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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.<sup>1</sup>

\* \* \*

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<sup>1</sup> Copies of the relevant correspondence are included in the attached Compendium.

### 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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").<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

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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<sup>2</sup> OCC Letter to LSC, dated October 15, 2021.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> LSC Letter to OCC, dated October 22, 2021.

<sup>7</sup> 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.

\* \* \*

November 18, 2021

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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)  
Megan Cohen (mcohen@theocc.com)  
Joseph P. Kamnik (jkamnik@theocc.com)  
Nathan Ice (nice@theocc.com)

November 18, 2021

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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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**OS Received 11/18/2021**

# **Compendium of Relevant Correspondence**

# **OCC Letter to LSC, dated October 15, 2021**



October 15, 2021

BY EMAIL

Charles Lek  
Lek Securities Corporation  
4 World Trade Center, 44<sup>th</sup> 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



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,

A handwritten signature in black ink, appearing to read "Scot E. Warren", with a long horizontal line extending to the right.

Scot E. Warren  
Chief Operating Officer

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

# **LSC Letter to OCC, dated October 22, 2021**

# SEWARD & KISSEL LLP

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October 22, 2021

## **BY EMAIL**

Secretary of the Corporation  
Options Clearing Corporation  
125 S. Franklin Street, Suite 1200  
Chicago, IL 60606  
OfficeoftheCorporateSecretary@theocc.com

### **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.

Secretary of the Corporation  
October 22, 2021  
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We look forward to the opportunity to be heard and correct the record with respect to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mark D. Kotwick". The signature is written in a cursive style with a large initial "M".

Mark D. Kotwick

Encl.

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

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# **OCC Letter to LSC, dated October 29, 2021**



October 29, 2021

BY EMAIL

Mark D. Kotwick  
Seward & Kissel LLP  
One Battery Park Plaza  
New York, NY 10004

***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.

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.

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

Very truly yours,

A handwritten signature in black ink that reads "Megan Malone Cohen". The signature is written in a cursive, flowing style.

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