orchestrated the move of the strategy from Avalon's accounts at LEK to accounts held in the name of Investment Management Firm at Other Broker-Dealer.

112. Pustelnik played a central role in causing the cross-market strategy to trade through Investment Management Firm. In or about February 2013, Pustelnik introduced the strategy to Investment Management Firm. Pustelnik was one of just a few people who discussed the cross-market strategy and its risks with Investment Management Firm. Yet Pustelnik did not

inform Investment Management Firm or Other Broker-Dealer that FINRA had flagged the activity as manipulative.

113. Pustelnik negotiated with Investment Management Firm initially to determine and later to increase the amounts of margin lending or buying power that Investment Management Firm would provide to the traders for the cross-market strategy.

114. Pustelnik then arranged for the Avalon traders who executed the trading in the cross-market strategy to operate through Blaise Greys (a Fayyer-owned entity), which in turn traded through accounts in the name of Investment Management Firm at Other Broker-Dealer. Pustelnik acted as the liaison between Investment Management Firm and the traders executing the strategy.

115. Pustelnik was heavily involved in developing and setting up technology at Investment Management Firm so that the cross-market manipulation could trade there. For example, in March 2013, Pustelnik worked with the cross-market traders to assist them first in testing and then actually trading the strategy through Investment Management Firm. Pustelnik had access to and monitored the accounts at Investment Management Firm that the traders used to conduct the strategy.

116. Within a month after the strategy started trading through Investment Management Firm's accounts at Other Broker-Dealer, Other Broker-Dealer flagged the conduct as potentially manipulative.

4. Pustelnik Participated in Moving the Cross-Market Manipulation Back to Lek

117. Pustelnik was actively involved in moving the cross-market strategy back to LEK in or about April 2013.

118. Pustelnik strongly urged LEK to improve its options trading technology so that Avalon could resume its options trading at LEK, including the cross-market strategy. For example, on April 3, 2013, Pustelnik emailed a LEK officer: "Avalon has stopped completely trading that options strategy. They did their part – agreed to pay more + good faith. Now they cant trade – so no comm, no anything on that strategy. issue is only technology." Pustelnik followed up with suggestions on how to improve the technology at LEK, noting that "yes they may cost a few hundred bucks – vs 10s of thousands missed commissions." Also, in April 2013, Pustelnik actively encouraged LEK officers to "prioritize[e] upgrading" LEK's technology specifically for the cross-market strategy.

119. At Pustelnik's suggestion, the cross-market strategy moved back to LEK in or about late April 2013, and the traders resumed executing the strategy through Avalon shortly thereafter. The cross-market manipulation continued trading through Avalon's accounts at LEK until at least December 2015.

5. Pustelnik Profited From the Cross-Market Manipulation

120. Pustelnik profited from the cross market manipulation. He received commissions and other payments from LEK for the transactions that occurred through LEK. Avalon also paid him a share of profits received.

CLAIMS FOR RELIEF

First Claim for Relief

(Against Avalon, Fayyer, and Pustelnik for Violations of Section 10(b) of the Exchange Act and Rule 10b-5)

121. Paragraphs 1 through 120 are realleged and incorporated by reference.

122. By reason of the conduct described above, Avalon, Fayyer, and Pustelnik, directly or indirectly, acting intentionally, knowingly or recklessly, in connection with the purchase or

sale of securities, by use of the means or instrumentalities of interstate commerce or the facilities of a national securities exchange or the mail: (a) employed devices, schemes, or artifices to defraud; and (b) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons.

123. Avalon, Fayyer, and Pustelnik acted knowingly or recklessly.

124. By reason of the foregoing, Defendants Avalon, Fayyer, and Pustelnik violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

Second Claim for Relief

(Against Avalon, Fayyer, and Pustelnik for Violations of Section 17(a)(1) and (3) of the Securities Act)

125. Paragraphs 1 through 120 are realleged and incorporated by reference.

126. By reason of the conduct described above, Avalon, Fayyer, and Pustelnik, in the offer or sale of securities, acting with the requisite degree of scienter, by the use of means and instruments of transportation and communication in interstate commerce, and by use of the mails, directly or indirectly: (a) knowingly or recklessly, employed devices, schemes, or artifices to defraud; and (b) with negligence, engaged in transactions, practices, or courses of business which operated or would have operated as a fraud or deceit upon purchasers.

127. Avalon, Fayyer, and Pustelnik acted knowingly, recklessly, or negligently.

128. By reason of the foregoing, Avalon, Fayyer, and Pustelnik violated Sections 17(a)(1) and (3) of the Securities Act [15 U.S.C. §§ 77q(a)(1) and (3)].

Third Claim for Relief

(Against LEK and Sam Lek for Violations of Section 17(a)(3) of the Securities Act)

129. Paragraphs 1 through 120 are realleged and incorporated by reference.

130. By reason of the conduct described above, LEK and Sam Lek, in the offer or sale of securities, acting with the requisite degree of scienter, by the use of means and instruments of transportation and communication in interstate commerce, and by use of the mails, directly or indirectly, with negligence, engaged in transactions, practices, or courses of business which operated or would have operated as a fraud or deceit upon purchasers, including but not limited to LEK and Sam Lek's involvement and participation in a scheme to defraud the U.S. securities markets through the layering and cross-market manipulation strategies.

131. LEK and Sam Lek acted knowingly, recklessly, or negligently.

132. By reason of the foregoing, LEK and Sam Lek violated Section 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(3)].

Fourth Claim for Relief

(Against Avalon and Fayyer for Violations of Section 9(a)(2) of the Exchange Act)

133. Paragraphs 1 through 120 are realleged and incorporated by reference.

134. By reason of the conduct described above, Avalon and Fayyer, directly or indirectly, by the use of the mails or means or instrumentalities of interstate commerce, or of a facility of a national securities exchange, effected, alone or with one or more other 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, including but not limited to Avalon's and Fayyer's actions, with Avalon, of engaging in the layering and cross-market manipulation strategies which affected the volume and prices of such securities for the purpose of inducing the purpose or sale of such securities by others.

135. Avalon and Fayyer acted with the intent to induce trading by others.

136. By reason of the foregoing, Avalon and Fayyer violated Section 9(a)(2) of the Exchange Act [15 U.S.C. § 78i(a)(2)].

Fifth Claim for Relief

(Against Fayyer and Pustelnik for Aiding and Abetting Avalon's and Each Other's Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder)

137. Paragraphs 1 through 120 are realleged and incorporated by reference.

138. By reason of the conduct described above, Avalon, Fayyer, and Pustelnik violated the federal securities laws. Avalon, Fayyer, and Pustelnik, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, directly or indirectly, with scienter: (a) employed devices, schemes, or artifices to defraud; and (b) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

139. By reason of the conduct described above, Fayyer and Pustelnik, acting knowingly or recklessly, provided substantial assistance to, and thereby aided and abetted, Avalon's and each other's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

140. Accordingly, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Fayyer and Pustelnik are liable for Avalon and each other's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

Sixth Claim for Relief

(Against LEK and Sam Lek for Aiding and Abetting Avalon's, Fayyer's, and Pustelnik's Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder)

141. Paragraphs 1 through 120 are realleged and incorporated by reference.

142. By reason of the conduct described above, Avalon, Fayyer, and Pustelnik violated the federal securities laws. Avalon, Fayyer, and Pustelnik, in connection with the purchase or sale of a security, by the use of means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange, directly or indirectly, with scienter: (a) employed devices, schemes, or artifices to defraud; and (b) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, in violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

143. By reason of the conduct described above, LEK and Sam Lek, acting knowingly or recklessly, provided substantial assistance to, and thereby aided and abetted, Avalon's, Fayyer's, and Pustelnik's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

144. Accordingly, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], LEK and Sam Lek are liable for Avalon's, Fayyer's, and Pustelnik's violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

Seventh Claim for Relief

(Against Fayyer and Pustelnik for Aiding and Abetting Avalon's and Each Other's Violations of Section 17(a)(1) and (3) of the Securities Act)

145. Paragraphs 1 through 120 are realleged and incorporated by reference.

146. By reason of the conduct described above, Avalon, Fayyer, and Pustelnik, in the offer or sale of securities and by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly: (a) with scienter, employed devices, schemes, or artifices to defraud; and (b) with negligence, engaged in transactions, practices, or courses of business which operated or would have operated as a fraud or deceit upon purchasers, in violation of Section 17(a)(1) and (3) of the Securities Act [15 U.S.C. § 77q(a)(1) and (3)].

147. By reason of the conduct described above, Fayyer and Pustelnik, acting knowingly or recklessly, provided substantial assistance to, and thereby aided and abetted, Avalon's and each other's violations of Section 17(a)(1) and (3) of the Securities Act [15 U.S.C. § 77q(a)(1) and (3)].

148. Accordingly, Fayyer and Pustelnik, pursuant to Section 15(b) of the Securities Act [15 U.S.C. § 77o(b)], are liable for those violations.

Eighth Claim for Relief

(Against LEK and Sam Lek for Aiding and Abetting Avalon's, Fayyer's, and Pustelnik's Violations of 17(a)(1) and (3) of the Securities Act)

149. Paragraphs 1 through 120 are realleged and incorporated by reference.

150. By reason of the conduct described above, Avalon, Fayyer, and Pustelnik, in the offer or sale of securities and by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly: (a) with scienter, employed devices, schemes, or artifices to defraud; and (b) with negligence, engaged in transactions, practices, or courses of business which operated or would have operated as a fraud or deceit upon purchasers, in violation of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

151. By reason of the conduct described above, LEK and Sam Lek, acting knowingly or recklessly, provided substantial assistance to, and thereby aided and abetted, Avalon's, Fayyer's, and Pustelnik's violations of Section 17(a)(1) and (3) of the Securities Act [15 U.S.C. § 77q(a)(1) and (3)].

152. Accordingly, pursuant to Section 15(b) of the Securities Act [15 U.S.C. § 77o(b)], LEK and Sam Lek are liable for Avalon's, Fayyer's, and Pustelnik's violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

Ninth Claim for Relief

(Against Fayyer, Pustelnik, LEK, and Sam Lek for Aiding and Abetting Avalon's Violations of Section 9(a)(2) of the Exchange Act)

153. Paragraphs 1 through 120 are realleged and incorporated by reference.

154. Based upon the conduct described above with regard to the layering scheme and the cross-market manipulation scheme, Avalon violated the federal securities laws. Avalon, directly or indirectly, by the use of the mails or means or instrumentalities of interstate commerce, or of a facility of a national securities exchange, effected, alone or with one or more other 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 [15 U.S.C. § 78i(a)(2)].

155. By reason of the conduct described above, Fayyer, Pustelnik, LEK, and Sam Lek, acting knowingly or recklessly, provided substantial assistance to, and thereby aided and abetted, Avalon's violations of Section 9(a)(2) of the Exchange Act [15 U.S.C. § 78i(a)(2)].

156. Accordingly, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], Fayyer, Pustelnik, LEK, and Sam Lek are liable for Avalon's violations of Section 9(a)(2) of the Exchange Act [15 U.S.C. § 78i(a)(2)].

Tenth Claim for Relief

(Against Avalon and Fayyer Under Section 20(a) of the Exchange Act for Violations of Exchange Act Sections 9(a)(2) and 10(b) and Rule 10b-5)

157. Paragraphs 1 through 120 are realleged and incorporated by reference.

158. By reason of the conduct described above, certain traders under Avalon's and Fayyer's control: (a) directly or indirectly, by the use of the mails or means or instrumentalities of interstate commerce, or of a facility of a national securities exchange, effected, alone or with one or more other 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; and (b) directly or indirectly, singly or in concert with others, in connection with the purchase or sale of a security, with scienter, used the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange to employ devices, schemes, or artifices to defraud and to engage in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon others.

159. By reason of the conduct described above, the Avalon traders were control persons of Avalon and Fayyer in that Avalon and Fayyer exercised actual power and control over the Avalon traders and were culpable participants in the Avalon traders' violations of Sections 9(a) and 10(b) and Rule 10b-5.

160. Accordingly, Avalon and Fayyer, pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], are liable for the Avalon traders' violations of Sections 9(a)(2) and 10(b) of

the Exchange Act and Rules 10b-5(a) and (c) thereunder [15 U.S.C. §§ 78i(a)(2), 78j(b), 17 C.F.R. §§ 240.10b-5(a), (c)].

Eleventh Claim for Relief

(Against LEK Under Section 20(a) of the Exchange Act for Violations of Exchange Act Section 10(b) and Rule 10b-5)

161. Paragraphs 1 through 120 are realleged and incorporated by reference.

162. By reason of the conduct described above, Pustelnik, a registered representative under LEK's control, directly or indirectly, singly or in concert with others, in connection with the purchase or sale of a security, with scienter, used the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange to employ devices, schemes, or artifices to defraud and to engage in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon others.

163. By reason of the conduct described above, LEK was a control person of Pustelnik in that LEK exercised actual power and control over Pustelnik and was a culpable participant in his violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

164. Accordingly, LEK, pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], is liable for Pustelnik's violations of Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder [15 U.S.C. § 78j(b), 17 C.F.R. §§ 240.10b-5(a), (c)].

Twelfth Claim for Relief

(Against Pustelnik Under Section 20(a) of the Exchange Act for Violations of Exchange Act Sections 9(a)(2) and 10(b) and Rule 10b-5)

165. Paragraphs 1 through 120 are realleged and incorporated by reference.

166. By reason of the conduct described above, Avalon, which was under Pustelnik's control: (a) directly or indirectly, by the use of the mails or means or instrumentalities of

interstate commerce, or of a facility of a national securities exchange, effected, alone or with one or more other 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; and (b) directly or indirectly, singly or in concert with others, in connection with the purchase or sale of a security, with scienter, used the means or instrumentalities of interstate commerce, or of the mails, or of a facility of a national securities exchange to employ devices, schemes, or artifices to defraud and to engage in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon others.

167. By reason of the conduct described above, Pustelnik was a control person of Avalon, in that he exercised actual power and control over Avalon and was a culpable participant in its violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

168. Accordingly, Pustelnik, pursuant to Section 20(a) of the Exchange Act [15 U.S.C. § 78t(a)], is liable for Avalon's violations of Sections 9(a)(2) and 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder [15 U.S.C. §§ 78i(a)(2), 78j(b), 17 C.F.R. §§ 240.10b-5(a), (c)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a judgment:

A. Finding that Defendants Avalon, Fayyer, LEK, Sam Lek, and Pustelnik violated the federal securities laws alleged in this complaint;

B. Permanently restraining and enjoining Defendants Avalon, Fayyer, LEK, Sam Lek, Pustelnik, and all persons in active concert or participation with them, from violating the federal securities laws alleged in this complaint;

C. Ordering Defendants Avalon, Fayyer, LEK, Sam Lek, and Pustelnik to disgorge all ill-gotten gains as a result of their unlawful conduct, plus pre-judgment interest;

D. Ordering Defendants Avalon, Fayyer, LEK, Sam Lek, and Pustelnik to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

E. Granting such other and further equitable relief to the Commission as the Court deems just and appropriate.

JURY DEMAND

The Commission demands trial by jury.

Dated: March 10, 2017
Washington D.C.

Respectfully submitted,

Robert A. Cohen
David J. Gottesman*
Olivia S. Choe*
Sarah S. Nilson*

U.S. Securities and Exchange Commission
100 F. Street NE
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Of Counsel:

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*Not admitted in the Southern District of New York.

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,	:	17cv1789(DLC)
Plaintiff,	:	SPECIAL VERDICT FORM
-v-	:	
VALI MANAGEMENT PARTNERS d/b/a AVALON FA LTD, NATHAN FAYYER, AND SERGEY PUSTELNIK a/k/a SERGE PUSTELNIK,	:	COURT EXHIBIT 11
Defendants.	:	

PLEASE CHECK (√) YOUR ANSWERS

All jurors must agree on the answers to all of the questions:

Issue I: Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) and Substantial Assistance Under Section 20(e)

1. Did the SEC establish by a preponderance of the evidence that Avalon violated Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES ✓ NO _____

2. If your answer to Question 1 is YES, did the SEC establish by a preponderance of the evidence that Nathan Fayyer knowingly or recklessly provided substantial assistance to Avalon in doing so?

YES ✓ NO _____

3. If your answer to Question 1 is YES, did the SEC establish by a preponderance of the evidence that Sergey Pustelnik knowingly or recklessly provided substantial assistance to Avalon in doing so?

YES ✓ NO _____

4. Did the SEC establish by a preponderance of the evidence that Nathan Fayyer violated Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES ✓ NO _____

5. If your answer to Question 4 is YES, did the SEC establish by a preponderance of the evidence that Sergey Pustelnik knowingly or recklessly provided substantial assistance to Nathan Fayyer in doing so?

YES ✓ NO _____

6. Did the SEC establish by a preponderance of the evidence that Sergey Pustelnik violated Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES ✓ NO _____

7. If your answer to Question 6 is YES, did the SEC establish by a preponderance of the evidence that Nathan Fayyer knowingly or recklessly provided substantial assistance to Sergey Pustelnik in doing so?

YES ✓ NO _____

Issue II: Section 17(a)(1) of the Securities Act and Substantial Assistance Under Section 15(b)

8. Did the SEC establish by a preponderance of the evidence that Avalon violated Section 17(a)(1) of the Securities Act?

YES ✓ NO _____

9. If your answer to Question 8 is YES, did the SEC establish by a preponderance of the evidence that Nathan Fayyer knowingly or recklessly provided substantial assistance to Avalon in doing so?

YES ✓ NO _____

10. If your answer to Question 8 is YES, did the SEC establish by a preponderance of the evidence that Sergey Pustelnik knowingly or recklessly provided substantial assistance to Avalon in doing so?

YES ✓ NO _____

11. Did the SEC establish by a preponderance of the evidence that Nathan Fayyer violated Section 17(a)(1) of the Securities Act?

YES ✓ NO _____

12. If your answer to Question 11 is YES, did the SEC establish by a preponderance of the evidence that Sergey Pustelnik knowingly or recklessly provided substantial assistance to Nathan Fayyer in doing so?

YES ✓ NO _____

13. Did the SEC establish by a preponderance of the evidence that Sergey Pustelnik violated Section 17(a)(1) of the Securities Act?

YES ✓ NO _____

14. If your answer to Question 13 is YES, did the SEC establish by a preponderance of the evidence that Nathan Fayyer knowingly or recklessly provided substantial assistance to Sergey Pustelnik in doing so?

YES ✓ NO _____

Issue III: Section 17(a)(3) of the Securities Act and Substantial Assistance Under Section 15(b)

15. Did the SEC establish by a preponderance of the evidence that Avalon violated Section 17(a)(3) of the Securities Act?

YES ✓ NO _____

16. If your answer to Question 15 is YES, did the SEC establish by a preponderance of the evidence that Nathan Fayyer knowingly or recklessly provided substantial assistance to Avalon in doing so?

YES ✓ NO _____

17. If your answer to Question 15 is YES, did the SEC establish by a preponderance of the evidence that Sergey Pustelnik knowingly or recklessly provided substantial assistance to Avalon in doing so?

YES ✓ NO _____

18. Did the SEC establish by a preponderance of the evidence that Nathan Fayyer violated Section 17(a)(3) of the Securities Act?

YES ✓ NO _____

19. If your answer to Question 18 is YES, did the SEC establish by a preponderance of the evidence that Sergey Pustelnik knowingly or recklessly provided substantial assistance to Nathan Fayyer in doing so?

YES ✓ NO _____

20. Did the SEC establish by a preponderance of the evidence that Sergey Pustelnik violated Section 17(a)(3) of the Securities Act?

YES ✓ NO _____

21. If your answer to Question 20 is YES, did the SEC establish by a preponderance of the evidence that Nathan Fayyer knowingly or recklessly provided substantial assistance to Sergey Pustelnik in doing so?

YES ✓ NO _____

Issue IV: Section 9(a)(2) of the Exchange Act and Substantial Assistance Under Section 20(e)

22. Did the SEC establish by a preponderance of the evidence that Avalon violated Section 9(a)(2) of the Exchange Act?

YES ✓ NO _____

23. If your answer to Question 22 is YES, did the SEC establish by a preponderance of the evidence that Nathan Fayyer knowingly or recklessly provided substantial assistance to Avalon in doing so?

YES ✓ NO _____

24. If your answer to Question 22 is YES, did the SEC establish by a preponderance of the evidence that Sergey Pustelnik knowingly or recklessly provided substantial assistance to Avalon in doing so?

YES ✓ NO _____

25. Did the SEC establish by a preponderance of the evidence that Nathan Fayyer violated Section 9(a)(2) of the Exchange Act?

YES ✓ NO _____

26. If your answer to Question 25 is YES, did the SEC establish by a preponderance of the evidence that Sergey Pustelnik knowingly or recklessly provided substantial assistance to Nathan Fayyer in doing so?

YES ✓ NO _____

Issue V: Section 20(a) of the Exchange Act (Control Person Liability)

27. Did the SEC establish by a preponderance of the evidence that any of Avalon's Traders violated Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES ✓ NO _____

If your answer to Question 27 is YES, answer Questions 28 through 31:

28. Is Avalon liable as a control person under Section 20(a) of the Exchange Act for the Avalon's Traders' violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES ✓ NO _____

29. Did Avalon know, or was Avalon reckless in not knowing, that the Avalon Traders were engaged in a violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES ✓ NO _____

30. Is Nathan Fayyer liable as a control person under Section 20(a) of the Exchange Act for the Avalon Traders' violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES ✓ NO _____

31. Did Nathan Fayyer know, or was he reckless in not knowing, that the Avalon Traders were engaged in a violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES ✓ NO _____

32. Did the SEC establish by a preponderance of the evidence that any of Avalon's Traders violated Section 9(a)(2) of the Exchange Act?

YES ✓ NO _____

If your answer to Question 32 is YES, answer Questions 33 through 36:

33. Is Avalon liable as a control person under Section 20(a) of the Exchange Act for the Avalon's Traders' violation of Section 9(a)(2) of the Exchange Act?

YES ✓ NO _____

34. Did Avalon know, or was Avalon reckless in not knowing, that the Avalon Traders were engaged in a violation of Section 9(a)(2) of the Exchange Act?

YES ✓ NO _____

35. Is Nathan Fayyer liable as a control person under Section 20(a) of the Exchange Act for the Avalon Traders' violation of Section 9(a)(2) of the Exchange Act?

YES ✓ NO _____

36. Did Nathan Fayyer know, or was he reckless in not knowing, that the Avalon Traders were engaged in a violation of Section 9(a)(2) of the Exchange Act?

YES ✓ NO _____

If you found in answer to Question 1 that Avalon violated Section 10(b) of the Exchange Act and Rules 10b-5(a) or (c), answer Questions 37 and 38:

37. Is Sergey Pustelnik liable as a control person under Section 20(a) of the Exchange Act for the Avalon violation of Section 10(b) of the Exchange Act and Rules 10b-5(a) or (c)?

YES ✓ NO _____

38. Did Sergey Pustelnik know, or was he reckless in not knowing, that Avalon was engaged in a violation of Section 10(b) of the Exchange Act and Rule 10b-5(a) or (c)?

YES ✓ NO _____

If you found in answer to Question 22 that Avalon violated Section 9(a)(2) of the Exchange Act, answer Questions 39 and 40:

39. Is Sergey Pustelnik liable as a control person under Section 20(a) of the Exchange Act for the Avalon violation of Section 9(a)(2) of the Exchange Act?

YES ✓ NO _____

40. Did Sergey Pustelnik know, or was he reckless in not knowing, that Avalon was engaged in a violation of Section 9(a)(2) of the Exchange Act?

YES ✓ NO _____

Issue VI: The Layering and Cross-Market Strategies

If you have answered any question with a YES, answer Questions 41 through 44:

41. Did the SEC prove by a preponderance of the evidence that orders placed by Avalon constituted a layering strategy?

YES ✓ NO _____

42. If your answer to Question 43 is YES, did the SEC prove by a preponderance of the evidence that the layering strategy constituted a manipulation of the securities markets?

YES ✓ NO _____

43. Did the SEC prove by a preponderance of the evidence that orders placed by Avalon constituted a cross-market strategy?

YES ✓ NO _____

44. If your answer to Question 45 is YES, did the SEC prove by a preponderance of the evidence that the cross-market strategy constituted a manipulation of the securities markets?

YES ✓ NO _____

EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **LEK SECURITIES CORPORATION, et al,** **Defendants.**	**17-CV-1789 (DLC)**

FINAL JUDGMENT AS TO DEFENDANT
LEK SECURITIES CORPORATION

The Securities and Exchange Commission ("SEC" or "Commission") having filed a Complaint and Defendant Lek Securities Corporation ("Defendant" or "Lek Securities") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment; and Defendant having admitted the facts set forth in the Consent of Lek Securities ("Consent"):

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Lek Securities is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Lek Securities is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Lek Securities is permanently restrained and enjoined from violating Section 9(a)(2) of the Exchange Act [15 U.S.C. § 78i(a)(2)], directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange to:

effect, alone or with one (1) or more other persons, a series of transactions in any security registered on a national securities exchange, any security not so registered, or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's

officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Lek Securities is liable for disgorgement of $419,623, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $106,892, and a civil penalty in the amount of $1,000,000 pursuant to Section 21(d) of the Exchange Act. Defendant shall satisfy this obligation by paying $1,526,515 to the Securities and Exchange Commission within 30 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Lek Securities as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part

of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement, prejudgment interest, and penalties by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 30 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant Lek Securities is restrained and enjoined for a period of three (3) years from having foreign customers that engage in intra-day trading pursuant to the definitions and terms detailed in Appendix A hereto (the "Foreign Intra-Day Trading Injunction Provisions"), which also is incorporated with the same force and effect as if fully set forth herein.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Defendant Lek Securities shall comply with all of the undertakings and agreements set forth therein, including but not limited to the undertakings to:

(a) retain an independent compliance monitor for a period of at least three (3) years to perform a comprehensive and ongoing review pursuant to the terms and concerning the areas and subjects set forth in Appendix B hereto (the "Independent Compliance Monitor Provisions"), which also is incorporated with the same force and effect as if fully set forth herein; and

(b) certify, in writing, compliance with the undertaking(s) set forth above. The certification shall identify the undertaking(s), provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Defendant agrees to provide such evidence. Defendant shall submit the certification and supporting material to Melissa Hodgman, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VIII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: September 30, 2019

UNITED STATES DISTRICT JUDGE

APPENDIX A

FOREIGN INTRA-DAY TRADING INJUNCTION PROVISIONS

I. **Definitions applicable to Foreign Intra-Day Trading Injunction.**

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

B. ***"Customer."*** The term "Customer" shall mean any individual or entity holding an account at or trading through Lek Securities.

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

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

II. **Foreign Intra-Day Trading Injunction.**

A. Lek Securities is enjoined for a period of three (3) years from the date of entry of the Final Judgment, from having Foreign Customers that engage in Intra-Day Trading. This shall be referred to as the "Foreign Intra-Day Trading Injunction."

B. The Foreign Intra-Day Trading Injunction does not apply where Lek Securities engages in the following limited non-executing prime brokerage functions: (1) post-execution clearing services; (2) settlement of securities; (3) custody services, including

providing technical services necessary to the provision of such custody services; and (4) pre-execution credit checks conducted in connection with sections II.B(1)-(3).

C. ***Exceptions to the Foreign Intra-Day Trading Injunction.***

Trading Exceptions. Subject to the Time-Out Period described in section II.D. below, the Foreign Intra-Day Trading Injunction shall not apply to the following types of trading by Foreign Customers:

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

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

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

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

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

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

D. ***Applicability of Exceptions.***

(1) **Existing Foreign Customers.** From the date of entry of the Final Judgment until the later of (i) one-hundred twenty (120) days, or (ii) three (3) days after the Monitor's first report ("Time Out Period"), the Exceptions to the Foreign Intra-Day Trading Injunction set forth in section II.C(2)-(5) above shall be available only to existing Foreign Customers of Lek Securities. Attachment 1 hereto [filed under seal] is a list of existing Foreign Customers of Lek Securities.

(2) **New Foreign Customers.** At the end of the Time Out Period, subject to review and approval by the Monitor, Lek Securities may begin excepting new Foreign Customers from the Foreign Intra-Day Trading Injunction pursuant to section II.C(2)-(5).

III. **Requirement to Terminate Certain Foreign Customers.**

A. Foreign Customers of Lek Securities may be deemed Significant Compliance Risks and must be terminated as following:

(1) **Significant Compliance Risk Designation.** Lek Securities shall designate a Foreign Customer as a "Significant Compliance Risk" if:

(a) A Foreign Customer that does not fall within the exceptions in section II.C(4)-(5) engages in Intra-Day Trading twice in a 30-day period; or

(b) A Foreign Customer, regardless of whether subject to any exception set forth in section II.C., engages in potential manipulative trading or other market manipulation that is flagged by the Monitor, the SEC, Financial Industry Regulatory Authority, or another Self-Regulatory Organization ("SRO").

(2) **Significant Compliance Risk Review.** Lek Securities must cause the Monitor to conduct a review of a Foreign Customer that has been deemed a Significant Compliance Risk within 30 days of the Foreign Customer being so designated, as set forth in section X of Appendix B ("Significant Compliance Risk Review").

(3) **Account Suspension.** Lek Securities must suspend all trading by the Foreign Customer that is deemed a Significant Compliance Risk during the Significant Compliance Risk Review if the Monitor so recommends, as set forth in section X of Appendix B.

(4) **Termination.**

(a) Lek Securities must terminate a Foreign Customer that is deemed a Significant Compliance Risk if, after the Significant Compliance Risk

Review, the Monitor determines that the Foreign Customer should be terminated, as set forth in section X of Appendix B.

(b) If Lek Securities or the Foreign Customer cannot or does not provide information requested by the Monitor to conduct the Significant Compliance Risk Review as set forth in section X of Appendix B, Lek Securities must terminate that Foreign Customer.

APPENDIX B

INDEPENDENT COMPLIANCE MONITOR PROVISIONS

I. **Definitions Applicable to Independent Compliance Monitor Provisions.** The definitions in Appendix A (Foreign Intra-Day Trading Injunction Provisions) shall apply herein.

II. **Retention and Tasks.** No later than thirty (30) days after entry of the Final Judgment, Lek Securities shall retain an independent compliance monitor ("Monitor") not unacceptable to SEC staff to perform a comprehensive and ongoing review of Lek Securities concerning the areas and subjects set forth below, and to carry out the tasks set forth herein. Lek Securities may apply to SEC staff for an extension of that deadline before it arrives, and upon a showing of good cause by Lek Securities, SEC staff in its sole and reasonable discretion may grant such extension for whatever period of time it deems appropriate.

III. **Term and Payment of Monitor.** Lek Securities shall retain the monitor for a period of three (3) years from the date of retention, provided, however, that if Lek Securities fails to implement the Monitor's recommendations and obtain the Monitor's certification of such implementation within that period, Lek Securities shall retain the Monitor until Lek Securities complies with all recommendations and the Monitor certifies that such recommendations have been implemented. Lek Securities shall be solely responsible for payment of the Monitor's fees and expenses.

IV. **Independence of Monitor.** Lek Securities shall require the Monitor to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Monitor shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Lek Securities or any of its present or former affiliates, directors, officers, employees, or agents acting in those

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

V. **Confirmation.** Within three (3) business days after retaining the Monitor pursuant to section II above, Lek Securities must provide to SEC staff a copy of the engagement letter detailing the Monitor's responsibilities.

VI. **Cooperation.** Lek Securities shall cooperate fully with the Monitor, including providing the Monitor with access to its files, books, records, and personnel (and the files, books, records, and personnel of Affiliates of Lek Securities), as reasonably requested for the tasks set forth herein, and Lek Securities shall obtain the cooperation of its employees or other persons under its supervision or control.

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

A. The identity and full legal name of every Customer, including the account holder and every person authorized by Lek Securities to trade in the account.

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

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

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

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

F. Such other information as the Monitor requests.

VIII. Monitor's Review, Assessment and Recommendations of Lek Securities' Compliance With Foreign Intra-Day Trading Injunction.

A. Lek Securities shall require the Monitor to review and assess on an ongoing basis whether Lek Securities is complying with the Foreign Intra-Day Trading Injunction as set forth in Appendix A. This shall include but not be limited to requiring the Monitor to: (i) review and assess all Intra-Day Trading by Foreign Customers who are not excepted from such injunction under sections II.C(4)-(5) and II.D of Appendix A; (ii) review and assess the sufficiency and reasonableness of Lek

Securities' systems, policies, and procedures related to Intra-Day Trading by Foreign Customers; (iii) review and assess Lek Securities' compliance with the Foreign Intra-Day Trading Injunction; and (iv) conduct reviews and make recommendations pursuant to the Significant Compliance Risk provisions below.

B. In order to facilitate the Monitor's review required by this section and the Significant Compliance Risk provisions below, Lek Securities shall provide the Monitor with the following information for all Intra-Day Trading by Foreign Customers who are not excepted from such injunction under sections II.C(4)-(5) and II.D of Appendix A:

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

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

(3) Such other information as the Monitor requests, including but not limited to the information described in section VII above.

C. Lek Securities shall make the information required by this section VIII available to the Monitor beginning no later than thirty (30) days after the date of entry of the Final Judgment, and then every thirty (30) days thereafter, or at such other intervals as the Monitor may require.

D. Lek Securities shall require the Monitor to perform and complete the review, assessment and making of recommendations required by this section within one hundred twenty (120) days of the date of the Monitor's appointment, and again by

the end of each one hundred twenty (120) day period thereafter, for so long as the Monitor is engaged.

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

IX. **Monitor's Review, Assessment and Recommendations Regarding Manipulative Trading and Market Manipulation.**

A. Lek Securities shall require the Monitor to review and assess the sufficiency and reasonableness of Lek Securities' controls and procedures for preventing manipulative trading and other market manipulation (not limited to Foreign Customers), and to recommend actions, if any, to be taken by Lek Securities to make its controls and procedures more effective at detecting and preventing manipulative trading and other market manipulation.

B. Lek Securities shall require the Monitor to conduct reviews and make recommendations regarding Foreign Customers engaged in potential manipulative trading or other market manipulation pursuant to the Significant Compliance Risk provisions set forth below in section X.

C. Lek Securities shall require the Monitor to perform and complete this review, assessment and making of recommendations within one hundred twenty (120) days of the date of the Monitor's appointment, and again by the end of each one hundred twenty (120) day period thereafter, for so long as the Monitor is engaged.

D. Lek Securities shall require the Monitor to submit a report to Lek Securities and SEC staff on the review, assessment, and recommendations required by this section within one hundred twenty (120) days of the date of the Monitor's appointment, and again by the end of each one hundred twenty (120) day period thereafter, for so long as the Monitor is engaged. The report shall include information concerning the Monitor's review and recommendations regarding manipulative trading and other market manipulation.

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

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

B. Where a Foreign Customer has been designated a Significant Compliance Risk, Lek Securities shall require the Monitor to undertake reviews and recommendations as follows:

(1) Conduct a review within thirty (30) days of the Foreign Customer being designated a Significant Compliance Risk ("Significant Compliance Risk Review")

to determine whether the Foreign Customer has engaged in Intra-Day Trading not subject to the exceptions set forth in sections II.C and D. of Appendix A, or has engaged in manipulative trading or other market manipulation;

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

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

(4) Determine whether the Foreign Customer has engaged in Intra-Day Trading not subject to the exceptions set forth in sections II.C and D. of Appendix A, or has engaged in manipulative trading or other market manipulation; and

(5) Make a recommendation regarding termination of the Foreign Customer based upon the Monitor's determinations under sections X.B(3) and (4) and the Requirement to Terminate Certain Foreign Customer provisions under section III of Appendix A.

C. Lek Securities shall require the Monitor to perform this review, assessment, and making of recommendations on an ongoing basis for so long as the Monitor is engaged.

D. Lek Securities shall require the Monitor to submit a report to Lek Securities and SEC staff on the review and recommendations required by this section within one hundred twenty (120) days of the date of the Monitor's appointment, and again by the end of each one hundred twenty (120) day period thereafter, for so long as the Monitor is engaged. The report shall include information concerning the Monitor's

review and recommendations regarding any Foreign Customers designated as Significant Compliance Risks.

XI. **Monitor's Review and Assessment of Whether Sam Lek Has Any Interest or Role in Lek Securities.**

A. Lek Securities shall require that the Monitor review and assess Lek Securities' corporate governance structure, ownership, and management, so as to determine whether Sam Lek has any legal or beneficial interest or role in Lek Securities.

B. Lek Securities shall require the Monitor to perform and complete this review and assessment within one hundred twenty (120) days of the date of the Monitor's appointment, and again by the end of each one hundred twenty (120) day period thereafter, for so long as the Monitor is engaged.

C. Lek Securities shall require the Monitor to submit a report to Lek Securities and SEC staff on the review, assessment, and recommendations required by this section within one hundred twenty (120) days of the date of the Monitor's appointment, and again by the end of each one hundred twenty (120) day period thereafter, for so long as the Monitor is engaged.

XII. **Implementation of Recommendations.**

A. Except as set forth in section XII.B-G below, Lek Securities shall have ninety (90) days from the date of receiving any recommendations from the Monitor to adopt and implement such recommendations. Lek Securities shall notify the Monitor and SEC staff in writing when each such recommendation has been implemented.

B. Any recommendations that the Monitor makes regarding suspending all trading by the Foreign Customer during a period of Significant Compliance Risk Review must be implemented within one (1) business day of the Monitor's recommendation.

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

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

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

F. In the event that Lek Securities and the Monitor are unable to agree on an acceptable alternative proposal under sections XII.D-E above, Lek Securities shall promptly consult with SEC staff. Any disputes between Lek Securities and the

Monitor with respect to any recommendation shall be decided by SEC staff in its sole discretion. Pending such determination, Lek Securities shall not be required to implement any contested recommendation(s), except as set forth above recommendations regarding (i) suspending all trading by the Foreign Customer during a period of Significant Compliance Risk Review, or (ii) termination of a Foreign Customer.

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

XIII. **Providing Information to the SEC.** For the period of the Monitor's engagement, Lek Securities shall provide SEC staff with any information reasonably requested by the SEC pertaining to the subject matter of this Judgment. Lek Securities shall require that the Monitor provide the SEC with any information that SEC staff requests regarding such matters, including but not limited to the Monitor's review, assessments, recommendations, and any communications and interactions between the Monitor and Lek Securities.

XIV. **Requirements Hereunder Do Not Supplant Other Legal Requirements.** The prohibitions and obligations set forth herein do not supplant any obligations that Lek Securities has under the law or under the rules of any self-regulatory organization or exchange of which Lek Securities is a member. No determinations by the Monitor, and no provisions herein, shall preclude the SEC, any other law enforcement agency or authority, or any self-regulatory organization from bringing actions against the Lek Defendants.

XV. **Certification by Lek Securities.** Within thirty (30) days after the date of implementation of any recommendation herein, Lek Securities shall certify to the Monitor and SEC staff, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. SEC staff may make reasonable requests for further evidence of compliance, and Lek Securities agrees to provide such evidence.

EXHIBIT 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **LEK SECURITIES CORPORATION, et al,** **Defendants.**	**17-CV-1789 (DLC)**

FINAL JUDGMENT AS TO DEFENDANT SAMUEL LEK

The Securities and Exchange Commission ("SEC" or "Commission") having filed a Complaint and Defendant Samuel Lek ("Defendant" or "Sam Lek") having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment; waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment; and Defendant having admitted the facts set forth in the Consent of Samuel Lek:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Sam Lek is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Sam Lek is permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Sam Lek is permanently restrained and enjoined from violating Section 9(a)(2) of the Exchange Act [15 U.S.C. § 78i(a)(2)], directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange to:

> effect, alone or with one (1) or more other persons, a series of transactions in any security registered on a national securities exchange, any security not so registered, or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's

officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Sam Lek is liable for a civil penalty in the amount of $420,000 pursuant to Section 21(d) of the Exchange Act. Defendant shall satisfy this obligation by paying $420,000 to the Securities and Exchange Commission within 30 days after entry of this Final Judgment.

Defendant may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendant may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Sam Lek as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

Defendant shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for a civil penalty by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 30 days following entry of this Final Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

VI.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and without further notice.

Dated: September 30, 2019

UNITED STATES DISTRICT JUDGE

EXHIBIT 5

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 87268 / October 10, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19581

In the Matter of **LEK SECURITIES CORPORATION and SAMUEL LEK,** **Respondents.**	**ORDER INSTITUTING ADMINISTRATIVE PROCEEDINGS PURSUANT TO SECTION 15(b) OF THE SECURITIES EXCHANGE ACT OF 1934, MAKING FINDINGS, AND IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Lek Securities Corporation ("Lek Securities") and Samuel Lek ("Sam Lek") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement ("Offers") that the Commission has determined to accept. Respondents admit the facts set forth in Section III, paragraph 5 below and admit the Commission's jurisdiction over them and the subject matter of these proceedings, and consent to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds that:

OS Received 04/23/2021

1. Lek Securities is a broker-dealer based in New York, New York and is registered with the Commission.

2. Sam Lek is the founder, Chief Executive Officer ("CEO"), Secretary, sole Director, Chief Compliance Officer, and Anti-Money Laundering Compliance Officer of Lek Securities. Between at least 2010 and 2016, Sam Lek exercised overall and day-to-day control over Lek Securities' operations. Sam Lek holds Series 3, 7, 8, 14, 24, 53, and 63 licenses.

3. On October 1, 2019, final judgments were entered by consent against Lek Securities and Sam Lek, permanently enjoining them from future violations of Section 17(a) of the Securities Act of 1933 and Sections 9(a)(2) and 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Lek Securities Corporation, et al., Civil Action Number 17-cv-1789, in the United States District Court for the Southern District of New York.

4. The Commission's Complaint in Securities and Exchange Commission v. Lek Securities Corporation, et al. alleged that Lek Securities and Sam Lek participated in and substantially assisted two manipulative trading schemes executed by Lek Securities' customer Avalon FA, Ltd. ("Avalon"). The Commission's Complaint also alleged that Lek Securities provided Avalon with access to the U.S. securities markets and, along with Sam Lek as CEO, approved, permitted and facilitated Avalon's schemes even though they knew or were reckless in not knowing that Avalon was engaging in market manipulation.

5. Lek Securities and Sam Lek admit that Avalon's trading activity through Lek Securities as alleged in the Commission's Complaint occurred and constituted violations of the federal securities laws.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers.

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Lek Securities is censured.

B. Sam Lek be, and hereby is, barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization; and barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock; with the right to apply for reentry after ten (10) years to the appropriate self-regulatory organization, or if there is none, to the Commission.

OS Received 04/23/2021

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, compliance with the Commission's order and payment of any or all of the following: (a) any disgorgement or civil penalties ordered by a Court against the Respondent in any action brought by the Commission; (b) any disgorgement amounts ordered against the Respondent for which the Commission waived payment; (c) any arbitration award related to the conduct that served as the basis for the Commission order; (d) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (e) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Vanessa A. Countryman
Secretary

OS Received 04/23/2021

EXHIBIT 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. LEK SECURITIES CORPORATION, SAMUEL LEK, VALI MANAGEMENT PARTNERS dba AVALON FA LTD, NATHAN FAYYER, and SERGEY PUSTELNIK, a/k/a SERGE PUSTELNIK, Defendants.	:	Case No. 17-CV-1789(DLC)

FINAL JUDGMENT AGAINST DEFENDANTS
AVALON FA LTD, NATHAN FAYYER, AND SERGEY PUSTELNIK

This matter having come before the Court following trial by jury, and the jury unanimously having found in favor of Plaintiff Securities and Exchange Commission ("SEC" or the "Commission") and against Defendants Vali Management Partners dba Avalon FA Ltd ("Avalon"), Nathan Fayyer ("Fayyer"), and Sergey Pustelnik a/k/a Serge Pustelnik ("Pustelnik") on liability; and the Court having considered the evidence and the parties' submissions regarding remedies, and the record herein; the Court hereby enters final judgment in favor of the SEC and against each of the said Defendants.

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants Avalon, Fayyer, and Pustelnik each are permanently restrained and enjoined from violating Section 10(b)

of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], directly or indirectly, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Each of said Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with any Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Avalon, Fayyer, and Pustelnik each are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Each of said Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with any Defendant or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Avalon, Fayyer, and Pustelnik each are permanently restrained and enjoined from violating Section 9(a)(2) of the Exchange Act [15 U.S.C. § 78i(a)(2)], directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce, or of any facility of any national securities exchange, or for any member of a national securities exchange to:

> effect, alone or with one (1) or more other persons, a series of transactions in any security registered on a national securities exchange, any security not so registered, or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Each of said Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with any Defendant or with anyone described in (a).

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Avalon, Fayyer, and Pustelnik are jointly and severally liable for disgorgement of $4,495,564, together with prejudgment interest thereon in the amount of $131,750, for a total of $4,627,314.

Defendants shall satisfy this obligation by paying the amount remaining due for disgorgement as set forth in accordance with the terms of section VIII, below.

Defendants may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendants may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; identifying by name the Defendant as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

The Defendant making such payment shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 30 days following entry of this Final Judgment. Defendants Avalon, Fayyer, and Pustelnik shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Avalon,

Fayyer, and Pustelnik are each individually liable for a civil penalty in the amount of $5,000,000, pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

Defendant Avalon shall satisfy its obligation under this section by paying the remaining amount due for its penalty in accordance with the terms of section VIII, below. Defendants Fayyer and Pustelnik shall each individually satisfy this obligation by paying $5,000,000 each to the Securities and Exchange Commission within 30 days after entry of this Final Judgment.

Defendants Avalon, Fayyer, and Pustelnik may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendants Avalon, Fayyer, and Pustelnik may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; identifying by name the Defendant as a defendant in this action; and specifying that payment is made pursuant to this Final Judgment.

The Defendant making such payment shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

Each Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that within 14 days after being served with a copy of this Final Judgment, Lek Securities Corporation ("Lek Securities") shall take the following action with regard to any and all money and assets that it holds pursuant to this Court's order entered on July 31, 2017 (ECF No. 95) in the name of or for the benefit of Defendant Avalon, together with any interest that has accrued thereon:

(A) To the extent any assets so held are securities or other non-cash assets, Lek Securities shall liquidate them at market prices and convert them to cash; and

(B) Lek Securities shall transfer to the SEC the entire balance of the funds held by Lek Securities pursuant to said order of the Court.

Lek Securities may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Lek Securities may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; stating that the payment is being made by Lek Securities; and specifying that payment is made pursuant to this Final Judgment.

Lek Securities shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Lek Securities relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Lek Securities or to any Defendant. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Clerk of Court is ordered to turn over to the SEC all funds held in the Registry of the Court with regard to Avalon pursuant to the Order entered by this Court in this case on July 31, 2017 (ECF No. 95), together with any interest remaining after deducting any applicable fee not exceeding the fee authorized by the Judicial Conference of the United States and set by the Director of the Administrative Office. The Clerk of Court may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. The Clerk of Court may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; stating that the payment is being made by the Clerk of Court; and specifying that payment is made pursuant to this Final Judgment.

The Clerk of Court shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. The Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

VIII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the amounts remitted to the SEC by Lek Securities and by the Clerk of Court pursuant to sections VI and VII above shall be applied first to the prejudgment interest, then disgorgement owed by Avalon pursuant to this Final Judgment, and if any amounts are left over, they shall be applied towards the penalty owed by Avalon pursuant to this Final Judgment. Within 14 days of receiving the funds from both Lek Securities and the Clerk of Court pursuant to sections VI and VII, above, the SEC shall file a notice indicating the amounts received from Lek Securities and the Clerk of Court, and indicating the remaining amount of disgorgement, if any, that is due from Defendants Avalon, Fayyer and Pustelnik in accordance with section IV above, and the amount of penalties due from Avalon, after application of the funds received. Within 14 days after the SEC files such notice:

(A) Defendants Avalon, Fayyer and Pustelnik shall pay to the SEC any remaining disgorgement amounts owed as set forth in section IV, above; and

(B) Defendant Avalon shall pay to the SEC any remaining penalty amount that it owes as set forth in section V, above.

IX.

The Court shall retain jurisdiction of this matter for purposes of enforcing this judgment.

Dated: April 14, 2020

DENISE COTE
United States District Judge

EXHIBIT 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. LEK SECURITIES CORPORATION, SAMUEL LEK, VALI MANAGEMENT PARTNERS dba AVALON FA LTD, NATHAN FAYYER, and SERGEY PUSTELNIK a/k/a SERGE PUSTELNIK, Defendants.	CASE NO. 17-CV-1789 (DLC)

AMENDED FINAL JUDGMENT AGAINST DEFENDANTS
AVALON FA LTD, NATHAN FAYYER, AND SERGEY PUSTELNIK

This matter having come before the Court following trial by jury, and the jury unanimously having found in favor of Plaintiff Securities and Exchange Commission ("SEC" or the "Commission") and against Defendants Vali Management Partners dba Avalon FA Ltd ("Avalon"), Nathan Fayyer ("Fayyer"), and Sergey Pustelnik a/k/a Serge Pustelnik ("Pustelnik") on liability; and the Court having considered the evidence and the parties' submissions regarding remedies, and the record herein; the original final judgment having been appealed to the U.S. Court of Appeals for the Second Circuit and this case having been remanded to this Court; and this Court having considered the further submissions of the parties, the Court hereby enters this Amended Final Judgment in favor of the SEC and against each of the said Defendants.

OS Received 04/23/2021

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants Avalon, Fayyer, and Pustelnik each are permanently restrained and enjoined from violating Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], directly or indirectly, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

(a) to employ any device, scheme, or artifice to defraud;

(b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Amended Final Judgment by personal service or otherwise: (a) Each of said Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with any Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that

Defendants Avalon, Fayyer, and Pustelnik each are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

(a) to employ any device, scheme, or artifice to defraud;

(b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Amended Final Judgment by personal service or otherwise: (a) Each of said Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with any Defendant or with anyone described in (a).

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Avalon, Fayyer, and Pustelnik each are permanently restrained and enjoined from violating Section 9(a)(2) of the Exchange Act [15 U.S.C. § 78i(a)(2)], directly or indirectly, by the use of the mails or any means or instrumentality of interstate commerce,

or of any facility of any national securities exchange, or for any member of a national securities exchange to:

effect, alone or with one (1) or more other persons, a series of transactions in any security registered on a national securities exchange, any security not so registered, or in connection with any security-based swap or security-based swap agreement with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Amended Final Judgment by personal service or otherwise: (a) Each of said Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with any Defendant or with anyone described in (a).

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that each of Defendants Avalon, Fayyer, and Pustelnik is liable for a civil penalty in the amount of $7,500,000 pursuant to Section 20(d) of the Securities Act [15 U.S.C. §77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

The SEC has already collected $5,283,598.61 from Avalon. This amount shall be applied towards the civil penalty ordered herein against Avalon, leaving $2,216,401.39 owing from Avalon for the civil penalty ordered against it. Avalon shall satisfy this obligation by paying $2,216,401.39 to the Securities and Exchange Commission within 30 days after entry of

this Amended Final Judgment. Defendants Fayyer and Pustelnik each shall satisfy their obligations under this section by each paying $7,500,000 to the Securities and Exchange Commission within 30 days after entry of this Amended Final Judgment.

Defendants Avalon, Fayyer, and Pustelnik may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendants Avalon, Fayyer, and Pustelnik may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

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Accounts Receivable Branch
6500 South MacArthur
Boulevard Oklahoma City, OK
73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; identifying by name the Defendant as a defendant in this action; and specifying that payment is made pursuant to this Amended Final Judgment.

The Defendant making such payment shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendant. The Commission shall send the funds paid pursuant to this Amended Final Judgment to the United States Treasury.

Each Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

V.

The Court shall retain jurisdiction of this matter for purposes of enforcing this judgment.

Dated: February 9, 2021

DENISE COTE
United States District Judge

EXHIBIT 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff,	:	17cv1789 (DLC)
-v-	:	OPINION AND ORDER
LEK SECURITIES CORPORATION, SAMUEL LEK, VALI MANAGEMENT PARTNERS dba AVALON FA LTD, NATHAN FAYYER, and SERGEY PUSTELNIK, Defendants.	:	

APPEARANCES

For the plaintiff:
David J. Gottesman
Olivia S. Choe
Sarah S. Nilson
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549

For the defendants:
James M. Wines
Law Office of James Wines
1802 Stirrup Lane
Alexandria, VA 22308

DENISE COTE, District Judge:

Following a jury verdict in its favor on November 12, 2019, plaintiff United States Securities and Exchange Commission ("SEC") seeks a permanent injunction, disgorgement jointly and severally in the amount of $4,495,564 plus prejudgment interest, and civil penalties in the amount of $13.8 million against each

of the defendants Vali Management Partners dba Avalon FA Ltd ("Avalon"), Nathan Fayyer ("Fayyer") and Sergey Pustelnik ("Pustelnik") (collectively, the "Defendants"). The Defendants oppose the imposition of any obligation to disgorge their revenue and contend that civil penalties should be limited to $300,000 for Fayyer and Pustelnik and $1,450,000 for Avalon. For the following reasons, disgorgement is ordered, jointly and severally, in the amount requested by the SEC, with interest, and civil penalties are assessed in the amount of $5 million for each defendant, subject to an increase as described below.[1]

Background

Much of the factual background for this litigation is described in the Motion to Dismiss Opinion issued in August 2017 and the Opinion on the Motions to Exclude Expert Testimony issued in March 2019. See Sec. & Exch. Comm'n v. Lek Sec. Corp., 370 F. Supp. 3d 384, 389 (S.D.N.Y. 2019) ("Daubert Opinion"); Sec. & Exch. Comm'n v. Lek Sec. Corp., 276 F. Supp. 3d 49, 54 (S.D.N.Y. 2017). Familiarity with those Opinions is assumed and they are incorporated by reference.

[1] The Defendants do not oppose an injunction permanently prohibiting them from violating Sections 9(a)(2) and 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and Section 17(a) of the Securities Act of 1933. Accordingly, that relief is granted as well.

The SEC sued Lek Securities Corporation ("Lek Securities"), its principal Samuel Lek ("Lek") (collectively, the "Lek Defendants"), and the Defendants on March 10, 2017. On the same day, the SEC obtained an Order freezing $5.5 million in assets held in Avalon accounts.

Lek Securities is a broker-dealer based in New York. Avalon is a foreign day-trading firm whose hundreds of traders were based primarily in Eastern Europe and Asia. Avalon relied on registered broker-dealers such as Lek Securities to trade in U.S. markets. Fayyer was Avalon's principal. Pustelnik was a co-owner of, and exercised control over, Avalon during the entire period at issue. For a large portion of that time Pustelnik was also the registered representative at Lek Securities who worked on the Avalon account.

The Lek Defendants settled with the SEC on October 1, 2019. Lek Securities was enjoined from having foreign customers that engage in intra-day trading for a period of three years, ordered to retain an independent entity to monitor compliance with the injunction on foreign intra-day trading, permanently enjoined from further securities law violations, ordered to disgorge $419,623 along with prejudgment interest in the amount of $106,269, and assessed a civil penalty of $1 million. Lek was permanently enjoined from further securities violations, barred

from the securities industry for ten years, and assessed a civil penalty of $420,000.

On October 21, the SEC proceeded to trial on its claims against the Defendants. The jury rendered its verdict on November 12 and found that the Defendants violated several anti-fraud and anti-manipulation provisions of the Securities Exchange Act of 1934 ("Exchange Act") and the Securities Act of 1933 ("Securities Act"). The jury found that each Defendant violated Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) thereunder, which together prohibit manipulative practices in connection with the purchase or sale of securities. 15 U.S.C. § 78j; 17 C.F.R. § 240.10b-5. The jury also found that the Defendants violated both Section 17(a)(1) and Section 17(a)(3) of the Securities Act, which proscribe fraudulent conduct in connection with the offer or sale of securities. 15 U.S.C. §§ 77q(a)(1) and (3). Avalon and Fayyer were also found liable for directly violating Section 9(a)(2) of the Exchange Act, which proscribes "creating active or apparent trading" in securities "for the purpose of inducing the purchase or sale of such security by others." 15 U.S.C. §§ 78i(a)(2), 78i(f). The jury found that Fayyer and Pustelnik knowingly or recklessly provided substantial assistance to each other and to Avalon to facilitate the market manipulation. 15 U.S.C. §§ 77t(b) and (d), 77o(b); 15 U.S.C. §§ 78u(d)(1) and (3), 78t(e). Finally,

the jury found that Avalon and Fayyer were liable pursuant to Section 20(a) of the Exchange Act when they acted as "control persons" of Avalon and its traders in connection with their fraud and market manipulation. It similarly found Pustelnik liable as a control person of Avalon. 15 U.S.C. § 78t(a).

These myriad violations stemmed from two schemes to manipulate U.S. securities markets, each separately found by the jury. See Lek Sec. Corp., 370 F. Supp. 3d at 390-93, 396-400. The first manipulative scheme, referred to as "layering," involved placing multiple orders to buy (or sell) a given stock at increasing (or decreasing) prices, to move the price of the security without intending to execute those orders. These are referred to as the loud-side orders. The loud-side orders created the appearance of an artificially inflated level of demand (or supply) for a stock. In conjunction with the loud-side orders, the trader would place a smaller number of orders on the opposite side of the market to sell (or buy) the same stock. These are referred to as the quiet-side orders. Once the stock reached the desired price, the trader canceled the loud-side orders.

Defendants also engaged in a manipulative scheme known as the Cross-Market Strategy. That involved a trader buying (or selling) a stock in order to influence the price of a corresponding option. The trader would purchase (or sell) the

stock, causing the price of the option to rise (or fall). The trader would then establish an options position that would benefit from the stock returning to its price before the trader placed the stock trades. Then the trader reversed the stock position, causing the option to revert to its prior price. Although the trader would lose money on the stock trades, the trader would recoup this amount and more through the profits from buying or selling the option at artificially set prices. The jury entered a special verdict finding that Avalon's trading constituted layering and the Cross-Market Strategy and that both schemes manipulated the securities markets.

The evidence adduced at trial demonstrated Defendants' widespread and longstanding use of layering and the Cross-Market Strategy. Defendants employed these schemes for more than five years, from 2012 through 2016.[2] During that time, they engaged in more than 675,000 instances of layering and 668 instances of Cross-Market trading. Both practices were also highly lucrative: Defendants generated over $21 million in revenue through layering, along with $8.1 million in revenue from the

[2] This action was filed on March 10, 2017. The five-year statute of limitations period runs from March 12, 2012. Although the schemes preceded March 12, 2012, the revenue figures cited in this Opinion are for the manipulative trading that followed March 12, 2012.

Cross-Market scheme. Almost $4.5 million of this amount was retained by the three Defendants; approximately $25 million was distributed to Avalon's traders.[3]

The SEC submitted its Motion for Judgment Including Remedies on December 20, 2019. The motion became fully submitted on February 7, 2020.

Discussion

"Once the district court has found federal securities law violations, it has broad equitable power to fashion appropriate remedies." SEC v. Frohling, 851 F.3d 132, 138 (2d Cir. 2016) (citation omitted). For the following reasons, the SEC's request for relief is granted in part.

I. Disgorgement

The SEC requests that the Defendants be disgorged of the revenue they reaped from the layering and Cross-Market schemes. Disgorgement "is a well-established remedy in the Second Circuit, particularly in securities enforcement actions." S.E.C. v. Cavanagh, 445 F.3d 105, 116 (2d Cir. 2006). Once a securities violation has been found, the court may order the wrongdoer to surrender the profits derived from the illegal venture. S.E.C. v. Razmilovic, 738 F.3d 14, 31 (2d Cir. 2013), as amended (Nov. 26, 2013).

[3] Pursuant to Avalon's contracts with its traders, Avalon retained between 1% and 14% of trading profits.

Because disgorgement "is a method of forcing a defendant to give up the amount by which he was unjustly enriched, . . . the party seeking disgorgement must distinguish between the legally and illegally derived profits." Id. (citation omitted). The proper measure of disgorgement is the profit wrongdoers made and "the size of a disgorgement order need not be tied to the losses suffered by defrauded investors." Official Committee of Unsecured Creditors of WorldCom, Inc. v. SEC, 467 F.3d 73, 81 (2d Cir. 2006) (citation omitted). Courts may require disgorgement "regardless of whether the disgorged funds will be paid to . . . investors as restitution." Kokesh v. SEC, 137 S. Ct. 1635, 1644 (2017) (citation omitted). Where a plaintiff seeks disgorgement "for combined profits on collaborating or closely related parties," a court may hold those parties jointly and severally liable for the combined profits. S.E.C. v. AbsoluteFuture.com, 393 F.3d 94, 97 (2d Cir.), supplemented, 115 F. App'x 105 (2d Cir. 2004).

"The district court has broad discretion not only in determining whether or not to order disgorgement but also in calculating the amount to be disgorged." SEC v. Contorinis, 743 F.3d 296, 301 (2d Cir. 2014) (citation omitted). Recognizing that the precise amount of a defendant's illegal proceeds might be impossible to determine, courts have held that a party seeking disgorgement need only provide "a reasonable

approximation of profits causally connected to the violation." Id. at 305 (citation omitted). To calculate disgorgement, the district court engages in "factfinding . . . to determine the amount of money acquired through wrongdoing," and then issues "an order compelling the wrongdoer to pay that amount plus interest." Cavanagh, 445 F.3d at 116. Furthermore, "any risk of uncertainty in calculating disgorgement should fall upon the wrongdoer whose illegal conduct created that uncertainty." Contorinis, 743 F.3d at 305 (citation omitted). The SEC bears the burden "of establishing a reasonable approximation of the profits causally related to the fraud," but once it has met this burden, "the burden shifts to the defendant to show that his gains were unaffected by his offenses." Razmilovic, 738 F.3d at 31 (citation omitted). A defendant may not avoid disgorgement by arguing that the gains did not "personally accrue" to him. Contorinis, 743 F.3d at 306.

In addition to the base disgorgement amount, an award of prejudgment interest is within the discretion of the court. Razmilovic, 738 F.3d at 35-36; S.E.C. v. First Jersey Sec., Inc., 101 F.3d 1450, 1475-76 (2d Cir. 1996). Generally, "an award of prejudgment interest may be needed in order to ensure that the defendant not enjoy a windfall as a result of its wrongdoing." Slupinski v. First Unum Life Ins. Co., 554 F.3d 38, 54 (2d Cir. 2009).

> In deciding whether an award of prejudgment interest is warranted, a court should consider (i) the need to fully compensate the wronged party for actual damages suffered, (ii) considerations of fairness and the relative equities of the award, (iii) the remedial purpose of the statute involved, and/or (iv) such other general principles as are deemed relevant by the court.

First Jersey, 101 F.3d at 1476 (citation omitted). Where, as here, the case is "an enforcement action brought by a regulatory agency, the remedial purpose of the statute takes on special importance." First Jersey, 101 F.3d at 1476. As for the interest rate to be applied, the Second Circuit has approved the use of the "IRS underpayment rate" as the baseline interest rate because it "reflects what it would have cost to borrow the money from the government and therefore reasonably approximates one of the benefits the Defendants received from its fraud." Id.

The SEC seeks disgorgement in the amount of $4,495,564 plus prejudgment interest in the amount of $131,750. Based on the Defendants' revenue analysis as well as the evidence presented during trial, those sums are a reasonable approximation of the extent to which the Defendants profited from their fraudulent activities.[4] The SEC has demonstrated that between March 2012 and September 2016, Defendants' layering scheme generated

[4] Assuming without conceding that they were liable for the manipulative trading activity identified by the SEC's experts at trial, the Defendants prepared a Payout Analysis to calculate the revenue from that trading that was distributed to Avalon's traders. The SEC has accepted those calculations.

$2,457,073 in net revenue and the Cross-Market scheme generated $2,038,491 in net revenue for the Defendants.

Defendants raise several objections to the SEC's disgorgement request. First, Defendants contend that disgorgement is not an available remedy following the Supreme Court's decision in Kokesh. 137 S. Ct. 1635 (2017). As the Second Circuit has noted, Kokesh classified disgorgement as "a 'penalty' for purposes of 28 U.S.C. § 2462, which imposes a five-year statute of limitation." United States v. Brooks, 872 F.3d 78, 91 (2d Cir. 2017); see also Kokesh v. SEC, 137 S. Ct. 1635, 1644 (2017).[5] Kokesh did not decide whether a court is deprived of its authority to impose disgorgement. The Kokesh Court itself observed that its holding "should [not] be interpreted as an opinion on whether courts possess authority to order disgorgement in SEC enforcement proceedings or on whether courts have properly applied disgorgement principles in this context." Kokesh 137 S. Ct. at 1642 n.3. Until this issue is decided differently by the Supreme Court,[6] this Opinion follows the current law in the Second Circuit.

[5] 28 U.S.C. § 2462 imposes a five-year statute of limitations applies to any "action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise." 28 U.S.C. § 2462.

[6] The Supreme Court recently granted certiorari to address whether, after Kokesh, district courts have the authority to

Second, Defendants argue that the SEC has failed to show which specific transactions were manipulative, and therefore which profits are properly disgorged. Defendants' objection is premised on the alleged inability of the SEC's expert witnesses, Professors Hendershott and Pearson, to identify any single trade as manipulative. Defendants misunderstand the professors' testimony and the nature of manipulative trading schemes.

The jury found that the Defendants intended to manipulate the securities markets and engaged in two distinct schemes to do so. The jury specifically found that orders Avalon placed constituted layering and the Cross-Market Strategy and that those schemes were manipulations of the securities markets. Furthermore, the jury found that Avalon did so while under the control of Fayyer and Pustelnik. Together, the schemes involved hundreds of thousands of separate instances of manipulative trading. In each instance, there were multiple orders placed in the market and executed by the Defendants to achieve their goal of market manipulation. During the statute of limitations period, Professor Hendershott found 675,504 separate instances

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order disgorgement. See SEC v. Liu, 754 F. App'x 505 (9th Cir. 2018) (unpublished), cert. granted sub nom. Liu v. SEC, --- U.S. ---, 2019 WL 5659111 (U.S. Nov. 1, 2019) (No. 18-1501). Defendants have not requested a stay of this motion pending a decision in Liu. In any event, the law of this Circuit is that disgorgement is an available remedy in SEC enforcement cases. See, e.g., Frohling, 851 F.3d at 138-39; Contorinis, 743 F.3d at 301.

of layering. Professor Pearson found 668 separate instances of trading consistent with the Cross-Market Strategy, none of which had an alternative, legal economic rationale.

As described in detail in the Daubert Opinion, the SEC experts used rigorous and conservative criteria to identify the trading involved in the two schemes. Lek Sec. Corp., 370 F. Supp. 3d at 391-92, 397-98. They then conducted further analyses to confirm that they had correctly identified manipulative trading. Id. at 392-93, 398-400. Given the conservative measures they applied, this Court has no hesitation using the numbers presented by the experts at trial. The cross examination of the SEC experts provided no basis to question these numbers and neither does the Defendants' opposition to this motion.

After identifying the trades that fit the profile of either manipulative practice, the professors calculated the gross revenue produced by the trades in each instance of market manipulation. Avalon used those figures to calculate the share of revenues it retained. Those sums are the proceeds the SEC now seeks to be disgorged. The SEC has therefore provided a "reasonable approximation" of the profits that the Defendants gained from their illegal practices. Contorinis, 743 F.3d at 305.

Any risk of uncertainty related to those sums falls on Defendants, who bore the burden of "show[ing] what transactions were unaffected by [their] offenses." SEC v. Lorin, 76 F.3d 458, 462 (2d Cir. 1996). Defendants' conclusory assertion that the SEC failed to carry its burden to show a causal connection between illegality and disgorged profits is rejected.

In addition to disgorgement, Defendants should pay prejudgment interest to prevent them from obtaining what is essentially an interest-free loan from their illegal activity. The SEC calculated prejudgment interest running from the date of Defendants' last instance of each respective strategy through March 10, 2017, the date Avalon's funds were frozen. This sum amounts to $131,750.[7]

II. Civil Penalties

The SEC also seeks civil penalties of $13.8 million for each Defendant. Pursuant to the Securities Act and the Exchange Act, a court may impose three tiers of civil penalties.

> Under each statute, a first-tier penalty may be imposed for any violation; a second-tier penalty may be imposed if the violation involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; a third-tier penalty may be imposed when, in addition to meeting the requirements of the second tier, the violation directly or indirectly resulted in substantial losses or created a

[7] Defendants oppose the imposition of prejudgment interest on the same ground that they resist disgorgement generally; namely, that Kokesh deprived district courts of the authority to order it. For the reasons detailed above, this argument is rejected.

> significant risk of substantial losses to other persons.

Razmilovic, 738 F.3d at 38 (citation omitted); 15 U.S.C. § 77t(d)(2); 15 U.S.C. § 78u(d)(3). At each tier, "for each violation, the amount of penalty shall not exceed the greater of a specified monetary amount or the defendant's gross amount of pecuniary gain." Razmilovic, 738 F.3d at 38 (citation omitted). For individual defendants, the maximum amounts specified at the first, second, and third tier are $7,500, $75,000, and $150,000, respectively.[8] 17 C.F.R. 201.1001. Entities are liable in the maximum amount of $75,000, $375,000, and $725,000 at each tier. Id.

Aside from the maximum statutory restrictions, the appropriate civil penalty is within "the discretion of the district court." Razmilovic, 738 F.3d at 38 (citation omitted). Because monetary penalties are levied as a deterrent against securities law violations, SEC v. Palmisano, 135 F.3d 860, 866 (2d Cir. 1998), courts have broad discretion to fashion relief "in light of the facts and circumstances" surrounding the violations. 15 U.S.C. § 78u(d)(3). To aid this inquiry, courts

[8] These rates are adjusted periodically pursuant to the Debt Collection and Improvement Act of 1996 and associated SEC regulations. Defendants' conduct spans three rate regimes. The SEC proposes using the amounts listed in the earliest schedule of the penalty rates in which Defendants' illegal activity occurred.

in this Circuit have considered the following factors -- often described as the Haligiannis factors -- in assessing civil penalties:

> (1) the egregiousness of the defendant's conduct; (2) the degree of the defendant's scienter; (3) whether the defendant's conduct created substantial losses or the risk of substantial losses to other persons; (4) whether the defendant's conduct was isolated or recurrent; and (5) whether the penalty should be reduced due to the defendant's demonstrated current and future financial condition.

Sec. & Exch. Comm'n v. Rajaratnam, 918 F.3d 36, 44 (2d Cir. 2019); S.E.C. v. Haligiannis, 470 F. Supp. 2d 373, 386 (S.D.N.Y. 2007). Those factors are neither exhaustive nor "to be taken as talismanic." Rajaratnam, 918 F.3d at 45. Other relevant considerations include "a defendant's financial condition, a defendant's failure to admit wrongdoing, and a defendant's lack of cooperation with authorities." United States Sec. & Exch. Comm'n v. Alpine Sec. Corp., 413 F. Supp. 3d 235, 245 (S.D.N.Y. 2019) (citation omitted). Finally, the "brazenness, scope, and duration" of the fraudulent conduct may dictate "a significant penalty." Rajaratnam, 918 F.3d at 45.

As to the unit of calculation, it is within a court's discretion to treat each fraudulent transaction as a discrete violation. See, e.g., S.E.C. v. Pentagon Capital Mgmt. PLC, 725 F.3d 279, 288 n.7 (2d Cir. 2013) ("[W]e find no error in the district court's methodology for calculating the maximum penalty

by counting each late trade as a separate violation."); SEC v. Milan Capital Grp., Inc., No. 00 Civ. 108(DLC), 2001 WL 921169, *3 (S.D.N.Y. Aug.14, 2001) (imposing penalty for each of 200 defrauded investors).

The SEC requests maximum third-tier penalties against each defendant, calculated using the maximum penalty rate for natural persons of $150,000 per violation. The SEC requests that each month in which Defendants engaged in either manipulative practice be treated as a separate violation. This amounts to fifty-four months for the layering scheme and thirty-eight months for the Cross-Market Strategy, for a total of ninety-two months and a total penalty per Defendant of $13.8 million.

The record demonstrates that the Defendants' conduct falls into the third tier of penalties because it involved fraud and created a significant risk of substantial losses to other investors. The Defendants do not disagree that the third-tier of penalties is the correct tier for assessing penalties against them. Nor could they. The Defendants were the central figures in two separate years-long schemes to defraud the securities market. Their manipulation was intentional. Furthermore, as the trial established, Defendants' manipulation distorted the market and caused significant losses for other traders. Layering, for instance, induced other market participants to purchase a stock at the trader's desired price, a price that was

higher or lower than what the other participant otherwise would pay. Similarly, while Avalon reaped the proceeds of the artificial options prices from the Cross-Market Scheme, other investors ended up trading at unfavorable prices. Finally, both schemes fostered uncertainty in the market. As a hedge against that uncertainty, the bid/ask spreads widened and other traders had to either pay more to purchase a security or accept less to sell one.

Turning to the first Haligiannis factor, the Defendants' conduct was egregious. Defendants engaged in market manipulation on a massive scale. Defendants' participation in layering and the Cross-Market Scheme was endemic; they recruited other traders to assist in the fraud over the course of many years and millions of trades. Fraud of that scope and duration is plainly egregious. Nor were Defendants bit players in the schemes. Fayyer, Pustelnik, and Avalon coordinated nearly every facet of the plan to manipulate the market. The Defendants facilitated both schemes by enlisting and organizing traders, arranging technology upgrades to better execute the manipulation, and assisting traders to circumvent the meager internal controls Lek Securities implemented to detect layering. Taken together, these facts are more than sufficient to demonstrate that the Defendants' conduct was egregious.

The next factor in determining the appropriate penalty is Defendants' degree of scienter. Defendants' fraudulent behavior was intentional. As early as September 2012, they learned of a FINRA inquiry into trades they were conducting through Lek Securities.[9] Armed with this knowledge, Defendants increased their use of layering. Defendants' scienter is also illustrated by their efforts to conceal their activity and connections to the schemes. See United States v. Triumph Capital Grp., Inc., 544 F.3d 149, 160 (2d Cir. 2008) ("[E]fforts to obstruct the investigation evidence a consciousness of guilt. . . ."). During the SEC administrative investigation, Defendants failed to produce highly incriminating emails despite subpoenas directing them to do so. Later, Fayyer and Pustelnik tried to conceal Pustelnik's ties to Avalon and Fayyer.

In addition to withholding incriminating information, Fayyer and Pustelnik gave false testimony under oath during the SEC investigation and at trial. And, while the schemes were ongoing, they assured Lek that they were not engaging in layering, even while recruiting traders to do just that. United States v. Anderson, 747 F.3d 51, 60 (2d Cir. 2014) (citation omitted) (noting that "acts that exhibit a consciousness of

[9] FINRA, or the Financial Industry Regulatory Authority, is a self-regulatory organization that supervises broker-dealers. See Fiero v. Financial Industry Regulatory Auth., Inc., 660 F.3d 569, 571 & n.1 (2d Cir. 2011).

guilt, such as false exculpatory statements, . . . may also tend to prove knowledge and intent of a conspiracy's purpose"). Defendants' specious attempts to excuse their behavior continued at trial, where Fayyer and Pustelnik testified that they thought layering was merely the legal practice of trading on both sides of the market. That contention was transparently wrong and is also belied by Defendants' written statements to their traders. Avalon explained to traders that it charged higher fees to engage in layering because traders had few other brokers who would accept such orders.

As to the third factor, as already described, Defendants' malfeasance resulted in substantial losses to other market participants who traded at unfavorable prices due to the manipulative practices. As for the fourth factor, Defendants' conduct was not intermittent; it was recurrent behavior meant to cheat the market. From 2012 to 2016, Defendants took aggressive measures to evade the securities law. Their illicit activities persisted -- and indeed increased -- when Defendants came under regulatory scrutiny.

The final Haligiannis factor, Defendants' current and future financial statuses, does not offset the need to impose a significant penalty. In opposition to the SEC's motion for remedies, the Defendants submitted affidavits describing Fayyer and Pustelnik's current assets and liquidity. Those affidavits

represent that Fayyer and Pustelnik have limited resources. The Defendants have submitted no evidence of Avalon's current financial state. Fayyer and Pustelnik have decades of their working lives ahead of them. They were instrumental in building a company that produced millions of dollars in revenue. When weighed against the clear need to assess a substantial civil penalty, Defendants' current financial position is not a bar to the imposition of significant civil penalties.

Defendants contend that the SEC's proposed civil penalties are excessive. Defendants first object that the penalties would be disproportionate to the disgorged amount, an outcome Defendants argue is inconsistent with the SEC's historical disgorgement-to-civil penalty ratio. Those general trends, however, have little to do with the penalty appropriate for the Defendants, which must be determined based on "the facts and circumstances" of the Defendants' violations. 15 U.S.C. § 78u(d)(3) & 77t(d). In particular, in this case the disgorgement sought by the SEC is only a fraction of the total profits made through Defendants' market manipulation.[10]

Defendants also argue that the disgorgement and injunctive relief the SEC seeks necessitate smaller civil penalties.

[10] The expert testimony established that the manipulative schemes generated more than $29 million in revenue, most of which was distributed to Avalon's traders. The SEC seeks approximately $4.5 million in disgorgement.

Defendants conflate the aims of the different remedies available for securities law violations. As the SEC notes, disgorgement deprives defendants of their ill-gotten gains and an injunction facilitates speedier enforcement if the Defendants violate the securities laws again. Neither of those remedies carries the same deterrent effect as a robust civil penalty. Disgorgement and injunctive relief are meant to ensure that defendants do not profit from their illegal conduct; SEC civil penalties are, by contrast, designed to effect general deterrence and to make securities law violations a money-losing proposition. See Rajaratnam, 918 F.3d at 44.

Defendants' appeal to the penalties negotiated with the Lek Defendants is similarly unavailing. Defendants were responsible for recruiting traders to execute the fraudulent schemes and then took extensive steps to cover their trail. Defendants repeatedly concealed their participation in the layering scheme from the Lek Defendants during the investigation. The latter's settlement does not, therefore, limit the Court's discretion to assess harsher penalties on the Defendants.

Defendants also object to the manner in which the SEC calculated civil penalties. Defendants propose treating each scheme as a single violation, yielding civil penalties of $300,000 for Fayyer and Pustelnik, and $1,450,000 for Avalon, if the maximum fines for a third-tier violation are used. The SEC

argues for a measurement that reflects the longevity of the schemes and seeks the maximum fine per month of illegality, counting each of the two schemes separately. The SEC points out that there were identifiable instances of layering and the Cross-Market Scheme in ninety-two separate months from 2012 to 2016. Defendants do not dispute the accuracy of the calculation.[11]

Defendants' preferred method -- a single penalty per manipulative scheme -- would deliver grossly inadequate deterrence for the scope of this illegal activity. Their proposal results in penalties that pale in comparison to the extent of their misconduct, including their obstruction of justice. The breadth and duration of Defendants' violations are well established; violations of that magnitude require a correspondingly severe penalty. Defendants' proposal does not meet that requirement. It would recognize no distinction between a violator who engaged in a single episode of market manipulation and one who continued the manipulation year after year even after they were alerted that regulators were

[11] SEC administrative bodies have adopted a monthly definition of statutory violations where, as here, discrete instances of prohibited conduct occurred in individual months and alternative metrics to measure violations could justify larger penalties. See, e.g., J.S. Oliver Cap. Mgt., LP, SEC Rel. No. 4431 (Jun. 17, 2016); Phlo Corp., James B. Hovis, & Anne P. Hovis, 90 SEC Docket 961, 2007 WL 966943, at *15 (Mar. 30, 2007).

suspicious of their trading activity. It bears emphasis that the Defendants accelerated their market manipulation after regulators put them on notice of their concerns. During the investigation and litigation of this matter, the Defendants continued to obfuscate and conceal evidence of their unlawful conduct. Even now, in opposition to this motion, the Defendants attempt to excuse their behavior based on their alleged ignorance of the relevant law. A "course of conduct" measure for a civil penalty would not promote deterrence.

The other alternative measure of counting violations, wherein each transaction or series of transactions is counted as a violation, shows the reasonableness of the monthly measure. In light of the millions of transactions at issue, and the many separate instances of manipulation, using transactions or even instances of manipulation as a measure would produce a staggering penalty. A penalty measured in terms of months is a reasonable intermediate metric that fulfills the need to impose significant fines while honoring the value of proportionality.

Weighing all of the factors discussed above, a third-tier civil penalty of $5 million is assessed against each of the three Defendants. Although this penalty is significant, it corresponds to the extent and brazenness of the Defendants' conduct and the need to deter those practices in the future. It is also a fraction of the maximum tier-three penalties available

and substantially less than the penalty the SEC has requested. This figure is set based at least in part on the assumption that the amount already seized by the SEC, or at least most of that amount, will be used to satisfy Defendants' duty to disgorge their profits from their schemes.[12]

Conclusion

The SEC's December 20, 2019 motion for remedies is granted in part. A judgment of disgorgement in the amount of $4,495,564 plus prejudgment interest in the amount of $131,750 is imposed jointly and severally against each of the Defendants: Avalon, Fayyer, and Pustelnik. Each Defendant is also assessed a civil penalty in the amount of $5 million.[13] Lastly, each Defendant will be permanently enjoined from violating Sections 9(a)(2) and 10(b) of the Exchange Act, Rule 10b-5 thereunder, and Section

[12] This Order relies on the Defendants' commitment, expressed in their memorandum in opposition the SEC's motion and counsel's letter of March 13, 2020, that they largely consent to the application of the $5.5 million seized by the SEC to be used to satisfy their obligation to pay disgorgement.

[13] In the event that no order of disgorgement may be enforced, the civil penalty assessed against each Defendant shall be increased to $7.5 million.

17(a) of the Securities Act.

Dated: New York, New York
March 20, 2020

DENISE COTE
United States District Judge

EXHIBIT 9

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act Of 1934

Admin. Proc. File No. 3-19798

In the Matter of

SERGEY PUSTELNIK a/k/a
SERGE PUSTELNIK,

Respondent.

MR. PUSTELNIK'S ANSWER TO THE ALLEGATIONS OF ORDER

Dear Secretary Countryman,

The below is an answer to the order from Administrative Proceeding File No. 3-19798. I am currently representing myself *pro-se.*

1. Undisclosed Control Person

The Division of Enforcement ("Enforcement") alleges that from at least October 2010 through September 2016, I was an undisclosed control person of Avalon FA Ltd. ("Avalon"), a trading firm based in Kiev, Ukraine.

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I deny that I was an undisclosed or an otherwise control person of Avalon FA Ltd. The term "control" is defined in Rule 405 under the Act as "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise."

Enforcement has not alleged that there has been ownership through voting securities or by contract. The "*otherwise*" provision of the definition has not been clearly established in the Commission's rules, or case law and is factually based. See, e.g., First Gen'l Resources Co., SEC No-Action Letter, [1988-89 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 78,251 at 78,253 (Aug. 23, 1988) ("[t]he Division [of Corporation Finance] has historically declined to express any view on the affiliation of any person to an issuer of securities on the ground that the question is a matter of fact best determined by the parties and their advisors.")
However, I do concede that a jury has found in favor of all allegations made by Enforcement.

2. Registered Representative

I confirm that from March 2011 through January 2015 I was a FINRA registered representative associated with Lek Securities Corporation ("Lek"), a broker-dealer registered with the Commission. I was first registered with a regulated broker dealer in 2001. In the fourteen years of being in the industry I did not receive a single customer complaint and my record has been completely unblemished. On January 21, 2015 I voluntarily withdrew from FINRA, an organization that has improperly obtained private photographs and demanded I share my

personal spousal communications in my private email account. FINRA has taken the position that as a private, non-government entity, it does not recognize or respect spousal privilege, which is protected by the U.S. Supreme Court. To protect the privacy of myself and my spouse I chose not to be associated with FINRA.

During the time when I was registered at Lek, I did not have any supervisory responsibilities or roles within the broker dealer and relied solely on compliance staff of Lek, including Samuel F. Lek who was its Chief Operating Officer, Chief Compliance Officer, and who has acted as a FINRA administrative judge and legal counsel and opinions offered by Norton Rose, Lek's primary legal counsel during the time. See e.g. Exhibit 7 - Copy of letter from Sam Lek to FINRA that was prepared by Norton Rose. Prior to sending the letter, Sam Lek showed the letter assured me and Avalon that the trading was perfectly legal. There were multiple occasions on which Sam Lek has made such assurances to me and to Avalon. I then did not have any knowledge or expertise to determine whether the trading conducted by Avalon in the open market is manipulative. Nor did I ever have any authority at either Lek or at Avalon to stop any trading conducted by Avalon Traders.

From the period of 2015 and 2016, I was enrolled as a first-year and subsequently second-year law student at Harvard Law School. During the summer of 2015, I volunteered full-time at a D.C. based think tank that focuses on economic regulation to help developing nations. This time frame is important, because according to Enforcement and documents submitted in the civil case,

the majority of profits from the two strategies have occurred in 2015 and 2016, the time frame when I was no longer affiliated with Lek. FINRA has further alerted Lek and Samuel F. Lek, about manipulative layering. Most serious admonishments by FINRA to lek have also happened in the time period when I was no longer registered. “In April 2015, FINRA again alerted LEK and Sam Lek that Avalon might be engaged in manipulative trading through LEK, and that LEK and Sam Lek's conduct may have aided the manipulative trading. From at least March 2016 through September 2016, FINRA advised LEK on a monthly basis that it continued to see substantial layering activity through LEK.” I was not made aware of these communications.

During the entire period, Lek Securities, and Sam Lek have always maintained that trading conducted by Avalon is not manipulative and disagreed with the regulators. Thus, my registration as a registered representative was not a necessary condition for Avalon’s trading.

3. Civil Injunction

I agree with the allegation that this injunction has been entered against me and that a jury has found for the Commission on all counts. This decision however, is currently being appealed to the Second Circuit and is pending resolution. The Commission has recently filed a motion to remand a certain issue back to the District Court. Considering that this matter is not fully adjudicated, the current Administrative Proceeding should be adjournment until final resolution of the underlying matter.

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Among other appealable issues, a Higher Court should determine whether open market orders can constitute securities fraud based solely on intent ("sole intent approach") as opposed to requiring traditional elements of "artificial information." Circuits are currently split on this issue. See e.g. "Spoofing and Layering" Mark, Gideon.Journal of Corporation Law; Iowa City Vol. 45, Iss. 2, (2020): 399-469.

In determining the remedial actions I request that the Commission considers that there is disagreement among experts about what "layering" and "cross-market manipulation is", that all trades have been made in the open market, and that the only witnesses or victims of potential harm were highly sophisticated high-frequency trading firms employing trading algorithms, and not the general public. These firms were Hudson River Trading and Citadel Securities. Both these firms complained about losing money in their HFT trading algorithms. Both of these firms are named in a landmark lawsuit by the City of Providence, Rhode Island et al. v Bats Global Markets, Inc., No. 14-cv-2811 (S.D.N.Y.). Citadel has been fined for trading ahead of its clients, See FINRA letter of acceptance, waiver, and consent No. 2014041859401, July 16, 2020.

4. Considerations of Remedial Actions

In deciding what remedial actions to take, in addition to the above, and the request to postpone the decision until the underlying matter is fully adjudicated to avoid unnecessary litigation burdens on both sides I would request the attention to the following:

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a) I have not been associated with any regulated broker-dealer since January 21, 2015.

b) All alleged trading was conducted by Avalon traders and overseen by supervisors and compliance personnel at Lek Securities, not me.

c) All alleged trading was done in the open market, using real orders that faced risk of execution.

d) There was no allegation of traditionally manipulative orders such as pre-arranged wash-sales or "marking the close."

e) There are no allegations of traditional fraud, such as defrauding investors and clients. There is no allegation of any fiduciary duty to unknown and anonymous (by market structure design) other market participants.

f) There are no allegations that I, Avalon, Lek, or the traders made any public statements about any security.

g) All conduct was in the open market using electronic means that went through pre-trade and post-trade compliance checks and reports at a Broker-Dealer that had an obligation to prevent manipulative activity and who had the power and authority to terminate it at any time.

h) All trading was never concealed and was conducted in the open market and Lek Securities has gone through multiple audits by FINRA and other regulators. While the regulators expressed concerns over trading, there was no order to stop or prohibit trading in the period

of almost six years. Compliance and legal counsel for Lek Securities (Norton Rose) has assured me that while the regulators do not "like" the trading at issue - it is perfectly legal and "good trading." During this time, I had no authority to stop such trading at either Avalon or Lek.

i) There are multiple definitions of *layering* from various authorities including one from the Commission Concept Release on Equity Market Structure:

Passive market making primarily involves the submission of non-marketable resting orders (bids and offers) that provide liquidity to the marketplace at specified prices. While the proprietary firm engaging in passive market making may sometimes take liquidity if necessary to liquidate a position rapidly, the primary sources of profits are from earning the spread by buying at the bid and selling at the offer and capturing any liquidity rebates offered by trading centers to liquidity-supplying orders. If the proprietary firm is ***layering*** *the book with multiple bids and offers at different prices and sizes, this strategy can generate an enormous volume of orders and high cancellation rates of 90% of more. The orders also may have an extremely short duration before they are cancelled if not executed, often of a second or less.*

See *.17 CFR PART 242 [Release No. 34-61358; File No. S7-02-10] RIN 3235-AK47* at 48-49.

j) Evidence from denied experts that underscores that other industry and academic experts also determine that such trading is not violative and that trading in question was thus conducted under the color of legality.

i) Exhibit 1 Expert Report for Avalon - Equities Trading Final

ii) Exhibit 2 Expert Report for Avalon - Cross-Market Final

iii) Exhibit 3 Expert Report of Ronald Filler -- May 11 2018

iv) Exhibit 4 Begelman Expert Report 3.16.2018

v) Exhibit 5 Rebuttal Expert Report of Alan G. Grigoletto 5-11-18

vi) Exhibit 6 Rebuttal Report of David J. Ross (Layering) 5-11-18

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k) It has not been alleged nor have I ever acted or have been associated with an investor advisor and alleged conduct is irrelevant to being an investor advisor.

l) It has not been alleged nor have I ever been or have been associated with a municipal securities dealer and alleged conduct is irrelevant to municipal securities.

m) It has not been alleged nor have I ever been or have been associated with a municipal advisor, transfer agent, or nationally recognized statistical rating organization and alleged conduct is irrelevant to being a municipal advisor, transfer agent, or being associated nationally recognized statistical rating organization.

n) It has not been alleged nor have I ever participated in any securities offerings and alleged conduct is irrelevant to participating in any securities offering.

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o) It has not been alleged nor have I ever ever participated in any offering of penny stock, including as a promoter, finder, agent or other person who engages in activities with a broker, dealer or issuer for the purposes of issuance trading in any penny stock, including the purchase or sale of any penny stock and alleged conduct is irrelevant to penny stock activities.

p) Samuel F. Lek, the Chief Executive Officer and Chief Compliance Officer has been barred with the right to reapply for 10 years. (See Release No. 8726).

q) Other administrative remedial actions taken by the Commission in layering related cases (duration of bars) for cases that have settled and were not fully adjudicated.

i) SEC v. Hold Brothers, September 2012

1) Steve Hold, owner of broker and foreign trading firm - 2 years
2) William Tobias - associated person of brokerage, manager of foreign trading firm - 3 years
3) Robert Vallone - chief compliance officer of broker - 3 years

ii) SEC v. Biremis, December 2012

1) Beremis, broker - License Revoked
2) Peter Beck, owner of broker, controlled foreign traders - right to reapply
3) Charles Kim, owner of broker, controlled foreign traders - right to reapply

iii) SEC v. Visionary Trading, April 2014

1) Andrew Actman , broker, CEO - right to reapply
2) Joseph Dondero, wonder of trading firm - permanent

3) Eugene Giaquinto, owner of trading firm - 2 years

4) Lee Heiss, owner of trading firm - 2 years

5) Jason Medvin, owner of trading firm - 2 years

iv) SEC v Wedbush

1) Jeffrey Bell, associated person of broker - no nar

2) Christina Fillhart, associated person of broker - no bar

v) Citadel Securities, LLC (2017)- violated "Section 17(a)(2) of the Securities Act prohibits 'any person in the offer or sale of any securities . . . . [from] directly or indirectly . . . . obtain[ing] money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading[.]' Scienter is not needed to prove a violation of Section 17(a)(2); a showing of negligence is sufficient. Aaron v. SEC, 446 U.S. 680, 697 (1980). 42. As a result of the conduct described above, Citadel Securities willfully violated Section 17(a)(2) of the Securities Act." Citadel was censured and required to pay $5,200,000 disgorgement, prejudgment interest of $1,465,268 and a civil penalty of $16,000.000. No person was barred. (File 3-17772).

vi) Citadel Securities, LLC (2018) violated "Section 17(a)(1) of the Exchange Act requires, among other things, that broker dealers make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for

the protection of investors, or otherwise in furtherance of the securities laws. Exchange Act Rule 17a-4(j), promulgated thereunder, requires, in part, broker-dealers such as Citadel to furnish promptly legible, true, complete, and current copies of those records of the member, broker or dealer that are required to be preserved under Exchange Act Rule 17a-4 and any other records of the member, broker or dealer subject to examination under Section 17(b) of the Exchange Act that are requested by a representative of the Commission. Likewise, Exchange Act Rule 17a-25 requires that broker-dealers such as Citadel shall, upon request, electronically submit to the Commission the securities transaction information as required in the rule. As described above, Citadel failed to furnish complete records to the Commission staff that were requested by the Commission in its EBS requests. Therefore, Citadel willfully violated the recordkeeping and reporting requirements of Section 17(a)(1) of the Exchange Act and Rule 17a-4(j) thereunder by failing to furnish promptly true and complete trading information as requested by Commission staff over a period of approximately four years. In addition, Citadel willfully violated Exchange Act Rule 17a-25 by failing to submit electronically certain securities transaction information to the Commission through the EBS system in response to requests made by the Commission." Citadel was censured and ordered to pay a civil penalty of $3.5 million. No person was barred. (File 3-18915).

r) Other administrative remedial actions taken by the Commission, such as but not limited to

i) John J. Marvin - submitted false zip codes that "created misleading impression that Meslie's orders were bona-fide retail orders" - 12 months (File 3-19885).

ii) Hodgins & Kitay - $900 million dollar accounting fraud - 5 year bar (File No. 3-17582).

iii) Robert Russel Tweed - "The Commission's complaint alleged that, in connection with the management of the Athenian Fund, a pooled investment vehicle, Tweed failed to timely disclose the loss of investors' capital, failed to provide audited financial statements to investors, and otherwise engaged in conduct that misled investors". - 5 year bar (File No. 3-19881).

iv) Paul, J. Konigsberg - "On June 24, 2014, Konigsberg pled guilty to three federal felony charges relating to his falsification of investor account records of Bernard L. Madoff Investment Services, LLC. Judgment in that matter was entered against him on July 16, 2015. U.S. v. Konigsberg, 10-CR-228 (S.D.N.Y.)" - no securities bar, only attorney bar. (File No. 3-19879).

v) Benjamin Alderson - "The Commission's complaint alleged that Alderson failed to inform clients and prospective clients of conflicts of interest in the form of commissions he stood to—and did—receive. The complaint alleged that in doing so Alderson violated the fiduciary duty that every investment adviser has to its clients and prospective clients: to put the client's best interests first, employ utmost honesty, and fully disclose all material information, including actual and potential conflicts of interest." - 2 year bar with right to reapply (File No. 3-19869).

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vi) Raph, C. Greaves, Esq - “The Commission’s complaint alleged, among other things, David Sims and Mario Procopio, and their respective entities, Sims Equities, Inc., ALC Holdings, LLC and El Cether-Elyown, engaged in a “prime bank” scheme from at least April 2014 through at least May 2017, through which they raised at least $1,410,000 from at least 13 investors. They told the investors that their money would be invested with other large investments in a prime bank “trade platform” that would generate 1,200% to 40,000% in returns. No such trade platform existed. Sims and Procopio used nearly all of the investor funds to support their lifestyles and make at least one Ponzi-like payment. From at least 2015 through 2017, Greaves aided and abetted the scheme by, among other things, accepting investor deposits into his client trust account and by making misleading statements about Sims’ and Procopio’s past performance.” - no industry bar, but “Greaves is suspended from appearing or practicing before the Commission as an attorney.” (File 3-19889).

vii) Michelle Dipp - “In light of the information that Dipp was informed of and had access to, she knew or should have known the statements described above in filings with the Commission, press releases, earnings calls, and other communications with investors about the commercial progress, prospects and availability of AUGMENT and OvaPrime, were materially false or misleading. 44. Accordingly, Dipp violated Sections 17(a)(2) and (3) of the Securities Act which make it unlawful to obtain money or property through materially false or misleading statements and proscribe any

transaction, practice, or course of business that operates or would operate as a fraud or deceit upon a purchaser of securities." - no bar. (File 3-19843).

viii) Christopher D. Larson - "The Commission's complaint alleged, among other things, that from no later than December 2011 through at least December 2012, Larson engaged in a scheme to manipulate the market for Crown stock. As part of the scheme, Larson obtained control of Crown, transferred shares to nominees, paid $400,000 for a "call center" to promote Crown, placed manipulative trades in his own account to create the appearance of market interest, and acted as the undisclosed CFO of the company. As Crown's stock price became inflated as a result of these efforts, Larson's nominees sold Crown shares and wired the sale proceeds — at least $865,000 — to him." - No industry bar, and "respondent is suspended from appearing or practicing before the Commission as an accountant." (File 3-19821).

ix) Floyd Mayweather Jr. - "Mayweather violated Section 17(b) of the Securities Act by touting three ICOs that involved the offer and sale of securities on his social media accounts without disclosing that he received compensation from an issuer for doing so, or the amount of the consideration." - 3 years to ", forgo receiving or agreeing to receive any form of compensation or consideration, directly or indirectly, from any issuer, underwriter, or dealer, for directly or indirectly publishing, giving publicity to, or circulating any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security, digital or otherwise, for sale, describes such security." (File 3-18906).

x) Crypto Asset Management, LP and Timothy Enneking , "willfully violated Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, which make it unlawful for any investment adviser to a pooled investment vehicle to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle." - No bar. (File 3-18740).

xi) Moody's Investors Service, Inc (1), "Moody's rated approximately 26 Combo Notes with a total notional value of approximately $2 billion… As a result of the conduct described above, Moody's violated Rules 17g8(b)(2) and (3) of the Exchange Act which require NRSROs to establish, maintain, enforce and document policies and procedures reasonably designed to achieve transparency and consistency over the assignment of credit ratings." Moodies was required to pay a civil penalty in the amount of $1,250,000. No person was barred. (File 3-18689).

xii) Moody's Investors Service, Inc (2), " MIS violated Section 15E(c)(3)(A) of the Exchange Act, which requires NRSROs to "establish, maintain, enforce, and document an effective internal control structure governing the implementation of and adherence to policies, procedures, and methodologies for determining credit ratings...e, MIS violated Section 17(a)(1) of the Exchange Act and Rule 17g-2(a)(2) thereunder, which prescribe certain record-keeping responsibilities for NRSROs with regard to the credit rating

process." Moodies was required to pay a civil penalty of $15,000,000.00. No person was barred. (File 3-18688).

s) Primarily egregious cases have warranted permanent collateral bars, such as

i) William Andrew Hightower, who "on October 16, 2019, Hightower pleaded guilty to two counts of wire fraud in violation of 18 U.S.C. §§ 1343 and 2 in United States v. William A. Hightower, Case No. :18-CR00600 (S.D. Tex.). As part of Hightower's plea agreement, he agreed to entry of an Order Imposing Money Judgment in the amount of $9.5 million, which was signed by the court on October 9, 2019.3. One wire fraud count to which Hightower pleaded guilty alleged, among other things, that on or about January 14, 2015, he transferred $900,000 from a victim's account to HCG and used those funds to pay back other investors and for personal spending, rather than for the intended investment purpose. Hightower also pleaded guilty to a second count alleging that on March 14, 2016, he transferred $800,000 of another investor's money into his account and used the money to pay back other investors and to fund his personal lifestyle." Permanent collateral bar. (File 3-1981).

ii) Bernard L. Madoff - "The Commission's complaint alleged the following facts: Madoff and BMIS conducted a $50 billion fraudulent scheme through the firm's investment advisory business. In or around early December 2008, Madoff had told senior employees at BMIS that there had been approximately $7 billion in advisory client redemption requests and he was struggling to obtain the liquidity necessary to meet

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those obligations. When the employees pressed Madoff for more information, Madoff said that his advisory business was a fraud, "just one big lie [and] basically, a giant Ponzi scheme" that had been paying returns to certain investors out of principal received from other investors. Madoff said that he intended to surrender to authorities after he paid out remaining money to selected employees, friends and family members." Barred with the right to reapply. (File 3-13520).

From 2015, I have enrolled and graduated from a leading law school primarily in order to better understand laws and regulations so that my future conduct is fully compliant. I have not been in the financial industry for over five years and I have not yet applied to any bar of any state or jurisdiction.

I also should not be punished by an excessive bar for exercising my rights to a due process in determining whether "layering" and "cross-market" - two novel definitions of open market manipulation, are indeed manipulative, contrary to the opinions of my supervisors, Chief Compliance Officer and former FINRA administrative law judge Sam Lek, and legal opinions rendered by leading firm, Norton Rose.

Thank you for your consideration.

Sincerely,

Respondent
Sergey Pustelnik

July 27, 2020

/s/ Sergey Pustelnik
Sergey Pustelnik
serge.pustelnik@gmail.com
45 River Drive South
Jersey City, NJ 07310

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EXHIBIT 10

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20110297130-03

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: Sergey Pustelnik, Respondent
Registered Representative
CRD No. 4439199

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Sergey Pustelnik ("Pustelnik" or "Respondent"), submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. I hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

Respondent is currently registered as a general securities representative, general securities principal and equity trader with a FINRA member. Respondent first became registered with a FINRA member as a general securities representative in 2002. Respondent is subject to FINRA's jurisdiction pursuant to Article V, Section 2 of the FINRA By-Laws. Respondent has no disciplinary history.

FACTS AND VIOLATIVE CONDUCT

In Market Regulation Review No. 20110297130, the Market Manipulation Investigations Section of FINRA's Department of Market Regulation ("Market Regulation") conducted an investigation of, among other things, certain suspicious trading activities occurring through a FINRA-member firm during the review period October 1, 2010 through December 31, 2013.

In furtherance of Market Regulation's investigation, by letter dated October 21, 2014, Market Regulation staff requested, pursuant to FINRA Rule 8210, that Respondent produce certain emails in his possession, custody and control. Respondent, however, refused to produce all emails requested. Specifically, Respondent refused to produce a copy of a .pst file containing emails in a Gmail account used by Respondent for

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business and personal purposes. As a result of the foregoing misconduct, Respondent violated FINRA Rules 2010 and 8210.

B. I also consent to the imposition of the following sanction:

A bar from associating with any FINRA member in any capacity.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See FINRA Rules 8310 and 8311.)

The sanctions imposed herein shall be effective on a date set by FINRA staff. Pursuant to FINRA Rule 8313(e), a bar shall become effective upon approval or acceptance of this AWC.

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

A. To have a Complaint issued specifying the allegations against me;

B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;

C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and

D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, I specifically and voluntarily waive any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

I further specifically and voluntarily waive any right to claim that a person violated the *ex parte* prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

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III.

OTHER MATTERS

I understand that:

A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;

B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against me; and

C. If accepted:

1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;

2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

4. I may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. I may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

Date

Sergey Pustelnik

Reviewed by:

James Wines
1802 Stirrup Lane
Alexandria, VA 22308
202-297-6768
Phone Number

Accepted by FINRA:

1/21/15
Date

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

Robert A. Marchman
Executive Vice President
Department of Market Regulation

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

1/10/15
Date

Sergey Pustelnik

Reviewed by:

James Wines
1502 Stirrup Lane
Alexandria, VA 22308
202-297-6768
Phone Number

Accepted by FINRA:

1/21/15
Date

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

Robert A. Marchman
Executive Vice President
Department of Market Regulation

EXHIBIT 11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, -v- LEK SECURITIES CORPORATION, SAMUEL LEK, VALI MANAGEMENT PARTNERS d/b/a AVALON FA, LTD., NATHAN FAYYER, and SERGEY PUSTELNIK a/k/a SERGE PUSTELNIK, Defendants.	17cv1789 (DLC) OPINION AND ORDER

APPEARANCES

For plaintiff Securities and Exchange Commission:
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Norton Rose Fulbright US LLP
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DENISE COTE, District Judge:

On August 24, 2018, defendants Lek Securities Corp. ("Lek Securities") and Samuel Lek ("Lek"; together with Lek Securities, the "Lek Defendants") filed a motion for summary judgment seeking dismissal of all claims brought against them by the U.S. Securities and Exchange Commission ("SEC"). The SEC has brought claims against the Lek Defendants for violations of: § 20(e) of the Securities Exchange Act of 1934 ("Exchange Act") and § 15(b) of the Securities Act of 1933 ("Securities Act") for aiding and abetting the primary violations of Avalon FA Ltd. ("Avalon"), Nathan Fayyer ("Fayyer"), and Sergey Pustelnik ("Pustelnik"; together with Avalon and Fayyer, the "Avalon Defendants"); § 17(a)(3) of the Securities Act as a primary violator; and § 20(a) of the Exchange Act based on the Lek Defendants' control of Pustelnik, who the SEC alleges violated § 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. SEC v. Lek Sec. Corp., 276 F. Supp. 3d 49, 57-58 (S.D.N.Y. 2017).

The SEC's allegations concern two schemes to manipulate the U.S. securities markets. The first scheme involved Avalon's alleged use of a trading strategy referred to as layering. A trader engaged in layering typically places a large number of buy (or sell) orders on one side of the market without intending to execute those orders. The trader does so to increase the

perceived demand (or supply) of the stock and to influence the price per share or volume of shares the trader is able to sell (or buy) on the opposite side of the market. See SEC v. Lek Sec. Corp., No. 17cv1789(DLC), 2019 WL 1198599, at *2-3 (S.D.N.Y. Mar. 14, 2019). The SEC claims that Avalon engaged of hundreds of thousands of instances of layering through Lek. Id. at *3.

The second alleged scheme is a Cross-Market Strategy. In a Cross-Market Strategy, a trader manipulates the prices of options through trading in the corresponding stocks. See id. at *8. The SEC claims that Avalon engaged in the Cross-Market Strategy over 600 times through Lek. Id. at *9.

A motion for summary judgment may not be granted unless all of the submissions taken together "show[] that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A genuine issue of material fact exists if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Nick's Garage, Inc. v. Progressive Cas. Ins. Co., 875 F.3d 107, 113 (2d Cir. 2017) (citation omitted). The moving party bears the burden of demonstrating the absence of a material factual question. Gemmink v. Jay Peak Inc., 807 F.3d 46, 48 (2d Cir. 2015). In making this determination, the court must "view the evidence in the light most favorable to the party

opposing summary judgment" and "draw all reasonable inferences in favor of that party." Weyant v. Okst, 101 F.3d 845, 854 (2d Cir. 1996).

Once the moving party has asserted facts showing that the non-movant's claims or affirmative defenses cannot be sustained, the party opposing summary judgment "must set forth specific facts demonstrating that there is a genuine issue for trial." Wright v. Goord, 554 F.3d 255, 266 (2d Cir. 2009) (citation omitted). "[C]onclusory statements, conjecture, and inadmissible evidence are insufficient to defeat summary judgment," Ridinger v. Dow Jones & Co. Inc., 651 F.3d 309, 317 (2d Cir. 2011) (citation omitted), as is "mere speculation or conjecture as to the true nature of the facts." Hicks v. Baines, 593 F.3d 159, 166 (2d Cir. 2010) (citation omitted). Only disputes over material facts will properly preclude the entry of summary judgment. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

In bringing this motion, the Lek Defendants emphasize that they had a surveillance system which they improved over time, that the system prevented many manipulative trades, and that regulators failed to respond adequately to the Lek requests for assistance to improve the system. They assert that they are entitled to summary judgment because the SEC has presented insufficient evidence that Avalon engaged in manipulative

trading, that the Lek Defendants assisted Avalon, or that Lek Securities controlled Pustelnik. These arguments are addressed in turn.

I. Avalon's Primary Violations

The Lek Defendants principally argue that the record contains insufficient evidence to support a violation of the securities laws by the Avalon Defendants. Through two experts, the SEC has offered detailed analyses of the Avalon trading that purports to demonstrate voluminous trading consistent with the two alleged manipulative trading strategies. Lek Sec. Corp., 2019 WL 1198599, at *3-5, 8-11. The motion to exclude testimony from those experts was recently denied. Id. at *14-16. The Lek Defendants contend that, even with a denial of their motion to strike the SEC expert testimony, summary judgment is nonetheless appropriate.

According to the Lek Defendants, the SEC has failed to show market manipulation since a market manipulation scheme requires the SEC to offer evidence that Avalon injected false price information into the market. Because every order Avalon placed was a "real, actionable" order, the Lek Defendants reason that the Avalon orders were incapable of sending false price signals into the market. This very argument was rejected in the decision denying the Lek Defendants' motion to dismiss. Lek Sec. Corp., 276 F. Supp. 3d at 64. As explained there, the

defendants' position that open market orders may never constitute manipulative conduct is not the law. Id.[1]

With respect to the Cross-Market Strategy in particular, the Lek Defendants also contend that Avalon's trading strategy was not manipulative because it was part of "price discovery" and hedging strategies. Given these legitimate economic purposes, they argue that there can be no finding that the Avalon trading connected to the alleged Cross-Market Strategy was manipulative. This line of argument also fails. The Lek Defendants do not point to any affirmative evidence that they have offered to demonstrate what trading strategy or strategies Avalon was pursuing in connection with the accused trading. For instance, they have not presented expert testimony that defines the characteristics of any particular trading strategy, that demonstrates how one can locate that strategy from an examination of a body of trades, and that identifies the specific trades that conformed to that strategy. While they offered expert testimony to rebut the testimony of the two SEC

[1] The Lek Defendants have relied to some extent on CFTC v. Wilson, No. 13cv7884(RJS), 2018 WL 6322024 (S.D.N.Y. Nov. 30, 2018). Wilson concerned a different alleged manipulative scheme and is inapposite. Moreover, the defendants in Wilson offered evidence of a legitimate economic rationale underlying the trading strategy they designed. Avalon has not offered admissible evidence of either the trading strategy it was pursuing or a legitimate economic rationale for it.

experts, the defendants' expert reports disclosed no independent analysis of the Avalon trading. Conclusory opinion testimony does not raise a question of fact. Major League Baseball Props., Inc. v. Salvino, Inc., 542 F.3d 290, 310-11 (2d Cir. 2008).[2]

Nor have the Lek Defendants provided declarations from fact witnesses, such as the traders who were responsible for designing a trading strategy, to support their motion for summary judgment. But, even if the Lek Defendants had filled either of these evidentiary gaps, the analyses of the Avalon trading performed by the two SEC experts would raise questions of fact regarding whether Avalon was engaged in market manipulation. From the testimony provided by these two SEC experts and the other evidence to which the SEC points, the record contains evidence from which a jury could conclude that the Avalon Defendants engaged in layering and the Cross-Market Strategy with the intent to manipulate the market. Either of these strategies would constitute a violation of § 10(b) of the Exchange Act if proven at trial.

[2] Four of the SEC's Daubert motions to exclude the defense expert testimony have been addressed and they have been granted in whole or in part. Lek Sec. Corp., 2019 WL 1198599, at *16-27; SEC v. Lek Sec. Corp., No. 17cv1789(DLC), 2019 WL 1304452, at *3-4 (S.D.N.Y. Mar. 21, 2019).

II. Aiding and Abetting

The Lek Defendants also argue that there is insufficient evidence that they aided and abetted Avalon's alleged violations of the securities laws. They contend principally that they were properly responsive to regulators' concerns about layering and that they only provided services to Avalon that brokers provide to all customers.

To prevail on a claim of aiding and abetting, the SEC must prove two elements in addition to the existence of a primary violation by the Avalon Defendants: "[1] knowledge of [a] violation on the part of the aider and abettor; and [2] substantial assistance by the aider and abettor in the achievement of the primary violation." SEC v. Apuzzo, 689 F.3d 204, 211 (2d Cir. 2014) (citation omitted). In opposition to the Lek Defendants' motion for summary judgment, the SEC has presented evidence that raises a genuine issue of fact as to both of these elements.

With respect to the Lek Defendants' knowledge of the schemes, the SEC points to the Lek Defendants' receipt of numerous regulatory inquiries identifying patterns of manipulative trading within Avalon subaccounts. They also point to Lek's responses to these inquiries, which the SEC contends were either inadequate or misleading. In addition, the SEC offers evidence that at Avalon's request the Lek Defendants

adjusted their internal control system -- the Q6 Layering Control system -- to relax controls for certain Avalon subaccounts. The SEC relies as well on a series of e-mails between Lek and an individual trader who was seeking to engage in layering. Although Avalon and the SEC dispute the inferences to be drawn from the correspondence, the trader opened a subaccount at Lek Securities through which thousands of orders allegedly consistent with layering were placed. This evidence, which is not the only evidence on which the SEC relies, is sufficient to raise a genuine issue as to the Lek Defendants' knowledge of Avalon's alleged violations.

The SEC also points to evidence that Lek Securities' registered representative Pustelnik knew of and furthered Avalon's manipulative schemes. Pustelnik's knowledge of Avalon's primary violations may be imputed to the Lek Defendants if he was acting within the scope of his employment and in the interests of the corporation. Wight v. BankAmerica Corp., 219 F.3d 79, 87 (2d Cir. 2000). While the Lek Defendants argue against imputation, there are factual disputes that must be resolved at trial.

The SEC has also pointed to evidence that the Lek Defendants provided substantial assistance to Avalon. First and foremost, Lek Securities provided brokerage services. The fact that it is the business of a brokerage company to provide such

services to its customers does not mean that those services are not of substantial assistance to manipulative traders. Lek Sec. Corp., 276 F. Supp. 3d at 65; see also Graham v. SEC, 222 F.3d 994, 1004 (D.C. Cir. 2000).

The SEC also points to what it characterizes as Lek Securities' flawed and inconsistent use of the Q6 Layering Control system, as mentioned above. The Lek Defendants also provided Avalon with technology and capital that allowed Avalon traders to engage more effectively in the allegedly manipulative Cross-Market Strategy. This evidence raises a question of material fact regarding substantial assistance for the jury to resolve.

The Lek Defendants' citation to Armstrong v. McAlpin, 699 F.2d 79 (2d Cir. 1983), does not support their motion. Although the court in Armstrong was not prepared to hold a broker liable as an aider and abettor for "merely execut[ing] an investment manager's [improper] orders," the court concluded that the complaint alleged sufficient evidence to support a claim for aiding and abetting against a broker-dealer. Id. at 91. The court highlighted that the complaint included allegations of "greater wrongdoing," including that the defendant "acted as broker for substantially all the [transactions at issue] with knowledge of their fraudulent nature in order to generate commissions for himself." Id.

Here, the SEC points to evidence that, as Avalon's broker-dealer, the Lek Defendants knew of and furthered Avalon's improper orders in order to generate additional commissions for the company. In addition, the SEC points to statements by Fayyer from which a jury could conclude that Avalon viewed Lek Securities as "the only solution" for traders seeking to engage in layering or the Cross-Market Strategy.[3]

III. Lek's Primary Violation

The Lek Defendants argue that the SEC has not adduced evidence that the Lek Defendants committed a primary violation of the securities laws. The Lek Defendants are mistaken. Primary liability may be imposed not only on persons who initiate a scheme of manipulation, "but also on those who had knowledge of the fraud and assisted in the perpetration." SEC v. First Jersey, 101 F.3d 1450, 1471 (2d Cir. 1996) (citation omitted).

The evidence to which the SEC points includes evidence that the Lek Defendants relaxed controls under its Q6 Layering

[3] Nor is Levitt v. J.P. Morgan Securities, Inc., 710 F.3d 454 (2d Cir. 2013), instructive here. That case addressed, in the context of a motion for class certification, the liability of a clearing broker for aiding and abetting an allegedly manipulative trading scheme. Id. at 457. The Court of Appeals drew a sharp distinction between clearing brokers, whose involvement in a transaction ordinarily "begins after the execution of a trade," and introducing brokers, which bear "the burden of monitoring trades." Id. at 466-67. Lek Securities is not a clearing broker.

Control system, misled regulators concerning the actions it took to address potential market manipulation, installed and financed technological improvements at the request of the Avalon Defendants, and provided Avalon access to the U.S. securities markets notwithstanding numerous regulatory inquiries about potentially manipulative trading in Avalon subaccounts.

IV. Control Liability

Finally, the Lek Defendants contend that they cannot be held liable under § 20(a) of the Exchange Act because the SEC has not demonstrated that the Lek Defendants controlled Pustelnik, their registered representative. In the alternative, the Lek Defendants argue that they should not be liable for Pustelnik's violations because they acted in good faith. The SEC, however, points to several facts from which a jury could conclude that the Lek Defendants controlled Pustelnik, including with respect to the specific actions that form the basis for Pustelnik's alleged securities law violations, and that much of Pustelnik's allegedly violative conduct fell within the scope of his employment. The SEC also points to evidence from which a reasonable jury could infer that Lek Securities did not act in good faith. The SEC has shown that there are material factual disputes that are inappropriate for resolution on summary judgment.

Conclusion

The Lek Defendant's August 24, 2018 motion for summary judgment is denied.

Dated: New York, New York
March 26, 2019

DENISE COTE
United States District Judge

EXHIBIT 12

Immersive Network Partners With Blockchain Mega-Platform Starport To Connect Entertainment and Crypto Communities

Fundraise marks the first-of-its kind successful crypto-funded entertainment investment program

Pre-sale open to the public through Sunday April 4th

NEWS PROVIDED BY
Immersive Network →
Apr 02, 2021, 17:12 ET

LOS ANGELES, April 2, 2021 /PRNewswire/ -- Immersive Network announced today that it has secured commitments for over $50 million through the Starport platform in the 24 hours since the launch of their pre-IDO to fund Immersive Artistry's first slate of projects. The Immersive Network is a new blockchain-based platform launched by Starport, dedicated to extended reality entertainment and experiences.

"This is a pivotal moment in connecting entertainment and media companies, producers, creators and others with crypto investors, providing a new source of financing and capital that is both democratized and steeped in the knowledge of the various communities," said Cary Granat, CEO of Immersive Artistry and Immersive Networks. "Today's launch has made it clear that the future of our industry will include blockchain technology and cryptocurrency network financing."

Funding from Starport will go directly to Immersive Network which will then fund Immersive Artistry projects including the upcoming Las Vegas-based *Kind Heaven* which will utilize a myriad of new technologies and Hollywood style storytelling to transport visitors to an immersive destination experience including music, food, fashion, and exploration as well as

a digital landscape. Similarly, these funds will help launch Immersive Artistry's *Christmas Village*, where guests will experience a North Pole Village through a whole series of immersive technologies as performers and theatrical builds of natural locations.

"The potential for DeFi has barely been scratched," said James Wines, co-founder of Starport and Gebo. "Blockchain network technology has the ability to power and disrupt entire industry sectors. Starport's mission is mass adoption. The projects in our pipeline are all deployable real world uses cases that will help fulfill blockchain's promise to forever change everything."

"Immersive projects will help jump start post-Covid entertainment and travel and will create new jobs and opportunity in Las Vegas, Dallas and beyond. This is the future of entertainment brought to you by the future of finance," said Mr. Granat.

Starport is in Beta, with access now open, pre-IDO to the Immersive Network via three tiers, each offering future guaranteed allocations of Starport's tokens, distributions from the Starport Community Wallet, access to VIP events, one of a kind NFTs and more. Members will also have influence on the decisions of future selected network projects to receive funding as part of the Immersive Network and community.

NFTs purchased through the pre-sale include exclusive original works by famed artist Paul Gerben and serve as temporary keys to Starport's launch facility. After launch completion, Starport access tokens will be airdropped to NFT holders, the NFTs will be retired as access keys, and remain as collectible digital artwork commemorating this historic milestone in decentralized finance. These unique initial access NFTs are a small example of how Starport will bridge art, technology and finance in new and exciting ways.

Following the pre-sale, the Immersive Network will launch a blockchain network token called VERSE from Starport to allow guests and visitors of Immersive Artistry's attractions to access these experiences in a wearable, cashless, digital enhanced format.

The Starport pre-sale has attracted funding from around the globe and the first round of the pre-sale will remain open through Sunday April 4th. A second round will follow a 12-hour cool off period.

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Starport will announce follow on projects in consideration and will seek additional funding for new platforms, content companies, delivery systems, AI, location based platforms, gaming, e-sports, and other user generated network platforms in the coming weeks.

About Immersive Network

The Immersive Network is an open oracle network utilizing blockchain technology to power, host, and facilitate a new era of immersive interactive entertainment through its relationship with Immersive Artistry. Immersive Artistry was established to disrupt location-based entertainment by creating, building, and operating experiential destinations that transport guests to places, cultures, and time periods - both physically and digitally - through multi-sensory experiential entertainment. The Verse crypto-token will serve as a passport, linked to proprietary wearables and able to be used in Immersive Artistry's attractions.

About Starport

Starport is a launchpad for the decentralized financing (defi) of mega blockchain network projects sponsored by proven industry leader with deployable real work use cased primed for mass adoption. Starport was created by Gebo Group – a proprietary cryptocurrency trading firm was cofounded in 2018 by James Wines, Serge Pustelnik, Alex Lubetsky and Dan Pustelnik. James has over 25 years' experience as securities lawyer representing top tier Wall Street banks, broker-dealers, funds and trading firms. Serge and Alex, both Harvard alumni, have decades of experience trading and managing inventories of complex financial instruments across multiple domestic and international market centers. Dan heads a team of veteran fintech and blockchain developers and partners to maintain Gebo's position at the cutting edge of what is possible.

Destination:
www.strprt.com
www.spacepunk.io

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