

**BEFORE THE BOARDS OF DIRECTORS OF
CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
AND C2 OPTIONS EXCHANGE, INCORPORATED
DECISION NO. 17 BD 01**

In the Matter of:)	
)	CBOE File No. 15-0061
)	Star No. 20150455672
Lek Securities Corporation)	
1 Liberty Plaza)	C2 File No. 15-0006
165 Broadway)	Star No. 20150455703
52 nd Floor)	
New York, NY 10006)	
)	
Respondent.)	

Procedural History

This is a consolidated decision of the Board of Directors of Chicago Board Options Exchange, Incorporated (CBOE) and the Board of Directors of C2 Options Exchange, Incorporated (C2).¹ This decision concerns two related disciplinary matters involving Lek Securities Corporation (Lek). The CBOE Board of Directors is issuing this decision as it relates to CBOE Disciplinary Case 15-0061, and the C2 Board of Directors is issuing this decision as it relates to C2 Disciplinary Case 15-0006. The following is a synopsis of the procedural history in this matter.²

On June 9, 2015, pursuant to authorization of the Exchange Business Conduct Committee (BCC), the Exchange issued to Lek a Statement of Charges in CBOE Disciplinary Case 15-0061 (CBOE Charges) and a Statement of Charges in C2 Disciplinary Case 15-0006 (C2 Charges).³

On September 28, 2016, the BCC issued a decision (BCC Decision) in this matter following a two-day hearing regarding the Charges held on June 27 and June 29, 2016 before a three-member panel of the BCC. With respect to the C2 Charges, the BCC found that Lek violated C2 Rule 3.4 – Qualification and Registration by failing to register its Financial and Operations Principal. The BCC imposed the following sanction upon Lek for this C2 Rule 3.4 violation: (i) a censure and (ii) a \$7,500 fine. With respect to the CBOE Charges, the BCC found that Lek violated CBOE Rule 3.6A – Qualification and Registration of Trading Permit Holders and Associated Persons by failing to register: (i) its Chief Compliance Officer as a Proprietary Trader Compliance Officer (CT); (ii) its Chief Operating Officer as a Proprietary trader (PT); (iii) its Chief Executive Officer as a Proprietary Trader Principal (TP); and (iv) the minimum number of individuals required as a Proprietary Trading Principal (TP). The BCC imposed the following sanction upon Lek for these CBOE Rule 3.6A violations: (i) a censure and (ii) a \$37,500 fine.

¹ CBOE and C2 are together referred to as the “Exchange.”

² Exchange exhibit references are listed as “Exch. Ex. [number].”

³ The CBOE Charges and the C2 Charges shall be referred to collectively as the “Charges.”

On October 14, 2016, pursuant to CBOE Rule 17.13⁴, the Exchange Secretary granted Lek's request for an extension of the deadlines for the submission of an appeal of a BCC decision and of the related response and reply. On November 11, 2016, Lek submitted a Petition requesting that the CBOE and C2 Boards of Directors conduct a review of the BCC Decision pursuant to CBOE Rule 17.10. The Exchange's Regulatory Division (Regulation)⁵ submitted a Response to the Petition on December 19, 2016 and on January 5, 2017 Lek submitted a Reply. The Petition, Response and Reply were all timely submitted by the revised submission deadlines set by the Exchange Secretary.

At its meeting on December 14, 2016, the CBOE and C2 Boards of Directors appointed a three-member panel of the Board (Panel) to review Lek's appeal. The CBOE and C2 directors appointed to the Panel by the Boards were Carole Stone (Panel Chairperson), William Farrow, and Janet Froetscher. The Boards also delegated to the Panel the authority to rule on any procedural matters related to the Board's review of the appeal.

Board Standard of Review

As a threshold matter, the parties disagreed as to the proper standard of review that the CBOE and C2 Boards of Directors should apply with respect to the BCC's findings and conclusions.⁶ Lek asserted that the Boards should apply a *de novo* standard of review to all of the BCC's determinations, while Regulation argued that the Boards should allow the BCC's findings and conclusions to stand unless they are "clearly erroneous." (Reply 3; Response 4). The Panel determined to apply the latter standard consistent with the Boards' prior practice.

The Securities Exchange Act of 1934, as amended (Exchange Act) does not prescribe a specific standard that a self-regulatory organization (SRO), such as the Exchange, must employ when reviewing an appeal of a disciplinary action. Rather, Section 6(b)(7) of the Exchange Act requires that an SRO must "in general, provide a fair procedure for the disciplining of members and persons associated with members." In its decisions, the Board has used the clearly erroneous standard for over twenty years when reviewing appeals of BCC decisions.⁷ In all of those matters that were appealed to the Securities and Exchange Commission (SEC) the SEC decided the appeal without noting that applying a clearly erroneous standard was incorrect.⁸ Additionally, the SEC has approved as consistent with the Exchange Act an exchange's

⁴ This Rule and others in Chapter XVII of the CBOE Rules also apply to C2. Chapter 17 of the C2 Rules states that "[t]he rules contained in CBOE Chapter XVII, as such rules may be in effect from time to time, shall apply to C2 and are hereby incorporated into this Chapter."

⁵ The Financial Industry Regulatory Authority (FINRA) assisted Regulation in the handling of this matter in FINRA's capacity as regulatory services provider to CBOE and C2.

⁶ The parties agreed that the BCC applied the proper standard of review (abuse of discretion) with respect to the BCC's imposed sanctions. (Reply 3; Response 5).

⁷ See, e.g., *In the Matter of ABN AMRO Clearing Chicago, LLC*, CBOE Board Decision No. 16 BD 01, at 7-8 (July 28, 2016) (currently on appeal to SEC); *In the Matter of Red Cedar Trading, LLC*, CBOE Board Decision No. 15 BD 01, at 2 (February 17, 2016); *In the Matter of Electronic Transaction Clearing*, CBOE Board Decision No. 14 BD 01, at 3-4 (Oct. 29, 2014), *rev'd* in part and *aff'd* in part, SEC Release No. 78093 (June 16, 2016), 2016 WL 3345702; *In the Matter of David C-H Ho*, CBOE Board Decision No. 05 BD 01, at 3 (Jan. 26, 2006), *aff'd*, SEC Release No. 34-54481, 2006 WL 2959662 (Sept. 22, 2006), *aff'd*, 2007 WL 1224027 (7th Cir. 2007) (unpublished); *In the Matter of Michael Lubin*, CBOE Board Decision 99 BD 01, at 2 (Mar. 6, 2000), *aff'd*, SEC Release No. 34-45281, 2002 WL 54269 (Jan. 15, 2002); *In the Matter of William J. Murphy*, CBOE Board Decision No. 98 BD 01, at 2 (July 22, 1998), *aff'd*, SEC Release No. 34-41804, 1999 WL 668560 (Aug. 27, 1999); *In the Matter of John F. Lebens*, CBOE Board Decision No. 94 BD 02, at 4 (Jan. 11, 1995), *aff'd*, SEC Release No. 34-36691, 1996 WL 20836 (Jan. 5, 1996).

⁸ See, *In the Matter of Electronic Transaction Clearing*; *In the Matter of David C-H Ho*; *In the Matter of Michael Lubin*; *In the Matter of William J. Murphy*; *In the Matter of John F. Lebens*.

usage of a disciplinary appeal review standard similar to the standard that the Board has consistently used in its decisions.⁹

Consistent with a lengthy history containing numerous precedents of the Board reviewing BCC decisions under a clear error standard, the standard of review that the Panel applied in the review of this matter is that the BCC's findings and conclusions are allowed to stand unless Lek can show that they were clearly erroneous. Additionally, the BCC's sanction determinations are allowed to stand unless Lek can show that the imposition of the sanctions by the BCC was arbitrary, capricious, or a clear abuse of discretion.¹⁰

Panel Review of Appeal

In accordance with CBOE Rule 17.10(b), the Panel reached its decision regarding the appeal based upon the Panel's review of the record in this matter and the written exceptions filed by the parties. In conducting its review of the appeal, the Panel carefully considered all of the contentions and arguments presented to the Panel by the parties, even if each is not specifically discussed in this decision, and those contentions and arguments are rejected or sustained to the extent that they are inconsistent or in accord with this decision.

C2 and CBOE Rule Violations

C2 Rule 3.4 provides, in relevant part, that: "Each Permit Holder subject to Exchange Act Rule 15c3-1 shall designate a Financial/Operations Principal...Each Financial/Operations Principal is required to have successfully completed the Financial and Operations Principal Examination (Series 27). Each Financial/Operations Principal designated by a Permit Holder shall be registered in that capacity with the Exchange in a form and manner prescribed by the Exchange..." Lek admitted both in its Answer¹¹ and during the hearing¹² to having violated C2 Rule 3.4 by failing to register its Financial and Operations Principal (FINOP) (Dan Hanuka) as a Financial and Operations Principal (FN) from September 24, 2010 through December 4, 2014.¹³ Based on this admission, the Panel affirmed the BCC's finding that Lek violated C2 Rule 3.4 as described in the BCC Decision.

Lek was approved as a CBOE Trading Permit Holder (TPH) on January 9, 2001 to conduct business on CBOE as a clearing firm and was approved to transact business with the public.¹⁴ The BCC heard testimony and admitted evidence that Lek clears for broker-dealer clients.¹⁵

⁹ See SEC Release No. 34-34505, 1994 WL 440909, at *2 (Aug. 9, 1994) (SEC Order approving proposed rule change of Chicago Stock Exchange, Inc. that, among other things, "adopt[ed] a formal standard of review that prohibits an appeal panel from overturning the fact finder's decision if the factual conclusions are supported by substantial evidence and if the decision itself is not arbitrary, capricious, or an abuse of discretion" and in which the SEC found that the proposed rule change was "consistent with the requirements of the [Exchange] Act and the rules and regulations thereunder applicable to a national securities exchange").

¹⁰ See, *In the Matter of ABN AMRO Clearing Chicago, LLC*, CBOE Board Decision No. 16 BD 01.2, at 2-3 (February 16, 2017) (currently on appeal to SEC); *In the Matter of Red Cedar Trading, LLC*; *In the Matter of Electronic Transaction Clearing*; *In the Matter of David C-H Ho*; *In the Matter of Michael Lubin*; *In the Matter of William J. Murphy*; *In the Matter of John F. Lebens*.

¹¹ Exch. Ex. 4 (Lek's Answer to C2 Statement of Charges).

¹² June 27, 2016 hearing transcript at pp. 61-63 and June 29, 2016 hearing transcript at p. 408, ll. 12-15.

¹³ Lek was approved as C2 Permit Holder on September 24, 2010. Exch. Ex. 9.

¹⁴ Exch. Ex. 10.

¹⁵ June 27, 2016 hearing transcript at p. 66, ll. 9-14 and Exch. Ex. 28 at p. 11, Section V.

CBOE Rule 3.6A requires registration of individual Trading Permit Holders and individual Associated Persons engaged in the securities business of a Trader Permit Holder or TPH organization. In relevant part, CBOE Rule 3.6A.06 provides that the “Exchange shall consider an individual Trading Permit Holder or an individual associated person to be engaged in the securities business of a Trading Permit Holder or TPH organization if...the individual Trading Permit Holder or individual associated person engages in one or more of the following activities in the capacity of a Trading Permit Holder or on behalf of the associated Trading Permit Holder or TPH organization:...effecting transactions on a behalf of a broker-dealer[.]” CBOE Rule 3.6A.08 prescribes the categories of registration, including, but not limited to those effecting transactions on behalf of a broker-dealer (Proprietary Trader), those supervising or training those effecting transactions on behalf of a broker-dealer (Proprietary Trader Principal) and a chief compliance officer for a TPH effecting transactions on behalf of a broker-dealer (Proprietary Trader Compliance Officer). CBOE requires registration of these categories in WebCRD. Finally CBOE Rule 3.6A(d) provides that “[i]ndividual associated persons of a TPH organization that conducts a public customer business must also comply with the registration requirements set forth in Chapter IX” to CBOE’s Rulebook.

Lek’s first argument on appeal concerning statutory construction do not cause the BCC’s findings to be “clearly erroneous.” The Panel determined that the BCC did not commit clear error in applying CBOE Rule 3.6A to the facts admitted in this matter and therefore affirmed the BCC’s finding that CBOE Rule 3.6A applied to Lek and that Lek violated the registration provisions of CBOE Rule 3.6A. Specifically, the Panel found that there was substantial evidence and testimony to support the BCC’s findings and conclusions that Lek violated CBOE Rule 3.6A by failing to register:

- i. Samuel Lek, Lek’s Chief Compliance Officer as a Proprietary Trader Compliance Officer (CT) from November 5, 2011 through April 24, 2015;
- ii. Michael Mainwald, Lek’s Chief Operating Offer and a trader, as a Proprietary Trader (PT) from November 5, 2011 through January 2, 2015;
- iii. Samuel Lek, Lek’s Chief Executive Officer, as Proprietary Trader Principal (TP) from November 5, 2011 through April 24, 2015; and
- iv. the minimum number of individuals required to be registered as a Proprietary Trading Principal (TP), namely Samuel Lek from November 5, 2011 through April 24, 2015 and Andrew Shapiro, Lek’s compliance officer, from November 5, 2011 through January 12, 2012.

In particular, the Panel agreed with the BCC’s determination that the plain language of CBOE Rule 3.6A triggered registration requirements for Lek. Exchange rules are what govern the Exchange registration requirements applicable to Lek. The registration circulars issued by the Exchange refer TPHs to those rules. The BCC heard testimony and admitted documents evidencing that: (1) there were individuals “engaged in the securities business” of Lek, and that (2) Lek’s business activities amounted to “effecting transactions on behalf of a broker-dealer.” The BCC found that Lek executed transactions on behalf of broker-dealers and therefore Lek was required to register under Rule 3.6A. In addition, the BCC reviewed the text of Rule 3.6A(d), which cross references registration requirements under Chapter IX to CBOE’s Rulebook. Specifically, Rule 3.6A(d) states that “[i]ndividual associated persons of a TPH organization that conducts a public customer business must also comply with the registration requirements of Chapter IX.” As a result, the BCC found that that the registration requirements of Rule 3.6A are in addition to the registration requirements under Chapter IX. The Panel agreed with the BCC’s finding that Lek was subject to the registration requirements of CBOE Rule 3.6A and agreed with the BCC’s rejection of Lek’s arguments that CBOE Rule 3.6A did not apply to Lek.

Lek’s second argument on appeal is that the BCC treated certain witness testimony and closing arguments incorrectly. Importantly, with respect to the treatment of witness testimony, the Panel notes that

the formal rules of evidence do not apply the conduct of BCC's hearings.¹⁶ In addition, Rule 17.6(c) expressly empowers the BCC with the ability to regulate the conduct of the hearing. Notwithstanding Lek's argument, the Panel found that the closing argument presented by Regulation was supported by the evidence and testimony admitted in this matter. Further, the Panel afforded deference to the BCC in how the BCC determined to weigh witness testimony and closing arguments (from both sides). The BCC had the advantage of personal observation in connection with its assessment of witness credibility. The Panel also presumed that the experience and expertise in the securities business of the members of the BCC were brought to bear in determining the weight given to the evidence in determining the issues in this matter. Accordingly, the Panel does not find that the BCC committed clear error with respect to the BCC's treatment certain witness testimony and closing arguments.

CBOE and C2 Sanctions

Lek's final argument on appeal was that the sanctions imposed by the BCC were punitive, did not serve a deterrent effect and amounted to fee shifting. With respect to this argument, the Panel found that the sanctions imposed by the BCC were neither arbitrary, capricious, nor a clear abuse of discretion and found no basis to substitute its judgment for that of the BCC.

In reaching its sanction determination, the BCC considered prior similar disciplinary decisions and the other principal considerations in determining sanctions that are enumerated in Exchange CBOE Rule 17.11 – Judgment and Sanction and in relevant case law. The BCC took note of Regulation's arguments that the prior similar cases were resolved without the respondent admitting or denying the allegations and that a BCC decision following a disciplinary hearing involves the finding of a violation based on the record of the hearing and thus warrants a higher fine. Additionally, the SEC has held that respondents who offer to settle may properly receive lesser sanctions than they otherwise might have received based on pragmatic considerations such as the avoidance of time-and-manpower-consuming adversary proceedings. *See, e.g., David C. Ho*, 2006 WL 2959662, at *6 (affirming CBOE's imposition of higher sanctions following a contested hearing as compared to settled cases and noting that sanctions in settled cases "may understate the sanctions that would be imposed in litigated cases because settled sanctions reflect pragmatic considerations such as the avoidance of time-and-manpower-consuming adversary litigation").

Lek has not met the heavy burden of demonstrating that the BCC acted willfully, unreasonably and without consideration or in disregard of the facts of this matter when the BCC imposed the stated penalties. Further, the Panel disagreed with Lek's argument that the sanctions do not serve a deterrent effect. The Panel believed that the sanctions serve to reinforce that registration requirements must be taken seriously.

Accordingly, the Panel affirmed the sanction of a censure and a \$7,500 fine imposed upon Lek by the BCC for violation of C2 Rule 3.4 and the Panel affirmed the sanction of a censure and \$37,500 fine imposed upon Lek by the BCC for violations of CBOE Rule 3.6A.

¹⁶ CBOE Rule 17.6(c).

Board Ratification of Panel Decision

The Panel presented its decision in this matter to the CBOE and C2 Boards at their meeting on May 18, 2017. After review of this matter and careful consideration of the Panel's decision, the Boards hereby affirm that decision, and therefore hereby affirm the BCC Decision in its entirety. In addition, the Boards hereby order that the sanctions imposed upon Lek by the BCC Decision shall take effect 30 days from the date of this consolidated decision on June 17, 2017.

SO ORDERED FOR THE BOARD OF DIRECTORS

Carole Stone
Panel Chairperson

Dated: May 18, 2017