UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

In the Matter of the Application of

LEK SECURITIES CORPORATION

For Review of Actions Taken by

The Options Clearing Corporation

File No. 3-20665

LEK SECURITIES CORPORATION'S BRIEF ON THE COMMISSION'S JURISDICTION OVER THIS APPEAL

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Additional Authorities

Pursuant to Section 19(d) of the Securities Exchange Act of 1934 ("Exchange Act"), Lek Securities Corporation ("LSC") seeks review by the Securities Exchange Commission (the "Commission") of actions (the "Protective Measures") taken by the Options Clearing Corporation ("OCC"). On November 18, 2021, LSC timely submitted an application for review to the Commission challenging the Protective Measures (the "Application"), and on December 23, 2021, the Commission ordered briefs on the question of its jurisdiction under Section 19(d).

The Commission has jurisdiction to review the Protective Measures because, in imposing them, OCC limited LSC's access to the services it provides to LSC as a clearing member of OCC. The Protective Measures constrain the volume of customer transactions that LSC can clear and settle through OCC, and these clearing and settlement services are both important to LSC and central to the function of OCC. As a separate basis for the Commission's jurisdiction, the Protective Measures also constitute final disciplinary sanctions under OCC Rules.

FACTUAL AND PROCEDURAL BACKGROUND

LSC is a broker registered with the Commission under the Exchange Act that effects transactions as an agent for its own customers and for other brokers and for broker-dealers. LSC is a clearing member of OCC.

On October 15, 2021, OCC sent a letter to LSC (the "October 15, 2021 Letter") in which it imposed the Protective Measures, which consist of an increase in LSC's excess required margin charge from 25% to 50% and a requirement that LSC provide OCC with daily end-of-day liquidity sources and uses reporting covering all available liquidity sources.[1] OCC alleged that the Protective Measures were responsive to its assessment of LSC's liquidity, operational, and

[1] Exhibit 1, October 15, 2021 Letter.

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regulatory risk profiles. In addition to imposing the Protective Measures, OCC, on October 15, 2021, also rescinded six restrictions ("July Protective Measures") it had placed on the LSC as a result, according to OCC, of LSC shifting from a relationship with BMO Harris Bank ("BMOH") as its OCC-approved Clearing Bank for OCC transactions to Lakeside Bank ("Lakeside").[2] The two Protective Measures imposed on October 15, 2021 were identical to two of the rescinded July Protective Measures.

In the October 15, 2021 Letter, OCC stated that LSC's liquidity risks had increased due to a phased reduction by BMOH, ending ultimately in termination, of LSC's line of credit, and Texas Capital Bank's termination of a $25 million line of credit it extended to LSC. OCC stated that LSC's operational risks also had increased due to restrictions implemented by the Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC," and, together with DTC, the "DTCC Entities") in connection with those entities' purported concerns over LSC's liquidity risk.[3] OCC further stated that LSC's regulatory risks had increased because LSC received a "Wells Notice" from the Financial Industry Regulatory Authority ("FINRA") in connection with a line of credit that LSC has with its parent, Lek Securities Holdings Limited ("Lek Holdings").

On October 22, 2021, LSC explained to OCC in a letter ("October 22, 2021 Letter") that the Protective Measures were imposed based on inaccurate information and requested a hearing on OCC's actions.[4] Notwithstanding LSC's clarification in the October 22, 2021 Letter, on October 29, 2021, OCC denied LSC's request for an internal hearing and the Protective

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2 LSC also requested review of these measures by the Commission, but because OCC rescinded the July Protective Measures in the October 15, 2021 Letter, LSC withdrew its appeal of the July Protective Measures, other than the ones that were reimposed on October 15, 2021.

3 LSC's appeal to the Commission regarding these restrictions is pending. *See* SEC File No. 3-20543.

4 Exhibit 2, October 22, 2021 Letter.

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Measures have remained in effect since that time.[5] LSC has complied with the Protective Measures, despite the fact that they were imposed without a rational basis and are based on incorrect information.

Liquidity Risk

Increasing LSC's excess required margin charge at OCC by 50% requires LSC to borrow money at a cost and leave idle cash at OCC. The restriction is therefore akin to a monetary penalty. The effect of maintaining idle cash is economically similar to a fine and is not based on any additional risk created by LSC. The 25% excess margin to be posted with OCC without the additional margin charge—a requirement that LSC has always timely satisfied--sufficiently serves this purpose. LSC has nevertheless been able to deposit the additional margin charge, albeit at a cost.

The requirement that LSC provide daily end-of-day liquidity sources and uses reporting covering all available liquidity sources is likewise a sanction or penalty, because, as discussed further below, it was imposed without a rational basis. It requires the use of additional LSC resources without a demonstrated need for them at OCC. Contrary to OCC's liquidity concerns, LSC currently has a $100 million promissory note program with Lek Holdings, robust securities lending arrangements with more than a dozen counterparties and a $30 million credit facility with Lakeside that together supply financing capacity that more than satisfies LSC's liquidity needs, even following the loss of the Texas Capital Bank and BMOH credit lines. Notably, those two lines of credit had only supplemented other LSC preferred sources of liquidity, and LSC had not used Texas Capital Bank's line of credit since June 2020, and generally had used less than half of BMOH's lines, when they were in place.

[5] Exhibit 3, OCC Letter to LSC, dated October 29, 2021.

Operational Risk

As for OCC's concerns about operational risk, the restrictions imposed by the DTCC Entities were expressly premised on the same erroneous assumptions as OCC's and are currently being contested by LSC with the DTCC Entities and the Commission. *See* SEC File No. 3-20543.

Regulatory Risk

Regarding OCC's asserted concerns about regulatory risk, the only premise for this concern was the alleged receipt by LSC of a Wells Notice from FINRA. This alleged factual basis for the Protective Measures is simply false. LSC has not received a Wells Notice from FINRA.

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On November 18, 2021, LSC filed an appeal of the Protective Measures with the Commission ("Application"),[6] and on December 2, 2021, OCC filed an objection with the Commission alleging that the Commission lacks jurisdiction to review the Application ("December 2, 2021 Objection").[7] In the December 2, 2021 Objection, OCC reiterated the positions it had taken in the October 15, 2021 Letter, without acknowledging the clarifications of the factual bases for the Protective Measures that LSC provided in the October 22, 2021 Letter, and in the Application. On December 23, 2021, the Commission entered an Order Scheduling Briefs on the question of whether it has jurisdiction to review the Application and proceed to evaluate the Application on the merits.

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[6] Exhibit 4, Application.

[7] Exhibit 5, December 2, 2021 Objection.

ARGUMENT

The Commission has jurisdiction over this appeal and should permit the merits of LSC's appeal to be heard. Section 19(d) of the Exchange Act authorizes the Commission to review an action taken by a self-regulatory organization ("SRO"), including OCC, on different bases, including if the action "prohibits or limits any person in respect to access to services offered by such organization or member thereof" or if it "imposes any final disciplinary sanction on any member."[8] The Commission has jurisdiction under either of those bases to review the Protective Measures, and that jurisdiction is consistent with the legislative history of Section 19(d), which explains, in relevant part, that the Commission should have the authority to broadly characterize the actions an SRO takes against its members for purposes of defining the limits of the Commission's jurisdiction to review such actions.[9]

A. The Commission has jurisdiction because the Protective Measures limit LSC's access to services offered by OCC.

The imposition of the Protective Measures constitutes a limit on the services offered by OCC to LSC. The Commission's regulations regarding an SRO's limitations on its members' access to services are found at Rule 19d-1(i) adopted by the Commission under the Exchange Act.[10] In adopting its rules under Section 19(d), the Commission indicated that it would expect to review both disciplinary actions and "other kinds of administrative actions" that are "quite

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8 15 U.S.C. § 78s(d)(1). Section 19(d) also provides that the Commission has jurisdiction over actions taken by a SRO that denies membership to any applicant or bars any person from becoming associated with a member. Neither of those bases for jurisdiction, however, are relevant to this appeal. *Id.*

9 S. Comm. on Banking, Housing & Urban Affairs, Securities Acts Amendments of 1975, Accompanying S. 249, S. Rep. No. 94-75 ("Senate Report"), at 24 (1975).

10 12 C.F.R. § 240.19d-1(i).

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similar" to disciplinary actions.[11] An administrative action that limits the access of a member to an SRO's most fundamental services is an action that is -- at minimum -- "quite similar" to a disciplinary action in its effect on the member.[12]

The regulations do not define what constitutes a limitation on an SRO member's access to services. Prior reported decisions of the Commission, however, provide guidance in determining whether an SRO's action limits access to its services. The Commission considers whether the SRO limited access to a service that the SRO offers and whether that service is "fundamentally important" to the applicant.[13] The services at issue must be not only important to the applicant, but also central to the functioning of the SRO.[14]

By applying an increased excess margin charge to LSC, the Protective Measures constrain LSC's access to OCC's services. The Protective Measures increase the amount of excess margin LSC is required to post with OCC from 25% to 50%. Effectively, the Protective Measures limit the volume of customer transactions that LSC can clear and settle through OCC (and if LSC does not post the additional excess margin, the Protective Measures would preclude all access to OCC). Clearing and settlement at OCC is both fundamentally important to LSC and the primary service provided by OCC.

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11 SEC, *Provision for Notices by Self-Regulatory Organizations of Disciplinary Sanctions; Stays of Such Actions; Appeals; and Admissions to Membership or Association of Disqualified Persons*, 42 Fed. Reg. 36410, 36412 (Jul. 14, 1977).

12 The Protective Measures also constitute a final disciplinary action. *See infra,* Section B.

13 *Consolidated Arbitration Applications for Review of Action Taken by FINRA*, Rel. No. 34-89495, 2020 SEC LEXIS 3312, at *3 (Aug. 6, 2020); *see also Morgan Stanley & Co., Inc.,* Exchange Act Rel. No. 34-39459, 53 SEC 379, 1997 SEC LEXIS 2598, at *12-13 (Dec. 17, 1997), *William J. Higgins*, Rel. No. 34-24429, 48 SEC 713, 1987 SEC LEXIS 1879, at *11-12 (May 6, 1987).

14 *Morgan Stanley & Co, Inc*., Exchange Act Rel. No. 34-39459, 53 SEC 379, 1997 SEC LEXIS 2598, at *13 (Dec. 17, 1997).

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The Commission has found similar actions by SROs to meet the definition of a limitation on access to services within the meaning of Section 19(d). In *Securities Industry and Financial Markets Association* ("*SIFMA*"), the Commission analyzed what constitutes "a limitation on access to services" and found that rule changes made by the New York Stock Exchange ("NYSE") and the NASDAQ Stock Market LLC that charged additional fees for certain exchange data would be considered a "limitation to access to the SRO's services" as the SIFMA members contended that these fees were priced so high as to be outside a reasonable range of fees under the Exchange Act.[15] While the Commission's order in *SIFMA* was reversed by the District Court on the grounds that review under Section 19(d) does not apply to generally applicable fees,[16] the Protective Measures are not generally applicable. Rather, they specifically target LSC. The logic of the underlying Commission decision is fully applicable here. Charging a member (but not all members) additional margin without a reasonable basis for doing so can constitute a limitation on access to services.

Furthermore, the clearing and settlement services provided by OCC are "fundamentally important" to LSC. They are also the principal services provided by OCC to its members. The Commission has found that such "principal services" constitute the "fundamentally important" services that trigger its jurisdiction when reviewing an SRO's action that limits those services. In *William J. Higgins*, members of the NYSE were denied permission to install telephones to communicate from the exchange floor with non-members located off-floor.[17] The Commission opined that "[t]he operation of a trading floor and access to the floor is the principal service

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15 Rel. No. 1921, File No. 3-15350, 2014 SEC LEXIS 3906 (Oct. 20, 2014).

16 *Nasdaq Stock Mkt., LLC v. SEC*, 961 F.3d 421 (2020).

17 Rel. No. 34-24429, 48 SEC 713, 1987 SEC LEXIS 1879 (May 6, 1987).

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offered by a national securities exchange to its members…" and that limitation of such access to services would be subject to the Commission's review under Section 19(d).[18]

Similarly, in *Consolidated Arbitration Applications*, the Commission found that a limitation was fundamentally important when it involved access to FINRA's arbitration platform.[19] In making this determination, the Commission pointed to FINRA's corporate charter which states that one of its functions is "[t]o promote self-discipline among members, and to investigate and adjust grievances between the public and members and between members" and FINRA's rules that require members firms and associated persons to arbitrate certain disputes.[20]

Here, the Protective Measures restrict LSC's access to services that are even more fundamental than access to an SRO's arbitration platform. The Commission has previously stated, regarding DTC, that "DTC's role as an SRO and securities depository offering book-entry clearing and settlement services is central in this scheme, and those services are the fundamental ones offered by DTC."[21] The same services are central to OCC. The clearing and settlement services that are being restricted as a result of the Protective Measures are not only "fundamentally important" services to LSC, but they are the primary function and the reason for the existence of OCC.

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18 *Id*. at *11-12.

19 Rel. No. 34-89495, 2020 SEC LEXIS 3312, at *3 (Aug. 6, 2020).

20 *Id.* at *4-5.

21 *Int'l Power Grp., Ltd*., Rel. No. 66611, 2012 SEC LEXIS 844 at *15 (Mar. 15, 2012) (finding that DTC's suspension of its clearing and settlement services with respect to petitioner-issuer's securities held by clearing agency's participants constitutes a denial or limitation of DTC's services under Section 19(d)).

B. In the alternative, the Commission has jurisdiction because the Protective Measures constitute final disciplinary sanctions imposed by OCC.

The Protective Measures also constitute "final disciplinary sanctions" against LSC, which provides an alternative basis for the Commission's jurisdiction over this appeal under Section 19(d)(1) of the Exchange Act.[22]

While Section 19(d)(1) does not further define "disciplinary sanction," OCC Rules describe the limitation on access to services as an example of a disciplinary action. OCC Rule 1201(a) (Disciplinary Proceedings—Sanctions) states that OCC "may censure, suspend, expel or *limit the activities, functions or operations of any Clearing Member* for any violation of the By-Laws and Rules or its agreements with the Corporation (Emphasis added)."[23]

Clearly, then, OCC defines a limitation of activities, functions, or operations, such as the Protective Measures, as a disciplinary sanction. OCC here made an assessment of purported wrongdoing by LSC by inferring from its erroneous belief that LSC received a Wells Notice and from unfounded assumptions that other SROs' "risk controls" had a material basis in fact, that there had been wrongdoing by LSC. In response to that inference, OCC imposed a disciplinary sanction in the form of the Protective Measures. The basis for that assessment is now subject to review by the Commission. This is consistent with the decision in *Morgan Stanley & Co., Inc.*, in which the Commission requires that an SRO, among other things, (i) make an assessment of purported wrongdoing and (ii) take affirmative action against a member in order for a final disciplinary sanction to be subject to review.[24] Both requirements are present here.

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22 While the term described here is a "final" disciplinary sanction, as described in the Factual Background section above, the imposition of the Protective Measures has been treated as final by OCC.

23 OCC Rule 1201(a).

24 *Morgan Stanley & Co, Inc*., Exchange Act Rel. No. 34-39459, 53 SEC 379, 1997 SEC LEXIS 2598, at *7 (Dec. 17, 1997).

The fact that OCC chose not to treat the Protective Measures as disciplinary sanctions within the meaning of Rule 19d-1 is not dispositive. If an action by an SRO is appealable to the Commission, the SRO cannot avoid Commission review simply by electing not to treat it as a reviewable action and refusing to provide a member with the appropriate internal appeals process. The substance of the action -- its adverse effects on the member -- should govern whether the Commission views the action as a disciplinary sanction, regardless of whether the SRO elects to treat its action as a disciplinary sanction, or otherwise label it as a "disciplinary sanction." To do otherwise would elevate form over substance. In the context of limitation of access to services, as described above, the Commission only reviews SRO actions that limit access to "fundamentally important" services of an SRO. In that context, it is the harm done to the SRO's member by the action that is critical to the determination, because limitations on access to fundamentally important services harm the member in a way that limitations on access to ancillary services would not. Similarly, in the context of determining jurisdiction to review a final disciplinary sanction, the Commission should consider whether an SRO action functions as a final disciplinary sanction on a member, and not whether or not the SRO has elected to provide the appropriate internal processes for a final disciplinary sanction under its own rules. The harm done to the member should be critical to the determination. The Protective Measures, which limit the "activities," "functions" or "operations" of LSC, constitute disciplinary sanctions pursuant to OCC Rules, whether or not OCC elected to follow its rules, and thus are subject to review by the Commission.

C. <u>The Commission should not defer to OCC's actions.</u>

OCC has the authority to manage risk posed by its members. It does not, however, have unfettered authority to take actions that impose onerous burdens and significant costs on OCC's participants without a rational and reasonable basis for those actions, and the Commission is not

obligated to defer generally to OCC's actions. An action that might be an appropriate risk management measure, if based on accurate facts, can be subject to Commission review as an unwarranted limitation on access to services and a final disciplinary sanction if the action is lacks a colorable basis.

The December 2, 2021 Objection states that the Protective Measures are risk-management controls "within OCC's discretion" pursuant to OCC Rules 601 and 609. OCC Rule 601 provides, in pertinent part: "Notwithstanding any other provision of this Rule 601, the [OCC] may fix the margin requirement for any account or any class of cleared contracts at such amount as it deems necessary or appropriate *under the circumstances* to *protect the respective interests of Clearing Members, the [OCC], and the public*." (Emphasis added). In addition, OCC Rule 609 repeats this limitation by stating, in pertinent part, that "[OCC] may require the deposit of such additional margin ('intra-day margin) by any Clearing Member in any account at any time during any business day, as such officer deems advisable to reflect changes in … (iv) *the financial position of the Clearing Member, or otherwise to protect the [OCC], other Clearing Members or the general public*…" (emphasis added).

Neither OCC Rule 601 nor OCC Rule 609, however, grants OCC unfettered authority to impose risk management controls generally, or increases to margin charges specifically, that are untethered to existing facts or circumstances. Rather, these actions can only be taken for the protection of OCC, its Clearing Members or the general public. As discussed above, the Protective Measures were imposed based on incorrect assumptions and an inaccurate understanding of LSC's operations. Consequently, they serve no genuine protective purpose. To the extent that OCC's decision to impose the Protective Measures was predicated on the actions of the DTCC Entities with respect to LSC, those actions were based on the same

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misunderstandings and false assumptions as OCC made, and therefore do not provide a rational basis either. OCC's rationale for imposing the Protective Measures based on its concerns for regulatory risk is also groundless because, as noted above, LSC has not received a Wells Notice from FINRA.

It is true that the Commission generally defers to an interpretation by an SRO of its own rules as long as two requirements -- rationality and good faith -- are met by the SRO.[25] While LSC does not assert that OCC acted in bad faith, it does assert that the Protective Measures have no rational basis in light of the factual errors on which they purport to be based on, and OCC has not presented a rational basis, either to LSC, or in the December 2, 2021 Objection.

The December 2, 2021 Objection suggests that an action that OCC characterizes as a "risk management control" cannot also operate as a limitation on access to services. Yet there is nothing in OCC's Rules stating that actions that constitute adequate assurance measures and actions that constitute limits to access of services or disciplinary actions are mutually exclusive. When, as here, a given action imposes costs on a participant, if that action has no rational basis, then it can operate as a limitation on access to services or as a final disciplinary sanction on the member, even if the clearing agency, in good faith, did not intend it to.[26]

When an SRO takes an action that is harmful to one of its members and does so without a rational basis, the Commission must be permitted to intervene and review the action, whether or not the SRO agrees that the action is reviewable, and whether or not the SRO treats the action as a risk management measure, on one hand, or a limitation on access to services or a final

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[25] *See Heath v. SEC*, 586 F.3d 122 (2d Cir. 2009).

[26] The Exchange Act provides that clearing agencies, such as OCC, may discriminate among persons in the admission to, or the use of its services, only if such discrimination is based on "standards of financial responsibility, operational capability, experience, and competence." 15 U.S.C. § 78q–1(b)(4)(B).

disciplinary sanction, on the other. If the Commission were not allowed to review an action by an SRO that a member credibly alleges is without a rational basis, the SRO would have unfettered authority.[27] This is not the regulatory regime contemplated by Section 19(d) of the Exchange Act. Rather, Congress intended the Commission to have broad authority to review SRO actions that are detrimental to members of the SRO. The Commission has obligations pursuant to the Exchange Act to ensure that SROs act reasonably and rationally in carrying out their statutory obligations.

CONCLUSION

The Commission is required to review an action by an SRO if the action limits a member's access to services offered to any member by the SRO. The Protective Measures increased LSC's margin charge at OCC. As set forth above, these Protective Measures were imposed without a rational basis or a genuine protective purpose, and restricted LSC's access to the services of OCC within the meaning of Section 19(d)(1) of the Exchange Act. Separately and in addition, the Commission also has jurisdiction to hear an appeal from the Protective Measures because they constitute final disciplinary sanctions within the meaning of Section 19(d)(1) of the Exchange Act.

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[27] Senate Report, at 34 ("The Commission's oversight responsibility with respect to the self-regulatory agencies is to insure that they exercise their delegated governmental power effectively to meet the regulatory needs in the public interest and that they do not exercise that delegated power in a manner inimical to the public interest or unfair to private interests. To the degree that there may have been undue deference to the self-regulatory organizations because of the cumbersomeness of the oversight mechanisms or the unavailability of appropriately focused remedies, the Committee believes the Exchange Act should be amended to correct the problem.")

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Dated: January 24, 2022

Respectfully submitted,

/s/ Mark D. Kotwick___

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CERTIFICATE OF SERVICE

I, Mark D. Kotwick, certify that on this 24th day of January 2022, caused a copy of the foregoing Lek Securities Corporation's Brief on the Commission's Jurisdiction Over This Appeal to be served on the following via email:

Vanessa Countryman, Secretary, SEC (email: secretarys-office@sec.gov)
David S. Petron, Sidley Austin (email: dpetron@sidley.com)

/s/ Mark D. Kotwick____

Mark D. Kotwick

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20665

In the Matter of

LEK SECURITIES CORPORATION,

Petitioner.

LEK SECURITIES CORPORATION'S ("LSC")
INDEX OF ATTACHMENTS

Exhibit	**Description**
1.	OCC Letter to LSC, dated October 15, 2021
2.	LSC Letter to OCC, dated October 22, 2021
3.	OCC Letter to LSC, dated October 29, 2021
4.	LSC Application
5.	OCC Letter to SEC, dated December 2, 2021

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LSC Exhibit 1

THE FOUNDATION FOR SECURE MARKETS

Options Clearing Corporation
125 S. Franklin Street, Suite 1200
Chicago, IL 60606
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October 15, 2021

BY EMAIL

Charles Lek
Lek Securities Corporation
4 World Trade Center, 44th Floor
New York, NY 10007

Re: Imposition of OCC Protective Measures

Dear Mr. Lek,

This letter is to inform you that OCC's Office of the Chief Executive Officer ("OCEO") has in accordance with OCC's By-Laws and Rules elected to impose protective measures upon Lek Securities Corporation ("Lek Securities") due to recent and ongoing developments related to Lek Securities' liquidity risk, operational risk and regulatory risk profiles.

Lek Securities' liquidity risks have increased due to changes in its lines of credit, including, but not limited to, the phased reduction and ultimate termination of its line of credit with BMO Harris Bank ("BMOH"). Foremost, BMOH reduced Lek Securities' uncommitted line of credit from $75 million to $0 in a phased manner ending October 6, 2021. In addition, Texas Capital Bank terminated Lek Securities' $25 million line of credit in Q2 2021. Lek Securities has replaced these lines of credit totaling $100 million with two new sources of funding totaling $130 million: (1) a $30 million line of credit with Lakeside Bank; and (2) a $100 million unsecured line of credit with Lek Securities' parent, Lek Holdings Limited. The Lakeside Bank line of credit comprises a $10 million unsecured line to meet NSCC margin requirements and a $20 million secured line to meet Lek Securities' general liquidity obligations. OCC understands that the parent line of credit is ultimately sourced from a handful of Lek Securities' customers on an as-needed basis and is only available to Lek Securities to meet each customer's contribution to the NSCC excess capital premium charge.

Lek Securities' operational risks have also increased due to actions by other self-regulatory organizations in response to Lek Securities' heightened liquidity risks. DTCC, for one, has already implemented risk controls on Lek Securities, including reducing the firm's DTC net debit cap from $75 million to $50 million and establishing a minimum NSCC daily margin requirement of $20 million.

Last, Lek Securities' regulatory risks have also increased because Lek received notice of FINRA's preliminary determination to recommend formal disciplinary action in connection with the firm's parent line of credit. OCC understands that because the parent does not have the financial

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capacity to provide a $100 million line of credit, the Wells Notice(s) concern the flow of funds from the United States and United Kingdom customers to Lek Securities' parent, and from there to Lek Securities itself. All this is on top of the heightened regulatory risk already present due to the 2019 SEC settlement and three-year engagement with an independent compliance monitor.

Given these recent and ongoing developments, the OCEO has approved the implementation of the following protective measures, effective October 18, 2021:

(1) In accordance with OCC Rules 601 and 609, Lek Securities' additional margin charge will be 50% to mitigate exposures observed in OCC's sufficiency and adequacy stress test shortfalls; and,
(2) In accordance with OCC Rule 306, Lek Securities must provide daily end-of-day liquidity sources and uses reporting covering all available bank lines of credit, parent lines of credit, securities financing, unencumbered cash-on-hand, etc.

Item (1) margin charges are based on the daily sum of STANS 99% Historical Expected Shortfall and Stress Test Risk for each account holding marginable positions at OCC. The percentage will be reflected in margin requirements settled beginning October 18, 2021. Lek Securities may satisfy Item (2) by providing OCC's Credit Risk Management department copies of daily FINRA and/or DTCC liquidity reporting.

These protective measures will remain in place until the aforementioned risks are sufficiently reduced. OCC reserves its right to amend any and all protective measures imposed upon Lek Securities when facts and circumstances dictate.

If you have any questions, please don't hesitate to contact Nathan Ice, Executive Director, Credit Risk Management at (817) 562-3454.

Very truly yours,

Scot E. Warren
Chief Operating Officer

cc: Joseph P Kamnik, OCC
Clearing Member's File

LSC Exhibit 2

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October 22, 2021

BY EMAIL

Secretary of the Corporation
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Lek Securities Corporation: Imposition of OCC Protective Measures

Dear Corporate Secretary:

We represent Lek Securities Corporation ("Lek Securities"), and this letter serves as its request under OCC Rule 305(c) for review of the various protective measures (the "Protective Measures") imposed on it by OCC, described in the October 15, 2021 letter of Scot E. Warren to Charles Lek, Chief Executive Officer of Lek Securities (the "October 15 Letter"), a copy of which is attached hereto.

The Protective Measures are based on erroneous information and not warranted under OCC Rule 305, and Lek Securities request that no such action be taken until OCC has conducted a full review of this matter and Lek Securities has had the opportunity to be heard.

The imposition of the Protective Measures are appropriate under OCC Rule 305(a) only when OCC "determine[s] that the financial or operational condition of a Clearing Member makes it necessary or advisable, for the protection of the Corporation, other Clearing Members, or the general public, to impose [such] restrictions on such Clearing Member's positions and stock loan and borrow positions within the Corporation." That predicate for the imposition of the Protective Measures does not exist here. The Protective Measures appear to be based primarily on OCC's incorrect understanding of Lek Securities' liquidity needs and its erroneous belief that the Financial Industry Regulatory Authority has taken certain actions with respect to Lek Securities.

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We look forward to the opportunity to be heard and correct the record with respect to this matter.

Respectfully submitted,

Mark D. Kotwick

Encl.

Cc: Scot E. Warren
Joseph P. Kamnik
Nathan Ice

02739 0001 #8992832v2

LSC Exhibit 3

THE FOUNDATION FOR SECURE MARKETS

Options Clearing Corporation
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October 29, 2021

BY EMAIL

Mark D. Kotwick
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Re: Lek Securities Corp. Protective Measures

Dear Mr. Kotwick,

This letter is in response to your letter to OCC dated October 22, 2021 on behalf of Lek Securities Corporation ("Lek Securities"), in which Lek Securities requests a hearing under Rule 305(c) to review OCC's decision to implement additional margin requirements for Lek Securities under OCC Rules 601 and 609, and to require Lek Securities to provide daily end-of-day liquidity sources and uses reporting under OCC Rule 306 (together, the "Protective Measures"). As explained below, Lek Securities is not entitled to a hearing under Rule 305 or otherwise under the Securities Exchange Act of 1934 ("Exchange Act") to review the use of these risk management tools.

As an initial matter, Lek Securities' October 22, 2021 letter requests that no such Protective Measures be taken until OCC "has conducted a full review of this matter and Lek Securities has had the opportunity to be heard." However, OCC notes that pursuant to its letter dated October 15, 2021, the Protective Measures went into effect on October 18, 2021, four days prior to Lek Securities' request. Even if an appeal under Rule 305(c) were available in this situation, which it is not, a request that the Risk Committee review restrictions on a Clearing Member's transactions, positions or activities does not impair the validity or stay the effect of the action for which the Clearing Member seeks review.

In its October 22, 2021 letter, Lek Securities asserts that the Protective Measures are not warranted because it claims OCC's determination to impose such measures is based on "erroneous information." As such, Lek Securities contends the factual predicate for OCC to exercise authority under Rule 305(a) is not present. However, the Protective Measures are not restrictions on Lek Securities' transactions, positions or activities within the scope of Rule 305. The Protective Measures also do not otherwise constitute a prohibition or limitation on Lek Securities' access to OCC's services that gives rise to an opportunity to be heard under Section 17A(b)(5)(B) of the Exchange Act.

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As OCC indicated in its October 15, 2021 letter imposing the Protective Measures, the additional margin requirement and reporting requirement are risk management tools implemented by OCC under Rules 601 and 609, and Rule 306, respectively. A Clearing Member's right to appeal under Rule 305(c) is limited to actions taken by an authorized OCC officer pursuant to Rule 305. Accordingly, Lek has no right to appeal actions taken pursuant to Chapter VI of the Rules and Rule 306.

Nothing in OCC's By-Laws or Rules supports Lek Securities' assertions that the Protective Measures are not warranted because, according to Lek Securities, they are based on "erroneous information." Under Rule 601(c) and (d), concerning OCC's margin requirement calculation, OCC may fix margin requirements for any account at such amount "as it deems necessary or appropriate under the circumstances" to protect Clearing Members, OCC and the public. In addition, Rule 609 authorizes OCC to require deposit of such additional margin by any Clearing Member as an OCC officer "deems advisable to reflect changes in," among other things, the financial position of the Clearing Member, or otherwise to protect OCC, other Clearing Members or the general public. Under Rule 306, OCC may require any Clearing Member at any time to file financial reports or such other reports or financial statements in such form or detail prescribed by OCC. These risk management tools, which have been approved by the SEC through the rule filing process under Section 19(b) of the Exchange Act, grant OCC the authority to respond to and manage risks posed to the clearance and settlement system pursuant to OCC's obligations under Section 17A of the Exchange Act and SEC Rule 17Ad-22 thereunder.

The risk management tools mitigate the risks presented by a Clearing Member to OCC, other Clearing Members and the public should that Clearing Member default on its obligations to OCC. As OCC stated in its October 15, 2021 letter to Lek Securities, OCC imposed the Protective Measures in response to recent and ongoing developments related to Lek Securities' liquidity risk, operational risk and regulatory risk profiles, including concerns about the termination of certain lines of credit and the funding for Lek Securities' parent line of credit, risk controls implemented by other self-regulatory organizations due to those liquidity concerns, and potential disciplinary action that another self-regulatory organization is considering arising from concerns with the funding for the parent line of credit. The Protective Measures are risk management tools that are within OCC's discretion under the applicable Rules and are not subject to a Clearing Member's request for review by the Risk Committee under Rule 305(c).

Furthermore, Lek Securities has informed OCC that on October 26, 2021, the Depository Trust Company ("DTC") and the National Securities Clearing Corporation ("NSCC") determined to cease to act for Lek Securities, subject to Lek Securities' right to a hearing and NSCC's immediate imposition of a cap on Lek Securities' activities. OCC is reviewing the Protective Measures in light of this development. OCC reserves its right to amend any and all protective measures imposed upon Lek Securities when facts and circumstances dictate.

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If you have any questions, please don't hesitate to contact me at (312) 322-4467.

Very truly yours,

Megan Malone Cohen
Deputy General Counsel and Corporate Secretary

cc: Scot Warren, Chief Operating Officer
Joseph P. Kamnik, Chief Regulatory Counsel
Clearing Member's File

LSC Exhibit 4

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November 18, 2021

VIA EMAIL & FILED ON eFAP

Ms. Vanessa Countrymen
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549
Secretarys-office@sec.gov

Lek Securities Corporation

Dear Madame Secretary:

We represent Lek Securities Corporation ("LSC") in connection with its application to the U.S. Securities and Exchange Commission (the "Commission") pursuant to Rule 19d-3 of the General Rules and Regulations under the Securities Exchange Act of 1934 and Rule 420 of the Commission's Rules of Practice, 17 CFR § 201.420 for review of actions (the "Protective Measures") effective October 18, 2021 by the Options Clearing Corporation ("OCC") (i) increasing LSC's additional margin charge to 50% and (ii) requiring LSC to provide daily end-of-day reporting on liquidity sources and uses.

LSC's application follows.[1]

* * *

[1] Copies of the relevant correspondence are included in the attached Compendium.

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Application

LSC is a broker registered with the Commission whose business is limited to effecting transactions on an agency basis for customers of LSC and other brokers. The Protective Measures, whose imposition is being appealed, are based on erroneous information and therefore not warranted under OCC Rules and should be terminated by the Commission.

In its October 15, 2021 letter imposing the Protective Measures, OCC stated that its basis for the measures was LSC's recent and ongoing liquidity, operational and regulatory risk profiles.[2] OCC stated that LSC's liquidity risks have increased due to BMO Harris Bank's ("BMOH") phased reduction, and ultimate termination, of LSC's line of credit and Texas Capital Bank's termination of LSC's $25 million line of credit.[3] OCC stated that LSC's operational risks also have increased due to restrictions implemented by the DTC and NSCC in connection with their purported concerns over LSC's liquidity risk.[4] OCC further stated that LSC's regulatory risks have increased because LSC received a "Wells Notice" from the Financial Industry Regulatory Authority ("FINRA") in connection with a line of credit that LSC has with its parent, Lek Securities Holdings Limited ("LEK Holdings").[5]

On October 22, 2021, LSC explained to OCC that the Protective Measures were imposed based on inaccurate information and requested a hearing on OCC's actions.[6] In its October 29, 2021 response, OCC stated that the Protective Measures are discretionary risk management tools implemented under OCC Rules 306, 601 and 609 and that LSC's right to appeal under Rule 305(c) is limited to actions taken by an authorized OCC officer pursuant to Rule 305.[7]

Although OCC's Rules provide that OCC can adjust its margin requirement calculation as it deems necessary and appropriate, OCC's actions in this circumstance are inappropriate given OCC's erroneous bases for them. The authority granted to OCC to conduct risk management is not an unfettered grant of authority, and its determination must be based on an accurate understanding of the relevant underlying facts and circumstances. OCC Rule 305(a) states that the imposition of the Protective Measures is appropriate only when OCC "determine[s] that the financial or operational condition of a Clearing Member makes it necessary or advisable, for the protection of the Corporation, other Clearing Members, or the general public. . . ." In the same vein, OCC Rules 601 and 609 state that such restrictions can be implemented under circumstances that would protect the interests and financial positions of Clearing Members, the Corporation and the public.

The predicates for the imposition of the Protective Measures do not exist here because OCC's actions are based primarily on its erroneous understanding of LSC's liquidity needs and its misunderstanding that the FINRA has taken certain actions with respect to LSC.

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2 OCC Letter to LSC, dated October 15, 2021.
3 *Id.*
4 *Id.*
5 *Id.*
6 LSC Letter to OCC, dated October 22, 2021.
7 OCC Letter to LSC, dated October 29, 2021.

Contrary to OCC's liquidity concerns, LSC currently has a promissory note program with LEK Holdings and a credit facility with Lakeside Bank that together supply financing capacity that satisfies LSC's liquidity needs and more than replaces the previous BMOH lines. Moreover, LSC had never used Texas Capital Bank's line of credit and generally had used less than half of BMOH's lines when they were in place. The DTC and NSCC restrictions were expressly premised on the same erroneous assumptions as OCC's and are currently being contested by LSC. Lastly, LSC has not received a Wells Notice from FINRA.

The Commission has jurisdiction to review this action by OCC under § 19(d) of the Securities Exchange Act, as the Protective Measures are actions that limit or prohibit LSC from utilizing a fundamental service of OCC. Section 19(d) of the Exchange Act provides that if any SRO "prohibits or limits any person in respect to services offered by such" SRO, the Commission shall review such action "upon application by any person aggrieved" by such action. OCC has limited access by LSC to its clearing and settlement services by imposing an unreasonable margin charge and burdensome reporting requirements.

For the foregoing reasons, LSC respectfully requests that the Commission terminate the Protective Measures. Moreover, because LSC is likely to prevail on its request to terminate the Protective Measures, and because they are resulting in ongoing and continuing harm to LSC during the time leading up to a hearing on the matter before the Commission, LSC respectfully requests that the Commission suspend and stay the imposition of the Protective Measures pursuant to SEC Rule 401(d) pending the Commission's consideration of whether to terminate them.

* * *

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LSC continues to stand ready and willing to work with the OCC and the Commission to resolve the foregoing issues and to provide the Commission with any information, materials and briefings that the Commission believes would be useful to its decision on this application.

Respectfully submitted,

/s/ Paul T. Clark

/s/ Anthony C.J. Nuland

Attachments

cc: Jeffrey Mooney (mooneyj@sec.gov)
Michael Macchiaroli (macchiarolim@sec.gov)
Tom McGowan (mcgowant@sec.gov)
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CERTIFICATE OF SERVICE

Pursuant to Rule 151(d) of the Commission's Rules of Practice, on November 18, 2021, the undersigned caused a true and accurate copy of this Application for Review to be served by electronic mail on the following persons:

Scott E. Warren, Options Clearing Corporation (swarren@theocc.com)

Dated: November 18, 2021

/s/ Mark D. Kotwick

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LSC Exhibit 5

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December 2, 2021

By Email

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
secretarys-office@sec.gov

Re: In the Matter of the Application for Review of Lek Securities Corporation
Administrative Proceeding No. 3-20665 (Filed Nov. 18, 2021)

Dear Ms. Countryman:

We are counsel to The Options Clearing Corporation ("OCC"), a clearing agency registered with the Securities and Exchange Commission ("SEC" or the "Commission") under Section 17A of the Securities Exchange Act of 1934 (the "Exchange Act") that provides central counterparty clearing services and that is a self-regulatory organization ("SRO") subject to Section 19 of the Exchange Act. We write in response to the "application" purportedly made pursuant to Rule 19d-3 of the Exchange Act by Lek Securities Corporation ("Lek Securities"), an OCC Clearing Member, for review of certain actions taken by OCC, dated November 18, 2021 (the "Filing").

As explained in the Filing, OCC imposed two protective measures on Lek Securities as an OCC clearing member, effective October 18, 2021, due to recent and ongoing developments related to Lek Securities' liquidity risk, operational risk, and regulatory risk profiles. First, pursuant to OCC Rules 601 and 609, OCC made Lek Securities' additional margin charge 50% to mitigate exposures observed in OCC's sufficiency and adequacy stress test shortfalls as those apply to Lek Securities. Second, pursuant to OCC Rule 306, OCC required Lek Securities to provide daily end-of-day liquidity sources and uses reporting covering all available bank lines of credit, parent lines of credit, securities financing, unencumbered cash-on-hand, etc. OCC took this action after determining that Lek Securities' liquidity risks had increased because of changes in its lines of credit, that its operational risks had increased because of actions by National Securities Clearing Corporation and The Depository Trust Company regarding Lek Securities' membership in those clearing agencies (including implementation of risk controls on Lek Securities), and that its regulatory risks had increased because of FINRA's preliminary determination to recommend formal disciplinary action in connection with Lek's Securities'

parent line of credit. As a result, OCC evaluated (and continues to evaluate) the risks posed by Lek Securities to OCC, other Clearing Members, and the public, consistent with OCC's obligations under the Exchange Act as an SEC registered clearing agency.

As Lek Securities admits in its Filing, OCC has authority under its rules to implement protective measures "under circumstances that would protect the interests and financial positions of Clearing Members, the Corporation and the public" and "can adjust its margin requirement calculation as it deems necessary and appropriate." App'n at 2. Indeed, these protective measures are risk management controls within OCC's discretion that it must regularly evaluate and adjust as appropriate to protect Clearing Members, OCC, and the public from risks related to the clearance and settlement of securities transactions. These risk management controls, which have been approved by the SEC through the rule filing process under Section 19(b) of the Exchange Act, grant OCC the authority to respond to and manage risks posed to it and the national system for clearance and settlement of securities transactions pursuant to OCC's obligations under Section 17A of the Exchange Act and SEC Rule 17Ad-22 thereunder. The protective measures applied to Lek Securities do not constitute any form of disciplinary action, denial of membership or participation, or prohibition or limitation on access to services by OCC contemplated by Section 19(d) of the Exchange Act and Rule 19d-3 thereunder. Accordingly, no notice of any such action has been made by OCC under Rule 19d-1 of the Exchange Act. And because OCC has not taken any such action, there is no proceeding or record for purposes of Rule 420(e) of the SEC's Rules of Practice.

The actions complained of by Lek Securities in its Filing are not reviewable under Section 19(d) and Rule 19d-3. Thus, the Filing is invalid and should be rejected.[1]

[1] Lek Securities' request for a stay at the end of its Filing is likewise invalid. Even if the Filing were valid and reviewable, Lek Securities' one-sentence request for a stay is both procedurally improper and substantively baseless. Rule 401(d)(1) provides that "[a] *motion* for a stay of an action by a [SRO] . . . may be made . . . at the time an application is filed." And under Rule 401(a), "[a] request for a stay *shall* be made by written motion, filed pursuant to [Rule 154]," which in turn mandates that "a motion shall be in writing . . . and shall be accompanied by a written brief of the points and authorities relied upon." Lek Securities failed to file a motion or a written brief of points and authorities. Indeed, its Filing contains just one sentence requesting a stay and makes no attempt to address the four factors the Commission considers when deciding a motion for a stay. *See Windsor Street Capital, L.P.*, Exchange Act Release No. 83340, 2018 WL 2426502, at *3 (May 29, 2018). As a result, Lek Securities has not carried its burden of establishing that this "extraordinary remedy" is warranted here. *See Mark E. Laccetti*, Exchange Act Release No. 79138, 2016 WL 6137057, at *2 & n.10 (Oct. 21, 2016); *Lek Securities Corp.*, Exchange Act Release No. 93653, File No. 3-20643 (Nov. 23, 2021) (concluding that Lek Securities failed to carry its burden to show that a stay was warranted and noting that, as here, Lek Securities "d[id] not mention the final two factors in its request for a stay").

Sincerely,

/s/ David S. Petron

David S. Petron

cc (via email):

Mark D. Kotwick (Seward & Kissel LLP) (kotwick@sewkis.com)
Paul T. Clark (Seward & Kissel LLP) (clark@sewkis.com)
Anthony C.J. Nuland (Seward & Kissel LLP) (nuland@sewkis.com)
Joe Kamnik (OCC) (jkamnik@theocc.com)
Andrew P. Blake (Sidley Austin LLP) (ablake@sidley.com)

CERTIFICATE OF SERVICE

I hereby certify that on December 2, 2021, I caused a true and correct copy of the foregoing to be electronically filed using the Commission's Electronic Filings in Administrative Proceedings (eFAP) system. I further certify that I caused a true and correct copy of the foregoing to be served by electronic mail on the following:

The Office of the Secretary
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