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2021–2022 in Review: Selected Opinions and
Orders Issued by the Securities and
Exchange Commission (July 23, 2022)

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Attorneys in the Office of the General Counsel contributed to this outline. As a matter of policy, the Commission disclaims responsibility for any private publications or statements by any of its employees. The views expressed in this outline do not necessarily represent the views of the Commission or its staff. Portions of this outline may be used in connection with other continuing legal education programs.

INTRODUCTION TO THIS OUTLINE

This outline summarizes significant opinions and orders issued by the Securities and Exchange Commission between September 2021 and July 2022. It is intended to provide an overview of recent Commission adjudicative activity. The opinions and orders primarily concern appeals from actions taken by self-regulatory organizations and decisions in administrative proceedings set for hearings before the Commission or an administrative law judge.

Table of Contents

OPINIONS

I. SELF-REGULATORY ORGANIZATION PROCEEDINGS	7
1. <i>Blair Edwards Olsen</i> Exchange Act Release No. 93216 (Sept. 30, 2021) 2021 WL 4500130	7
2. <i>Shlomo Sharbat</i> Exchange Act Release No. 93757 (Dec. 13, 2021) 2021 WL 5907832	7
3. <i>Shad Nhebi Clayton</i> Exchange Act Release No. 93760 (Dec. 13, 2021) 2021 WL 5907835	7
4. <i>Bradley C. Reifler</i> Exchange Act Release No. 94026 (Jan. 21, 2022) 2022 WL 194504	8
5. <i>KJM Secs., Inc.</i> Exchange Act Release No. 94059 (Jan. 25, 2022) 2022 WL 215647	8
6. <i>J.W. Korth & Company, LP</i> Exchange Act Release No. 94581 (Apr. 1, 2022) 2022 WL 990183	9
7. <i>Equitec Proprietary Markets, LLC</i> Exchange Act Release No. 95083 (June 10, 2022) 2022 WL 2103962	9
8. <i>Louis Ottimo</i> Exchange Act Release No. 95141 (June 22, 2022) 2022 WL 2239146	10
II. COMMISSION ADMINISTRATIVE PROCEEDINGS	10
<i>Fidelity Transfer Services, Inc., and Ruben Sanchez</i> Exchange Act Release No. 94545 (Mar. 29, 2022) 2022 WL 969898	10
ORDERS	
SELF-REGULATORY ORGANIZATION PROCEEDINGS	11
1. <i>Keith Patrick Sequeira</i> Exchange Act Release No. 94472 (Mar. 18, 2022) 2022 WL 823505	11
2. <i>Lek Secs. Corp.</i> Exchange Act Release No. 95014 (May 31, 2022) 2022 WL 1769802	12

SELECTED COMMISSION OPINIONS

I. SELF-REGULATORY ORGANIZATION PROCEEDINGS

1. *Blair Edwards Olsen*

**Exchange Act Release No. 93216 (Sept. 30, 2021)
2021 WL 4500130**

The Commission dismissed an application for review filed by Blair Edwards Olsen that challenged FINRA action suspending and then barring Olsen for failing to respond to FINRA's requests for information. FINRA vacated the bar while Olsen's appeal was pending but kept the suspension in place until Olsen provided the requested information. The Commission dismissed Olsen's challenge to the suspension because he did not exhaust his administrative remedies. The Commission found that FINRA provided Olsen the opportunity to avail himself of its administrative process by: (1) taking corrective action to produce the requested information; (2) filing a request for a hearing in response to FINRA's notice of suspension; or (3) filing a request for termination of the suspension based on full compliance with FINRA's requests. The Commission found that, because Olsen did not take any of these steps, he failed to exhaust his administrative remedies and could not challenge the suspension on appeal.

2. *Shlomo Sharbat*

**Exchange Act Release No. 93757 (Dec. 13, 2021)
2021 WL 5907832**

The Commission dismissed an application for review filed by Shlomo Sharbat that challenged a FINRA disciplinary action barring him for failing to respond to FINRA's requests for testimony. The Commission dismissed Sharbat's application on the ground that he failed to exhaust his administrative remedies before FINRA and for the independent reason that it was untimely.

3. *Shad Nhebi Clayton*

**Exchange Act Release No. 93760 (Dec. 13, 2021)
2021 WL 5907835**

The Commission dismissed an application for review filed by Shad Nhebi Clayton that challenged a FINRA action barring him for failing to respond to FINRA's requests for information and documents. The

Commission dismissed Clayton's appeal on the grounds that he failed to exhaust his administrative remedies before FINRA.

4. *Bradley C. Reifler*
Exchange Act Release No. 94026 (Jan. 21, 2022)
2022 WL 194504

The Commission sustained FINRA's findings that Bradley C. Reifler violated FINRA Rules 8210 and 2010 by refusing to answer dozens of questions at two on-the-record interviews. But the Commission remanded FINRA's sanctions determination for additional consideration because FINRA misapplied its Sanction Guidelines. In imposing a bar, FINRA analyzed Reifler's refusal to respond to certain questions as a complete failure to respond under its Guidelines. But, because Reifler answered some questions and had earlier provided some answers to written inquiries, the Commission held that FINRA should instead have evaluated Reifler's refusal to answer questions as a partial failure to respond under the Guidelines. The Commission further directed FINRA to consider and include in the record the full transcripts of the two interviews at issue, noting that the record before the Commission consisted of only a portion of those transcripts. According to the Commission, "[c]onsideration of the complete transcripts is necessary to apply the Sanction Guidelines because doing so will permit FINRA to determine what questions Reifler answered and not just those questions he refused to answer."

5. *KJM Secs., Inc.*
Exchange Act Release No. 94059 (Jan. 25, 2022)
2022 WL 215647

The Commission sustained FINRA's findings that KJM Securities, Inc., violated Section 17(e) of the Securities Exchange Act of 1934, Exchange Act Rule 17a-5(d), and FINRA Rule 2010 by failing to file an annual report for 2019 that was audited by an accounting firm registered with the PCAOB. The Commission also sustained FINRA's determination to expel the firm. The Commission found that FINRA gave the firm numerous opportunities to file its 2019 annual report before FINRA expelled it. Among other things, the Commission rejected KJM's argument that its FINRA membership should be reinstated because it attempted to file the 2019 report after its expulsion. The Commission held that KJM's belated filing did not mitigate its

violation, citing precedent holding that a self-regulatory organization should not have to bring a disciplinary proceeding in order to obtain compliance with its rules.

**6. *J.W. Korth & Company, LP*
Exchange Act Release No. 94581 (Apr. 1, 2022)
2022 WL 990183**

The Commission sustained FINRA disciplinary action finding that J.W. Korth & Company, LP, charged its customers excessive markups and markdowns in violation of FINRA and MSRB rules. The Commission also sustained the sanctions FINRA imposed on Korth—a censure, an order to pay restitution plus prejudgment interest, and a requirement that Korth retain an independent consultant to review the firm’s pricing procedures.

**7. *Equitec Proprietary Markets, LLC*
Exchange Act Release No. 95083 (June 10, 2022)
2022 WL 2103962**

The Commission sustained disciplinary action taken against Equitec Proprietary Markets, LLC, by the Cboe Exchange, Inc., f/k/a Chicago Board Options Exchange, Inc. (“Cboe”). Cboe had found that Equitec violated Rule 15c3-5 under the Securities Exchange Act of 1934 (the “Market Access Rule”) and Cboe Rule 4.2 by failing to implement and maintain risk management controls reasonably designed to prevent the entry of orders that exceeded its capital threshold and by failing to implement written supervisory procedures (“WSPs”) reasonably designed to ensure compliance with all regulatory requirements. The Commission found that Equitec violated the Market Access Rule and Cboe Rule 4.2 by failing to account for executed proprietary orders in its capital threshold. The Commission also found that Equitec violated the Market Access Rule and Cboe Rule 4.2 because its WSPs did not adequately specify a process for preventing orders that exceeded its capital threshold. Finally, the Commission sustained the censure and the \$50,000 fine Cboe had imposed on Equitec for these violations as remedial and not excessive or oppressive.

8. *Louis Ottimo*
Exchange Act Release No. 95141 (June 22, 2022)
2022 WL 2239146

In 2018, the Commission sustained FINRA’s finding that Louis Ottimo fraudulently omitted information about his work with a company called Jet One Jets from his biography in a private placement memorandum. The biography stated that Ottimo had co-founded Jet One Jets and grew the company to \$18 million in revenues in approximately 18 months. But Ottimo omitted the facts that Jet One Jets ceased operations shortly thereafter, was never profitable, declared bankruptcy, and resulted in investor losses of over \$1 million. Ottimo also did not disclose that the Department of Transportation had found Jet One Jets liable for engaging in an unfair and deceptive practice. Despite sustaining this fraud finding, the Commission reversed FINRA’s additional finding that Ottimo had also fraudulently omitted to disclose adverse information about his work with another company. Because FINRA had imposed a single sanction for all of its fraud findings, the Commission remanded for FINRA to determine what sanction was appropriate for the portion of the fraud violations that was sustained.

After FINRA barred Ottimo on remand, Ottimo again appealed to the Commission, which sustained the bar. The Commission found that several aggravating factors justified the bar, including that Ottimo acted at least recklessly, that he benefitted financially from his misconduct, and that he pressured investors to claim that the omitted information would not have been material to them had he disclosed it. The Commission considered and rejected Ottimo’s arguments that the bar FINRA imposed was excessive or oppressive and found that the bar was remedial and not punitive because it was necessary to protect the public from Ottimo’s demonstrated propensity for fraudulently omitting material information in disclosures to investors. The Commission found the bar was warranted to remedy the risk that Ottimo would otherwise again defraud investors.

II. COMMISSION ADMINISTRATIVE PROCEEDINGS

Fidelity Transfer Services, Inc., and Ruben Sanchez
Exchange Act Release No. 94545 (Mar. 29, 2022)
2022 WL 969898

The Commission had instituted proceedings to determine whether Fidelity Transfer Services, Inc., a transfer agent, and Ruben Sanchez,

its only known officer, violated provisions of the Securities Exchange Act of 1934 relating to the registration of transfer agents and the furnishing of required books and records to Commission staff. The Commission found Fidelity to be in default; determined that it made inaccurate and untimely filings and failed to update its Form TA-1 in violation of Exchange Act Section 17A(d)(1) and Rules 17Ac2-1(c) and 17Ac2-2(a); and determined that Fidelity failed to furnish requested records to Commission staff in violation of Exchange Act Sections 17(a)(1), 17(a)(3), and 17(b)(1). As a result of this misconduct, the Commission determined that it was in the public interest to revoke Fidelity's registration as a transfer agent and to order Fidelity to cease and desist from future violations. The Commission dismissed the proceeding against Sanchez because the Division of Enforcement had been unable to serve Sanchez with the order instituting proceedings, although the Commission noted that its dismissal did "not preclude proceedings against Sanchez on these facts in the future."

SELECTED COMMISSION ORDERS

SELF-REGULATORY ORGANIZATION PROCEEDINGS

1. *Keith Patrick Sequeira* Exchange Act Release No. 94472 (Mar. 18, 2022) 2022 WL 823505

In 2019, the Commission dismissed Keith Patrick Sequeira's challenge to FINRA's determination to indefinitely suspend him from associating with FINRA member firms due to his failure to pay an arbitration award. After the United States Court of Appeals for the Third Circuit denied Sequeira's appeal of the Commission's order and his petitions for rehearing and rehearing *en banc*, Sequeira sent the Commission a letter again asking that his suspension be set aside. The Commission construed the letter as a request for reconsideration of its 2019 decision and denied the request as untimely. The Commission held that Rule of Practice 470, which governs requests for reconsideration, requires that a motion for reconsideration be made within ten days of the determination at issue. Accordingly, the Commission denied the request because Sequeira did not file his request within that ten-day period or seek an extension of time in which to do so.

2. Lek Secs. Corp.
Exchange Act Release No. 95014 (May 31, 2022)
2022 WL 1769802

The Commission denied Lek Securities Corporation's request that the Commission stay action taken against Lek by the National Securities Clearing Corporation and Depository Trust Company (collectively, "DTCC"). On March 10, 2022, a hearing panel composed of members of DTCC's board of directors issued a decision finding that the DTCC would: (1) cease to act for Lek; (2) impose an "activity cap" on Lek's trading activity; and (3) impose fines and sanctions for Lek's violation of that activity cap. DTCC's actions were based on findings that: (1) Lek had weak capital and liquidity, particularly in relation to its level of risk activity; (2) Lek had significant deficiencies in its internal controls and had made misrepresentations relating thereto; and (3) Lek failed to report material changes in its financial and business condition.

The Commission denied Lek's request, finding that it had not met its burden for obtaining a stay. Specifically, the Commission found that Lek had not raised a serious question on the merits regarding the appropriateness of DTCC's actions because Lek's proposed solution to the deficiencies DTCC identified, the so-called "Lek Holdings Note Program," under which Lek's customers would loan Lek money on an unsecured basis "in an amount necessary to cover what [Lek] calculates to be the initial required margin" on its trades was "unreliable as a means for Lek to meet its margin requirements." The Commission further found that DTCC provided Lek the statutorily-required process under Section 17A(b)(3)(H) of the Securities Exchange Act of 1934 by notifying Lek in writing of the basis for DTCC's actions, providing an opportunity to be heard, holding a hearing and keeping a record of the hearing, and stating in writing the basis for DTCC's determinations.

The Commission further found that, while it did "not dispute that the cease to act determinations will cause Lek to suffer irreparable harm," the remaining stay factors weighed against granting Lek's request. Specifically, the Commission noted that "each [DTCC] member's ability to meet its margin requirements is crucial for ensuring the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions" and that, therefore, "it would not be in the public interest to stay" DTCC's actions.

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