

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

DEPARTMENT OF ENFORCEMENT,

Complainant,

v.

LEK SECURITIES CORP.
(CRD No. 33135),

and

CHARLES FREDERIK LEK
(CRD No. 4672129),

Respondents.

Disciplinary Proceeding
No. 2021071137001

Hearing Officer–RES

**ORDER GRANTING DEPARTMENT OF ENFORCEMENT’S MOTION
FOR INTERIM CONDITIONS AND RESTRICTIONS**

I. Introduction

The Extended Hearing Panel in this disciplinary proceeding (“Hearing Panel”) issued its decision on March 22, 2024 (“Decision”).¹ The Hearing Panel found that the Department of Enforcement had proved the allegations in the Complaint and imposed sanctions. It determined that, while serving as Chief Executive Officer of Lek Securities Corporation (“Lek Securities”), Respondent Charles Frederik Lek had violated:

- FINRA Rule 2010 by failing to comply with a FINRA Order Accepting Offer of Settlement (“Order”) by violating the business line suspension required by the Order.
- FINRA Rule 2010 by not implementing all the recommendations of an Independent Consultant, as required by the Order.

¹ *Dep’t of Enforcement v. Lek Sec. Corp.*, No. 2021071137001, 2024 FINRA Discip. LEXIS 2 (OHO Mar. 22, 2024), *appeal docketed* (NAC Apr. 16, 2024).

- FINRA Rule 2010 by making false representations to FINRA to the effect that he had implemented all the recommendations of the Independent Consultant.
- FINRA Rules 3310 and 2010 by failing to develop and implement a reasonable anti-money laundering (“AML”) program.
- FINRA Rules 3110 and 2010 by failing to supervise Lek Securities’ low-priced securities business line.²

Imposing sanctions on Lek, the Hearing Panel found many aggravating factors and no mitigating factors.³ The Hearing Panel found that Lek had engaged in his misconduct despite a prior warning from FINRA—in the form of the Order no less—that such misconduct violated FINRA Rules.⁴ Lek failed to accept responsibility and acknowledge his misconduct to a regulator before detection and intervention.⁵ He engaged in many acts and a pattern of misconduct.⁶ His violations of FINRA Rules were egregious and intentional.⁷ Lek’s misconduct created the potential for his monetary gain in the form of exorbitant fees—as much as \$25,000 per month, per account—paid by Lek Securities’ customers who effected liquidations of low-priced securities.⁸

The Hearing Panel found that Lek’s failure to comply with the Order manifested a disregard for the fundamentals of good faith, fair dealing, and respect for the securities markets and public investors.⁹ Lek’s recklessness, dishonesty, and self-interest represented the antithesis of high standards of commercial honor and just and equitable principles of trade.¹⁰ His false statements to FINRA related to information that was important as viewed from FINRA’s perspective.¹¹ The AML supervisory system that he controlled at Lek Securities was not reasonably tailored to the firm’s low-priced securities business line.¹² This deficient AML supervisory system allowed potentially violative conduct to escape detection.¹³ Lek’s failure to

² *Id.* at *4.

³ *Id.* at *140-42, 145.

⁴ *Id.* at *141-42.

⁵ *Id.* at *140-41.

⁶ *Id.* at *141.

⁷ *Id.* at *141, 146-47.

⁸ *Id.* at *142.

⁹ *Id.* at *146-47.

¹⁰ *Id.* at *147.

¹¹ *Id.* at *149.

¹² *Id.* at *152.

¹³ *Id.*

supervise Lek Securities' low-priced securities business line affected many investors and market participants.¹⁴

Based on these aggravating factors, the Hearing Panel fined Lek \$100,000 and barred him from associating in any capacity with any FINRA member firm.¹⁵

Lek appealed the Decision to the National Adjudicatory Council ("NAC") on April 11, 2024. This appeal automatically stayed the sanctions.¹⁶

Lek is not currently associated with a FINRA member firm.

Enforcement filed a motion under FINRA Rule 9285 for an order imposing interim conditions and restrictions on Lek until FINRA's final decision takes effect and all appeals are exhausted ("Motion").¹⁷ In this Motion, Enforcement asks that I impose three interim conditions and restrictions on Lek. First, that Lek be prohibited from participating in any way in the deposit or sale of any low-priced security at any FINRA member firm. Second, that Lek be prohibited from serving in any supervisory position involving the deposit or sale of low-priced securities. Third, that Lek be prohibited from serving in any AML compliance position. In support of these conditions and restrictions, the Motion states: they are reasonably necessary to prevent customer harm if Lek reassociates with a FINRA member firm during the appeal process; are tailored to target the misconduct demonstrated in the disciplinary proceeding; and are not as restrictive as the sanctions imposed in the Decision.¹⁸

Lek filed an opposition to the Motion ("Opposition").¹⁹ In his Opposition, Lek states that no conditions or restrictions are necessary. He begins with the contention that the Decision was based on a process that was unfair.²⁰ Lek asserts that Enforcement's witnesses lied time and time again and, to this day, it is still not known how many documents entered into evidence were falsified by Enforcement. According to Lek, Enforcement's conduct and the Hearing Panel's alleged endorsement of it "is a disgrace to the legal profession and shows just how far into the gutter FINRA will stoop to get its way."²¹

More to the point, Lek argues that interim conditions or restrictions are unnecessary to prevent customer harm. Lek contends that Enforcement's Complaint did not allege customer

¹⁴ *Id.* at *156.

¹⁵ *Id.* at *158-60.

¹⁶ FINRA Rule 9311(b).

¹⁷ Department of Enforcement's Motion for Interim Conditions and Restrictions (April 26, 2024).

¹⁸ Mot. 2.

¹⁹ Respondent Charles Lek's Opposition to Interim Conditions and Restrictions (May 3, 2024).

²⁰ Opp'n 1.

²¹ Opp'n 2.

harm, and Enforcement introduced no evidence in the hearing to suggest such harm. There were no customer complaints.²² So according to Lek, this is not a proceeding where unwitting customers were duped by a registered representative's violation of FINRA Rules.²³

Lek also challenges the Hearing Panel's finding that public investors were harmed by purchasing worthless securities sold by Lek Securities' customers. He argues that the securities were not worthless because there were buyers in the market willing to buy the securities at the prices at which Lek Securities' customers sold them.²⁴ According to Lek, absent proof of market manipulation, a security is not worthless just because the price of the security is high and the issuer has no assets, a negative net worth, no revenue, or operating losses.²⁵ Lek claims he did not have to perform an analysis to determine the fair value of the low-priced securities Lek Securities sold to its customers.²⁶ In any event (Lek's argument runs), the standard of FINRA Rule 9285 is not "investor harm," but *customer harm*, and absent proof of a need to prevent customer harm, Enforcement's Motion must fail.²⁷

For the reasons stated below, I grant Enforcement's Motion.

II. Legal Standards

Enforcement asks that I order interim conditions and restrictions on Lek under FINRA Rule 9285. This Rule provides that Enforcement may move for an order imposing interim conditions or restrictions on the activities of a respondent that are reasonably necessary to prevent customer harm:

Unless otherwise ordered by a Hearing Officer, within 10 days after service of a notice of appeal from, or the notice of a call for review of, a decision issued pursuant to Rule 9268 or Rule 9269 in which the Hearing Panel or, if applicable, the Extended Hearing Panel or the Hearing Officer finds that a Respondent violated a statute or rule provision, the Department of Enforcement may file a motion for the imposition of conditions or restrictions on the activities of a Respondent that are reasonably necessary for the purpose of preventing customer harm.²⁸

FINRA Rule 9285 permits the respondent to file an opposition or other response to Enforcement's motion. This opposition "shall explain why no conditions or restrictions should

²² *Id.*

²³ Opp'n 3.

²⁴ Opp'n 4.

²⁵ Opp'n 4-5.

²⁶ Opp'n 5.

²⁷ *Id.*

²⁸ FINRA Rule 9285(a)(1); *accord* OHO Order 23-20 (2019061528001) (June 12, 2023), at 4, https://www.finra.org/sites/default/files/23-09/ofo_order_23-20_2019061528001_spartan.pdf.

be imposed or specify alternate conditions or restrictions that are sought to be imposed.”²⁹ In his Opposition, Lek did not propose alternate conditions or restrictions.

FINRA Rule 9285 further provides, “The Hearing Officer shall have the authority to impose any conditions or restrictions that the Hearing Officer considers reasonably necessary for the purpose of preventing customer harm.”³⁰ These conditions and restrictions remain in place until FINRA’s final decision in the underlying disciplinary proceeding takes effect.³¹

FINRA stated in Regulatory Notice 21-09, “New Rule 9285 authorizes the imposition of conditions or restrictions on disciplined Respondents during the pendency of an appeal or call for review of a disciplinary decision, where reasonably necessary for the purpose of preventing customer harm.”³² FINRA Rule 9285 provides an interim layer of investor protection:

Hearing Officers can impose conditions or restrictions during the period an appeal or review proceeding is pending to target the demonstrated bad conduct of a Respondent during the pendency of the appeal or review and add an interim layer of investor protection while the disciplinary proceeding remains pending. Conditions and restrictions will help protect investors by potentially preventing associated persons and firms found to have violated a statute or rule from engaging in additional misconduct during the appeal process.³³

The Securities and Exchange Commission approved FINRA Rule 9285 in an Exchange Act Release.³⁴ In this Release, the SEC stated that FINRA Rule 9285 “will help protect investors from associated persons found to have violated a statute or rule provision, by potentially preventing them from engaging in additional misconduct during the appeal process.”³⁵ FINRA Rule 9285 “should reduce the probability of investor losses resulting from the violation of statutes or rules.”³⁶ The Rule appropriately balances the business opportunities of associated persons against the investor protections the Rule establishes:

The Commission believes [the] potential disruption of the business opportunities of certain broker-dealers and individuals has been appropriately balanced against the investor protections the proposed rule change would establish, as well as the need

²⁹ FINRA Rule 9285(a)(3).

³⁰ FINRA Rule 9285(a)(5).

³¹ FINRA Rule 9285(d).

³² FINRA Regulatory Notice 21-09 (Mar. 2021), <https://www.finra.org/sites/default/files/2021-03/Regulatory-Notice-21-09.pdf>.

³³ *Id.*

³⁴ Exchange Act Release No. 34-90635, 2020 SEC LEXIS 5168 (Dec. 10, 2020).

³⁵ *Id.* at *12.

³⁶ *Id.* at *16.

to prevent potential customer harm from Respondents who have been found in violation of FINRA rules by a hearing officer or hearing panel.³⁷

III. Discussion

At the outset, I address Lek's argument that, because the Decision did not find he caused customer harm, there is insufficient reason to impose conditions and restrictions for the future. Nothing in FINRA Rule 9285's language suggests that Enforcement must prove past customer harm to prevail. The relevant issue is whether Lek's misconduct creates a risk of harm during the appeal period. The lack of customer harm in the past does not mean there is no risk of customer harm in the future. Furthermore, the protection of FINRA Rule 9285 is not limited to *customer* harm narrowly construed but extends also to *investor* harm. As shown by the excerpts I have quoted above, both Regulatory Notice 21-09 and Exchange Act Release No. 90635 use the terms "investor harm" and "customer harm" interchangeably. Indeed, an earlier FINRA Rule 9285 order found that prohibiting the respondent from serving in an AML compliance role—like the conditions and restrictions Enforcement seeks here—was reasonable and necessary to prevent customer harm.³⁸

I next address Lek's complaint about the alleged unfairness of the hearing. This is an argument he can make in his appeal to the NAC. But I point out here that, when Lek was represented by counsel, he made a similar argument and moved to have the entire proceeding dismissed under FINRA Rule 9280 because of Enforcement's allegedly contumacious misconduct. I denied Lek's motion because he failed to show prejudice or the materiality of the evidentiary issues he raised:

Respondents fail to show they were prejudiced by these evidentiary issues. In the hearing, I requested that Respondents file a motion and make a specific showing of prejudice . . . In addition, I invited Respondents to specify testimony they would have elicited based on corrected hearing exhibits . . .

In Respondents' Motion, they fail to provide transcript citations to any hearing testimony that was tainted by the evidentiary issues, and they identify no tainted portions of Enforcement's summary exhibits. They fail to make an offer of proof of the testimony they would have elicited based on corrected hearing exhibits. Even if there were prejudice to Respondents, it is outweighed by the public's interest in the prompt resolution of Enforcement's disciplinary claims and the disposition of this proceeding on the merits.

The errors that raised the evidentiary issues were not material. The Extended Hearing Panel Decision in this proceeding . . . does not dispute that the Tabak email

³⁷ *Id.* at *17-18.

³⁸ OHO Order 23-25 (2020066627202) (Sept. 14, 2023), at 6-7, https://www.finra.org/sites/default/files/2024-05/OHO_Order_23-25_Capellini_2020066627202.pdf.

came from Tabak's email account. The Decision barely touches on these issues, if at all. The Decision relies on the replacement exhibits that Enforcement filed, not the original problematic exhibits.

For these reasons, I conclude that Respondents' request for dismissal of Enforcement's Complaint is invalid.³⁹

Having decided that Lek's general arguments lack merit, I now address each of Enforcement's three requested conditions and restrictions. Lek did not make any request-specific arguments, but only the general arguments about the alleged unfairness of the hearing and the purported lack of customer harm. After considering Enforcement's argument in support of each condition and restriction, and keeping in mind Lek's general arguments, I make my determination as to the imposition of each condition and restriction.

A. Enforcement's Proposed Conditions and Restrictions on Lek

1. Lek shall be prohibited from participating in any way in the deposit or sale of any low-priced security at any FINRA member firm.

In support of this proposed condition and restriction, Enforcement contends that Lek's deficient management of Lek Securities' supervisory system for the deposit and sale of low-priced securities led to his bar from associating with any FINRA member firm in any capacity. Lek violated the Order's business line suspension and failed to implement many recommendations of the Independent Consultant.⁴⁰ As for the prevention of customer harm, Enforcement relies on the Hearing Panel's finding that Lek's misconduct resulted in injury to the investing public. Enforcement argues that the proposed condition and restriction complies with FINRA Rule 9285 because it targets the misconduct, is tailored to the risk Lek poses during the appeal, and is not as restrictive as, or economically equivalent to, the two all-capacities bars that the Hearing Panel imposed for Lek's violations of FINRA supervisory rules.⁴¹

I find this proposed condition and restriction to be reasonably necessary to protect customers Lek might have in the future and investors who might buy low-priced securities sold by Lek's customers. I base my determination on the Hearing Panel's findings of Lek's supervisory deficiencies in the deposit and sale of low-priced securities in both AML compliance and the prevention of unregistered sales of securities in violation of Section 5 of the Securities Act of 1933. The Hearing Panel found that Lek hired individuals to be the Deposit Specialist who were inexperienced and unqualified to detect and investigate suspicious activities by Lek Securities' low-priced securities customers.⁴² Because of Lek's supervisory deficiencies, Lek

³⁹ Order Denying Respondents' Motion Pursuant to Rule 9280 for Dismissal and Sanctions, at 6 (Mar. 22, 2024) (footnotes omitted).

⁴⁰ Mot. 6.

⁴¹ Mot. 7.

⁴² *Lek Sec. Corp.*, 2024 FINRA Discip. LEXIS 2, at *108.

Securities did not have an AML Compliance Officer for at least a year. Because of Lek, Lek Securities did not have an adequate, complete, or ongoing procedure for verifying the accuracy of information about the firm's low-priced securities customers.⁴³ Lek Securities' exception report system was deficient in the detection of suspicious trading activity.⁴⁴ Lek's failure to comply with FINRA Rules in connection with low-priced securities presented a risk of harm to customers and a danger of investor loss.

For these reasons, I find it reasonable and necessary, to prevent customer harm, to prohibit Lek from participating in any way in the deposit or sale of any low-priced security at any FINRA member firm.⁴⁵

2. Lek shall be prohibited from serving in any supervisory position involving the deposit or sale of low-priced securities at any FINRA member firm.

In support of this condition and restriction, Enforcement relies on the Hearing Panel's finding that aggravating factors predominated as to Lek's failure to supervise Lek Securities' low-priced securities business line. The Decision found that Lek's supervisory deficiencies affected many investors and market participants:

The deficiencies in Lek Securities' supervisory system allowed potentially violative conduct to occur. Respondents failed to respond reasonably to red flag warnings. The number of investors and market participants affected by the deficiencies was large. The dollar value of the transactions not properly supervised ran into millions of dollars. Respondents' deficiencies enabled the sale of worthless securities to the public and thus affected market integrity.⁴⁶

Enforcement contends that because Lek's supervisory failures affected investors and market integrity, a restriction preventing him from supervising the deposit and sale of low-priced securities is reasonably necessary to protect customers during his appeal.⁴⁷ Enforcement adds that the proposed condition and restriction complies with FINRA Rule 9285 because it is not as restrictive as, or economically equivalent to, the all-capacities bar that the Hearing Panel imposed for Lek's failure to supervise Lek Securities' low-priced securities business line.⁴⁸ The

⁴³ *Id.* at *109.

⁴⁴ *Id.* at *110.

⁴⁵ I define "low-priced security" as any equity security that does not trade on a national securities exchange and trades at a price of \$5 per share at the time it is submitted for deposit or sale.

⁴⁶ *Id.* at *156.

⁴⁷ Mot. 8.

⁴⁸ Mot. 8-9.

condition and restriction is limited to the same low-priced securities business line addressed by the Decision.⁴⁹

I find this proposed condition and restriction to be reasonably necessary to protect customers Lek might have in the future and investors who might buy low-priced securities sold by Lek's customers. The condition and restriction is needed to protect the investing public. I base my determination on the Hearing Panel's finding that, as the person who controlled Lek Securities' low-priced securities business line, Lek failed to detect and investigate red flags suggesting that illegal misconduct and unregistered distributions of securities might be in progress.⁵⁰ Lek Securities' Compliance Department was thinly staffed, and Lek failed to remedy both this understaffing and the lack of experience and qualifications of the employees who served as the firm's Deposit Specialist.⁵¹ Lek employed a check-the-box review process for low-priced securities that failed to detect readily discoverable red flags. In the trading phase, he provided no process to check for promotional campaigns or favorable press releases that might affect the price and volume of a low-priced security.⁵²

Lek's supervisory deficiencies enabled the sale of worthless securities to the public and undermined market integrity.⁵³ Lek's failure to comply with FINRA supervisory rules in connection with low-priced securities presented a risk of harm to customers and a danger of investor loss.

For these reasons, I find it reasonable and necessary, to prevent customer harm, to prohibit Lek from serving in any supervisory position involving the deposit or sale of low-priced securities at any FINRA member firm.

3. Lek shall be prohibited from serving in any AML compliance position at any FINRA member firm.

Enforcement contends that this condition and restriction complies with FINRA Rule 9285 because it targets Lek's individual failures to detect and investigate red flags of suspicious activity occurring through Lek Securities' deficient AML compliance program. In support of the condition and restriction, Enforcement relies on the Decision's finding of deficiencies in Lek Securities' AML compliance for which Lek was personally responsible. Enforcement argues it is necessary to protect customers from the clear risk posed by Lek's continued involvement in AML compliance.⁵⁴ According to Enforcement, the condition and restriction complies with FINRA Rule 9285 because it is not as restrictive as, or economically equivalent to, the all-

⁴⁹ Mot. 9.

⁵⁰ *Lek Sec. Corp.*, 2024 FINRA Discip. LEXIS 2, at *123.

⁵¹ *Id.* at *123-24.

⁵² *Id.* at *124.

⁵³ *Id.* at *156.

⁵⁴ Mot. 9.

capacities bar that the Hearing Panel imposed for Lek's failure to develop and implement a reasonable AML program at Lek Securities.

I find this proposed condition and restriction to be reasonably necessary to protect customers Lek might have in the future and investors who might buy low-priced securities sold by Lek's customers. I base my determination on the Hearing Panel's findings that Lek's AML compliance failed to detect and investigate red flags of suspicious activity.⁵⁵ Because of Lek's AML compliance deficiencies, Lek Securities' exception report system failed to detect suspicious trading of low-priced securities.⁵⁶ The value of the suspicious transactions he failed to detect ran into millions of dollars.⁵⁷ Lek's failure to comply with AML supervisory rules in connection with low-priced securities presented a risk of harm to customers and a danger of investor loss.

For these reasons, I find it reasonable and necessary, to prevent customer harm, to prohibit Lek from serving in any AML compliance position at any FINRA member firm.

4. Summary of the Reasonableness of Enforcement's Proposed Conditions and Restrictions on Lek

I find that the requested conditions and restrictions are reasonably necessary to prevent customer harm and are not as restrictive as, or economically equivalent to, the sanctions the Hearing Panel imposed.

IV. Order

I **GRANT** Enforcement's Motion and impose, until FINRA's final decision takes effect and all appeals are exhausted, these conditions and restrictions:

- Lek shall be prohibited from participating in any way in the deposit or sale of any low-priced security at any FINRA member firm.
- Lek shall be prohibited from serving in any supervisory position involving the deposit or sale of low-priced securities at any FINRA member firm.
- Lek shall be prohibited from serving in any AML compliance position at any FINRA member firm.
- The conditions and restrictions imposed by this Order are effective immediately.

⁵⁵ *Lek Sec. Corp.*, 2024 FINRA Discip. LEXIS 2, at *152.

⁵⁶ *Id.* at *110.

⁵⁷ *Id.* at *152.

- The conditions and restrictions imposed by this Order that are not subject to any stay, or imposed by the NAC Review Subcommittee, shall remain in effect until FINRA's final decision in the underlying disciplinary proceeding takes effect.⁵⁸

If the parties have any questions about this Order, they should contact Case Administrator Susan Cadeaux at susan.cadeaux@finra.org.

SO ORDERED.



Richard E. Simpson
Hearing Officer

Dated: May 23, 2024

Copies to:

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⁵⁸ FINRA Rule 9285(d).