UNITED STATES OF AMERICA
before the
U.S. SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20808

In the Matter of the Application of

LEK SECURITIES CORPORATION

For review of decision of the Depository Trust & Clearing Corporation

PETITIONER
LEK SECURITIES CORPORATION'S OPENING BRIEF

Kevin J. Harnisch
Ilana B. Sinkin
NORTON ROSE FULBRIGHT US LLP
799 9th Street NW
Suite 1000
Washington, DC 20001-4501

Attorneys for Lek Securities Corporation

OS Received 06/30/2022

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Rules and Statutes

Other Authorities

I. Introduction

Lek Securities Corporation ("LSC") appeals the March 10, 2022 decision of the Depository Trust & Clearing Corporation ("DTCC") affirming the unprecedented and self-described "draconian" determinations by the National Securities Clearing Corporation ("NSCC") and the Depository Trust Company ("DTC") (collectively, the "Clearing Agencies")[1] to cease to act on behalf of LSC, as well as the imposition of activity caps and associated financial penalties and censures (the "DTCC Decision"). The DTCC Decision is based on unfounded allegations that LSC (1) lacks adequate capital and liquidity despite never missing a required margin payment in its multi-decade history, and (2) failed to adequately respond to requests for information by the Clearing Agencies. The impact of the Clearing Agencies ceasing to act for LSC is to prevent LSC from being able to engage in securities trade execution and clearance activities, which is the equivalent of the death penalty for a self-clearing broker like LSC. The Clearing Agencies will begin ceasing to act on July 19, 2022, before the briefing will even be complete in this matter.[2]

The DTCC Decision cannot stand because it is predicated upon standardless criteria that provided no meaningful opportunity for LSC to address the Clearing Agencies' concerns before,

---

[1] DTC and NSCC are clearing agencies that supply the infrastructure needed to settle and clear securities transactions. DTCC is their corporate parent. NSCC acts as a central party for clearing and settlement by guaranteeing payment and delivery through its systems. DTCC Decision at 1. DTC is a central depository for domestic securities transactions. *Id.* Both are, in effect, the only means through which most public securities trades can be settled, and both are subject to oversight from, and review by, the SEC. See 15 U.S.C. § 78s(d)(1)-(2); 17 C.F.R. § 240.19d-3.

[2] On April 3, 2022, LSC sought a stay of the DTCC cease to act determinations pending the Commission's review of the appeal. On May 31, 2022, the SEC declined the stay, despite having recognized that the cease to act determinations would result in irreparable harm for LSC. *See* SEC Order Denying Motion for Stay and Scheduling Briefs at 20. The Commission must now closely scrutinize the evidence in the record to determine whether the DTCC Decision was appropriate, which it was not.

during or after the hearing. That type of standardless process is contrary to the mandates of the Securities Exchange Act of 1934 ("Exchange Act").

II. Standard of Review

The Commission conducts a *de novo* review of appeals from the findings of a self-regulatory organization ("SRO"). *See ABN AMRO Clearing Chicago LLC*, Exchange Act Release No. 80983, 2017 SEC LEXIS 1859, at *16 (June 20, 2017) (noting that the Commission's *de novo* review of an SRO's findings of violation results in an independent determination whether to uphold sanctions imposed by an SRO); *Mitchell H. Fillet*, Exchange Act Release No. 75054, 2015 SEC LEXIS 2142, at *18 (May 27, 2015) (reviewing FINRA disciplinary action *de novo* under Section 19(e)); *Sec. Indus. & Fin. Mkts. Ass'n*, Exchange Act Release No. 84432, 2018 SEC LEXIS 2860, at *45 (Oct. 16, 2018) (findings and conclusions in Section 19(f) review are reviewed *de novo*); *Keith P. Sequeira*, Exchange Act Release No. 81786, 2017 SEC LEXIS 3105, at *9 (Sept. 28, 2017) (noting that the standards of review under Section 19(e) and Section 19(f) are "similar").

The Commission must overturn the SRO's decision if a preponderance of the evidence does not support the SRO's findings or if the findings are not "consistent with the purposes of [the Exchange Act]." 15 U.S.C. § 78s(e) and (f). Even if the Commission affirms the factual findings of the SRO, it may reduce or cancel the sanctions as it sees fit. Under Section 19(e)(2), the Commission may also set aside a disciplinary sanction that is "excessive or oppressive." *See Paz Sec., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007).

III. Background

A. Procedural Background

On October 26, 2021, LSC received notices from NSCC and DTC advising, among other things, that both had determined to cease to act for LSC. *See* Certified Record Tabs 004; 005 (the "October 26 DTCC Notices").[3] In addition, the October 26 DTCC Notices imposed an activity cap on LSC. *Id.* Pursuant to the activity cap, LSC's "aggregate unsettled clearing activity as measured by the gross market value of its unsettled portfolio each business day coinciding with the approval of Lek's start-of-day margin call" was limited to $300 million. *Id.* LSC subsequently received notice from NSCC, dated November 5, 2021, modifying the activity cap and increasing it, at LSC's request, to $400 million. *See* Tab 006 (the "November 5 NSCC Notice"). Neither notice provided any basis for how the $300 million and $400 million activity caps were calculated and why those limitations on LSC's business were reasonable and required by the Clearing Agencies' rules. The November 5 NSCC Notice also informed LSC that, pursuant to NSCC Rule 48, it determined to impose a censure and a $100,000 penalty for violating the $300 million activity cap on November 1, 2, 3, 4, and 5, 2021. *Id.* Two days later, the NSCC informed LSC of additional violations of the activity caps and imposed another censure and fine of $20,000. *See* Tab 007 (the "November 7 NSCC Notice.").

LSC timely objected to the DTCC Notices and requested a hearing on the cease to act determinations, activity caps, financial penalties and censures. *See* Tab 009.

The hearing took place on February 17 and February 24, 2022. Tabs 164; 168. On March 10, 2022, the Hearing Panel issued the DTCC Decision affirming, among other things, the cease to act determinations despite acknowledging the "draconian" nature of that sanction and

[3] Citations to the certified record submitted to the Commission on April 18, 2022 by the Clearing Agencies hereinafter will be referred to with the relevant Tab Number (*e.g.*, "Tab 005").

without addressing why a lesser sanction was insufficient to address the Clearing Agencies' concerns. Tab 173 at 13.

On April 3, 2022, LSC timely filed with the Commission an application to review the DTCC Decision. *See* LSC Application for SEC Review. Contemporaneously, LSC filed a motion to stay the effectiveness of the DTCC Decision until the Commission heard the merits of its appeal. *See* LSC Motion to Stay. On May 31, 2022, the SEC denied LSC's motion for a stay and set the briefing schedule in this appeal. *See* SEC Order Denying Motion for Stay and Scheduling Briefs.

On June 6, 2022, LSC sought relief in the United States Court of Appeals for the District of Columbia Circuit by filing a petition pursuant to the All Writs Act requesting the SEC to stay the cease to act determinations pending the SEC's review. *See* LSC Ex. A . On June 10, 2022, DTCC sent a letter notifying LSC that NSCC would suspend trade capture for LSC on July 19, 2022 and cease to act for LSC on July 27, 2022, and the DTC would implement its cease to act on September 20, 2022. LSC Ex. B. On June 28, 2022, the D.C. Circuit denied the petition for a stay in an unpublished order. *See* LSC Ex. C.

B. LSC's Business

Founded in 1990, LSC is an agency-only, self-clearing broker. LSC became a member firm of NSCC and a participant in DTC in 1999. Many of LSC's broker-dealer clients fall within FINRA's definition of a "Small Firm."

LSC does not engage in market-making or proprietary trading, does not recommend investments to its customers, does not act for any customers in connection with securities issuances, and does not provide clearing or settlement services for brokers to engage in underwriting or market-making.

IV. Argument

A. The Clearing Agencies' Disciplinary Process Did Not Comply With The Exchange Act's Fairness Requirements.

The Exchange Act governs the actions and operations of SROs like DTC and NSCC. Section 17A of the Exchange Act mandates the Clearing Agencies to provide a "fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency." 15 U.S.C. § 78q–1(b)(3)(H). The Clearing Agencies failed to meet these fundamental statutory fairness requirements.

The Clearing Agencies' cease to act determinations were not based on any articulated, reasoned, or objective analysis. Instead, the Clearing Agencies made purely secret and subjective assessments regarding LSC's liquidity, steadfastly refused to tell LSC how it could address those concerns, and now takes the position that their secret and subjective determinations are beyond reproach. The DTCC Decision then rubber-stamped those determinations for two purported reasons: that LSC has "weak capital and liquidity" (Tab 173 at 5-11) and that it "failed to inform DTCC properly regarding the changes in its financial condition and indeed affirmatively misrepresented or willfully omitted certain information when responding to DTCC requests." Tab 173 at 13-19.[4] The objective evidence demonstrates otherwise.

1. LSC has ample liquidity and has never given reason to doubt its ability to meet its margin requirements.

[4] The DTCC Decision declined to affirm the determinations to cease to act for LSC on the grounds that LSC had deficient internal controls. Tab 173 at 12-13. We therefore do not address those allegations here.

The DTCC Decision's first and "principal reason" for affirming the cease to act determinations is that "LSC's liquidity position, including its capital position, was so weak as to present an unacceptable settlement risk to NSCC and NSCC's members." Tab 173 at 5. The uncontroverted facts, however, compel the opposite conclusion.

NSCC requires each member to post margin calculated by NSCC's margin system (hereinafter a "Required Fund Deposit"). Tab 173 at 6. As long as a member posts its Required Fund Deposit, NSCC is protected against a member's default to a confidence level in excess of 99 percent. *See* Tab 173 at 6 ("NSCC is required to ensure a confidence level that exceeds 99 percent that its risk-based margin system will cover its potential exposure to default by a member.").

LSC has never missed a Required Fund Deposit payment. Moreover, although per the NSCC rules, members are only required to make minimum daily deposits of $250,000 (NSCC Rule 4), by an email dated August 2, 2021, DTCC – without explanation – required LSC to make minimum daily deposits of $20 million (Tab 028), which was then increased to $27 million on November 5, 2021. Tab 004. Despite those astronomical minimum requirements, which are (1) more than 100-times greater than the $250,000 amount set forth in the NSCC's rules, (2) far in excess of the margin requirements associated with the trading of LSC's customers, and (3) were imposed without any sort of process, dialogue or analysis, LSC has complied.

LSC is – and has been – solvent. The Clearing Agencies argue that LSC's full compliance with all of its prior and current margin requirements is completely irrelevant. They are wrong. The Clearing Agencies have not identified a single metric in their rules that LSC has violated. The DTCC Decision lays out several additional financial requirements that the NSCC has imposed on LSC over time (*see e.g.*, Tab 173 at 7-8 n.10) and LSC has always satisfied

them. LSC has never given any indicia that it cannot or will not meet its margin obligations. In the absence of a factual predicate, the Clearing Agencies' concern that at some unspecified time in the future LSC may for the first time in its existence fail to meet its margin obligations is nothing more than wholesale speculation. But speculation cannot be a basis for the Clearing Agencies imposing the most severe sanctions possible.

Moreover, at the time the Clearing Agencies commenced their action, LSC had regulatory net capital in excess of $15 million, more than eight times its SEC required minimum capital requirements. *See* Tab 60 ¶ 23. At the same time, LSC had a $30 million line of credit with Lakeside Bank, $20 million of which was secured and $10 million of which was unsecured.[5] *See* Tab 005 (October 26, 2021 DTC Notice). As of December 2021, LSC was operating with the highest level of net capital in its 30 years of operation. *See* Tab 60 ¶ 20.

2. The Clearing Agencies' determinations that LSC did not have sufficient liquidity is not based on any articulated, objective standard.

Imposing the draconian death penalty-like sanctions against LSC based upon wholly speculative predictions about the future that run counter to past performance is inconsistent with the Exchange Act's requirements. Indeed, a disciplinary action must be predicated on *specific allegations* that give a "person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Upton v. SEC*, 75 F.3d 92, 98 (2d Cir. 1996) (quoting Grayned v. City of Rockford, 408 U.S. 104, 108 (1972)). Regulatory standards fail that test when they do not provide "fair notice of what is prohibited" or are "so standardless that [they] authorize[] or encourage[]

[5] It should be noted that earlier this month, on June 16, 2022, Lakeside Bank renewed the line of credit and increased the secured portion by $20 million, for a total line of credit $50 million. *See* LSC Ex. D.

seriously discriminatory enforcement." *FCC v. Fox Tel. Stations, Inc.*, 567 U.S. 239, 253 (2012) (quotation omitted).

Based upon this criteria, the Commission must reverse the DTCC Decision. The Clearing Agencies have not identified any objective standards or other metrics that LSC failed to satisfy. In fact, when LSC requested that the Clearing Agencies simply tell LSC what amount of capital and level of credit facilities would satisfy their concerns, the Clearing Agencies refused to do so. Indeed, a DTCC witness admitted there was no "magic number" for liquidity and financial obligations. *See* Tab 164 at 236:11-237:19.

Throughout all of the correspondence and litigation over this issue, the Clearing Agencies still have yet to say what they think LSC's liquidity level should have been, let alone why an amount below that unknown level constituted a violation of their rules. In other words, what was sufficient in the eyes of the Clearing Agencies was – and remains – only known to the Clearing Agencies. Without being given any benchmark or other standard by which LSC's capital and liquidity could be objectively evaluated, LSC was deprived of a meaningful ability to defend itself. Simply telling LSC that its liquidity is insufficient without giving any indication as to what would be sufficient (and why) runs afoul of the Exchange Act's fairness requirements.

The Clearing Agencies attempt to justify their approach simply by citing to their own completely subjective and standardless rules. Apparently because their rules do not specify standards, the Clearing Agencies believe they are permitted to act without having to provide any type of justification to anybody, including their own adversely impacted members. For example, the DTCC Decision cites NSCC Rule 46, which states that NSCC may limit its services if it determines "***in its discretion***" that a member "is in such financial or operating difficulty…that such action is necessary…" Tab 173 at 5 n. 4 (emphasis added) (quoting NSCC Rule 46, Sec. 1).

Similarly, DTC Rule 2 states that DTC must make a determination that a member "meets the standards of financial condition" and has "sufficient financial ability" to make required deposits. *Id.* (quoting DTC Rule 2 Sec. 1 (a)). The fact that the rules give the Clearing Agencies some discretion does not mean that their decision making can be divorced from established criteria that members can apply to their business or insulate the Clearing Agencies from having to explain the basis for any concerns they have and how a member can address those concerns. Yet that is precisely the untenable position the Clearing Agencies are advocating for here.

The Clearing Agencies' liquidity concerns are supposedly tied to reductions in LSC's bank lines of credit. In January 2021, LSC had two bank credit lines totaling $100 million, both of which were closed later that year: a $25 million line with Texas Capital Bank ("Texas Capital") and a $75 million line with Bank of Montreal Harris ("BMOH"). *See* Tab 173 at 7. The closure of those credit lines, however, had no meaningful impact on LSC's ability to meet its NSCC margin requirements because all but $8 million of those lines of credit was unusable for meeting margin obligations.

Specifically, the DTCC Decision fails to distinguish between secured and unsecured financing. LSC – like other broker-dealers – finances its Required Fund Deposit exclusively through unsecured financing. Tab 164 at 65:15-66:20. Secured financing is not typically used to finance a broker's Required Fund Deposit.[6] *Id.* The DTCC Decision is based on an erroneous belief that LSC's ability to finance its Required Fund Deposit was compromised by the termination of LSC's lines of credit with Texas Capital ($25 million secured) and BMOH ($67 million secured, $8 million unsecured). *See* Tab 173 at 7. The $8 million unsecured portion

[6] If a broker-dealer borrows funds secured by customer assets, it must place those funds into its special reserve account so that they are available to meet customer withdrawals. *See* Tab 060, ¶¶ 32-33 & n.4. Accordingly, secured loans are not useful for meeting margin requirements.

from the BMOH facility was the only portion of those two facilities used by LSC to finance its Required Fund Deposit. Tab 164 at 113:3-19; Tab 168 at 426:25-427:22. LSC also increased the unsecured portion of its credit line with Lakeside Bank from $7.5 million to $10 million. Tab 060 ¶ 30.

In order to carefully limit its margin exposure, LSC has an electronic pre-trade risk control process to block (1) any trades in excess of $500,000, and (2) any sale of microcap securities in excess of $500. Tab 152 ¶ 13. LSC only permits trades in excess of these limits if LSC receives funds up front sufficient to cover the margin impact of those trades.

3. The Lek Holdings Note Program, established in February 2021, undoubtedly meets LSC's liquidity needs.

Under the Lek Holdings Note Program, which is currently authorized for up to $100 million in unsecured financing, prior to LSC agreeing to execute the trade, the customer must enter into a note with LSC's corporate parent, Lek Securities Holdings Limited ("Lek Holdings"), in an amount greater than the estimated margin requirement, and Lek Holdings, in turn, provides those funds to LSC. Tab 164 at 136:22-138:5. The estimated margin is calculated using NSCC's own calculation of margin and LSC adds a cushion to ensure that the customer's purchase of a note will cover the initial margin and any potential changes in margin between trade date and settlement date. *Id.* LSC will not place the trade unless and until it receives the necessary funds via the Lek Holdings Note Program.

The Clearing Agencies wholesale refusal to acknowledge that the Lek Holdings Note Program has provided and continues to provide a reliable source of liquidity, (*see* Tab 173 at 8-9), is contrary to the uncontroverted evidence. The Lek Holdings Note Program has provided a ready source of funds for LSC to use to satisfy its margin obligations since it was implemented

in February 2021. Tab 060 ¶ 46. During that period, and as noted in the DTCC Decision itself, there were periods when LSC's Required Fund Deposit has spiked as high as $84 million. *See* Tab 173 at 11 n.16. On those occasions, LSC has relied on the Lek Holdings Note Program, which has operated seamlessly to allow LSC to fund that obligation. *See* Tab 164 at 76:11-78:9.

The DTCC Decision refuses to acknowledge the effectiveness of the Lek Holdings Note Program because there is no "legally binding requirement" (Tab 173 at 8) for LSC to receive funds from the Lek Holdings Note Program and the Clearing Agencies do not know the credit worthiness of the lenders under this program. *See* Tab 173 at 10 (The DTCC does not know whether the lenders "can be relied on as dependable lenders."). But those rationale ignore a fundamental and uncontroverted threshold aspect of the Program – LSC will not enter the trade generating a margin requirement unless and until LSC receives the necessary funds through the Lek Holdings Note Program. Therefore, there is no practical need for the Clearing Agencies to have access to information about the specific customers. Indeed, no such customer information is required in other trading contexts so there is no justifiable reason to impose such a requirement here. With respect to the documentation point, if the Clearing Agencies and the DTCC thought that more documentation was necessary, they could have required LSC to create such documentation instead putting LSC out of business.

The Lek Holdings Note Program has worked flawlessly since it was implemented more than a year ago and there is no evidentiary basis for concluding that it will not continue to do so. In addition, the Clearing Agencies have no rules prohibiting this type of loan program or otherwise limiting funding to traditional bank financing. The fact that the program may be "novel and inventive" (Tab 173 at 8) does not make it impermissible.

B. **LSC Did Not Make Misleading Representations To DTCC.**

The DTCC Decision erroneously finds that LSC made material misstatements or omissions to the Clearing Agencies. The DTCC Decision states that "LSC failed to inform DTCC properly regarding changes in its financial conditions" and "affirmatively misrepresented or willfully omitted certain material information when responding to the DTCC requests." Tab 173 at 13. Specifically, the DTCC Decision states that LSC made material misstatements when it failed to disclose (1) the termination of the two bank lines of credit; (2) the implementation of the Lek Holdings Note Program; and (3) LSC's liquidity plans generally. *Id.* None of these events are articulated as the type of material events that require disclosure under NSCC or DTC Rules.

The Clearing Agencies' rules regarding a member's obligations to notify them of "material facts" suffer from the same vague, discretionary, and undefined criteria described above. In fact, the DTCC Decision does not cite to any rule from either the NSCC or DTC that defines "material" information requiring disclosure. That is because no such rule exists.

1. LSC Did Not Have an Affirmative Duty to Disclose to DTCC The Termination of its Credit Facilities and Did Not Mislead DTCC Regarding Them.

The Clearing Agencies claim that LSC did not inform them in a timely manner after its lines of credit with Texas Capital and BMOH expired. However, LSC did not have any affirmative duty to do so.

NSCC Rule 2A, Section 1.G.ii authorizes NSCC to cease to act when there is a "record that reflects" that a member made a "misstatement of a material fact or has omitted to state a material fact" to the NSCC. NSCC Rule 2A, Section 1.G.ii. Although materiality is not defined within its rules, NSCC Rule 2B. Sec. 2.B.(b) outlines three specific events that would require notification, none of which exist here. Specifically, NSCC Rule 2B.Sec. 2.B.(b) says,

> Each Member shall submit to the Corporation written notice of any event that would effect a change in control of the participant or could have a material impact on such participant's business and/or financial condition, including but not limited to: (i) material changes in ownership, control or management; (ii) material changes in business lines, including but not limited to new business lines undertaken; or (iii) participation as a defendant in litigation which could reasonably be anticipated to have a direct negative impact on the participant's financial condition or ability to conduct business.
>
> NSCC Rule 2B.Sec. 2.B.(b).

As stated above, the closure of the Texas Capital and BMOH credit facilities did not materially impact LSC's ability to finance its margin obligations because almost all of it was only for secured financing and therefore unavailable for margin purposes. By way of additional context, by the time that the Texas Capital line had expired, LSC had not used it for roughly nine months. Tab 060 ¶¶ 50-51. Similarly, prior to winding down the BMOH line of credit, LSC was only using around one-third of the available credit line. Tab 060 ¶ 59 ("For the period February 1, 2021 through July 20, 2021…, the daily average balance of the BMOH Secured LOC was only approximately $22.6 million"). Finally, by the time the Texas Capital and BMOH credit lines were closed, LSC had significantly supplemented its liquidity when it established the Lek Holdings Note Program in February 2021. Accordingly, given the totality of the circumstances, the cessation of the Texas Capital and BMOH lines of credit had no material impact on LSC's ability to meet its margin obligations and therefore did not trigger an affirmative obligation to notify the Clearing Agencies of that information. The DTCC Decision does not identify any authority to the contrary.

In addition, the DTCC Decision claims that LSC made misleading statements to the Clearing Agencies about the closure of the Texas Capital and BMOH credit facilities. However, LSC did not intentionally provide inaccurate information and ultimately LSC provided all of the requested information within a brief period of time.

First, regarding the Texas Capital facility, in late 2020, Texas Capital began curtailing its broker-dealer financing business. Tab 60 ¶ 50; see also Tab 173 at 13-14. Accordingly, Texas Capital did not renew LSC's credit line when it expired on March 31, 2021, by which time LSC had not even used it for roughly nine months. Tab 60 ¶¶ 50-51. However, the DTCC Decision claims that even after the expiration, LSC represented to the Clearing Agencies in May 2021 that the credit line was still in place. Tab 173 at 14. That is because, in response to one of DTCC's requests for information about the sources of LSC's liquidity in April and May 2021, LSC personnel cut and pasted a schedule from the firm's 2020 audited financial statements showing, among other things, the Texas Capital facility, notwithstanding that the line of credit had terminated a short time before on March 31, 2021. *See* Tab 153. LSC's response, however, correctly noted that the Texas Capital credit line was in fact due to expire on March 31, 2021. *Id.* While LSC acknowledges that the information about the status of the Texas Capital facility could have more clearly stated that the facility had not been renewed, the mistake was not intentional and the expiration date was, indeed, included in the response. Tab 152 ¶¶ 83-84.

Second, the DTCC Decision alleges that LSC made affirmative misrepresentations to the Clearing Agencies about the status of its relationship with BMOH on or before receiving a letter from BMOH's counsel on July 8, 2021, which "recit[es] a long history of BMOH telling LSC that BMOH intended to scale back and ultimately discontinue its relationship with LSC." Tab 173 at 14. The evidence does not support this conclusion. Rather, LSC disclosed the pending closure of the BMOH credit line shortly after receiving the July 8th letter. Specifically, LSC forwarded that letter to DTCC on July 26, 2021 after DTCC had requested the information about the BMOH accounts on July 21, 2021. Tab 173 14-15; Tab 013. BMOH did not actually close the line of credit until three months later in October 2021 (Tab 019 at 3) so any notion that the

Clearing Agencies were somehow deprived of material information about the BMOH credit facility cannot be reconciled with those facts.

The DTCC Decision suggests that LSC should have known that BMOH was going to cancel the credit facility well before LSC received the July 8, 2021 correspondence from BMOH's counsel. Tab 173 at 15. But only months earlier, in February 2021, BMOH had renewed the $75 million unsecured facility, including an $8 million unsecured carveout. Tab 164 at 144:21-145:3. There is no evidence that, in the months leading up to the July 8, 2021 BMOH Letter, BMOH and LSC discussed the termination of the BMOH facility. Moreover, contrary to the conclusion in the DTCC Decision, the sole subject of LSC's counsel's correspondence with BMOH prior to the July 8, 2021 BMOH Letter was whether BMOH was actually intent on ending its OCC settlement bank relationship with LSC – a discrete portion of the overall LSC/BMOH relationship unrelated to DTCC – and if so, the process of transitioning to another institution, which was ultimately Lakeside Bank, and had nothing to do with the BMOH credit facility. *See* Tabs 20-22.

2. LSC Did Not Intentionally Fail to Disclose the BRG Final Report.

The Clearing Agencies also alleged that LSC failed to timely disclose to the Clearing Agencies an independent consultant's report by Berkley Research Group ("BRG") dated April 19, 2021. *See* Tab 173 at 18; Tab 042. LSC engaged BRG to evaluate its internal processes and operations following a settlement with FINRA. *Id.*

The Clearing Agencies alleged that LSC failed to provide a copy of the BRG Report until June 2021, after the Clearing Agencies had asked for it "several times." Tab 173 at 18. However, contrary to the conclusion in the DTCC Decision, the delay in providing the BRG Report was not an attempt to mislead the Clearing Agencies. Rather, the delay was caused by

poorly worded requests. The initial April 2021 request was for "updates" on BRG's reports and "status" regarding BRG's recommendations; it was ***not*** a request for the report itself, and the request was, even in the view of the Hearing Panel, "ambiguous." Tab 173 at 18. Even more, the DTCC Decision agrees that the "failure to deliver this report for a month or two is not a violation justifying a cease to act determination." *Id.*

3. LSC Was Responsive to Requests for Information Concerning the Lek Holdings Note Program.

The DTCC Decision's conclusion that LSC "fai[led] to provide full and fair information to the Clearing Agencies regarding the Lek Holdings Note Program" (Tab 173 at 17) is contradicted by the evidence. LSC did, indeed, speak with the Clearing Agencies about how the Lek Holdings Note Program works and also provided substantial materials regarding the Lek Holdings Note Program. *See e.g.*, Tabs 033; 034.

The DTCC Decision incorrectly states that LSC failed to explain how the Lek Holdings Note Program "fit[s] into LSC's risk management system" (Tab 173 at 17), and that LSC has not provided "full and sufficient financial information regarding all participants in the Lek Holdings Note Program." *Id.* at 17; 10. These incorrect statements underscore the Hearing Panel's failure to grasp the premise of the Lek Holdings Note Program. LSC did, indeed, identify the lenders under the Lek Holdings Note Program, as well as the lenders' notes and every loan and repayment of loans under the program. Tabs 017; 033; 034; 035. Detailed financial information about the customers making the initial loans is irrelevant because LSC does not place any trade that will result in significant margin until it has the money from the customer in hand. Tab 164 at 136:22-138:5. The DTCC Decision reflects a complete failure to accurately recite the

operative facts regarding the Lek Holdings Note Program and that LSC provided the Clearing Agencies with ample information about the Program.

C. The Clearing Agencies Have Failed to Justify the Activity Caps and Associated Censures and Penalties.

The stated rationale for imposing the activity cap on LSC is the same as the rationale for the cease to act determinations—namely, (1) LSC's purported weak capital and (2) the alleged misleading responses to the Clearing agencies—the imposition of the activity cap and associated penalties suffer from the same flaws as the cease to act determinations and therefore should be overturned. *See* Tabs 004; 005.

NSCC fined LSC a total of $120,000 for its failure to all but ***immediately*** comply with the arbitrarily imposed activity cap (within the first week the activity cap was imposed). *See* Tabs 006; 007. Indeed, the Clearing Agencies did not even provide LSC with an opportunity to have its questions or concerns regarding the calculation of the activity cap addressed before being subject to such fines. *Id.* The imposition of such caps without explanation and apparently untethered to any objective criteria or guidance whatsoever is another example of the Clearing Agencies denying LSC the mandated fairness protections of the Exchange Act.

In addition to the activity cap penalty, the DTCC Hearing Panel issued an additional decision ordering LSC to pay $383,449.14 of costs related to the underlying hearing that resulted in the DTCC Decision. *See* Tab 179. Most of the costs are purported to be associated with the legal fees for counsel to the DTCC's Hearing Panel. The Hearing Panel decision awarding these costs explained that the members of the Hearing Panel were not lawyers and therefore required outside counsel. *Id.* at 4-5. The result of this decision disincentivizes members, like LSC, from exercising their right to a hearing of the Clearing Agencies' actions—a right that is afforded to these members under the Clearing Agencies' rules. NSCC Rule 37; DTC Rule 22. The Hearing

Panel did not have to retain lawyers; they chose to. LSC should not be penalized for exercising its right to a hearing of the cease to act determinations. In addition, as this sanction is a direct result of the standardless and wrong result of the DTCC Decision, the costs should not be borne by LSC.

D. **The Cease To Act Determinations Are Excessive And Oppressive.**

The Commission can set aside sanctions that are inconsistent with the Exchange Act, are not necessary to protect the Clearing Agencies and their participants from unreasonable risks, or if the sanctions are excessive or oppressive. 15 U.S.C. § 78s(d)-(e)(2); *Saad v. SEC*, 873 F.3d 297, 301 (D.C. Cir. 2017). The cease to act sanctions are overly excessive and oppressive, and the Clearing Agencies have not shown why those draconian sanctions are necessary for the protection of the Clearing Agencies and its members. The obligation to specifically articulate that rationale is particularly important here, where the sanction sought is "the securities industry equivalent of capital punishment," *Paz Sec. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007).

The Commission acknowledged when denying LSC's motion to stay that LSC will be irreparably harmed by the cease to act determinations. *See* SEC Order Denying Motion for Stay and Scheduling Briefs at 20. As such, the cease to act determinations for LSC must be based on especially egregious conduct by LSC and supported by articulable reasons why such conduct would jeopardize the Clearing Agencies or their members. For the reasons stated above, the Clearing Agencies have failed to meet that burden. That is especially true in light of DTCC's claim that it already collects from LSC a Required Fund Deposit, which is sufficient to "ensure a confidence level that exceeds 99 percent" for each member. Tab 173 at 6. Although LSC increased its ready access to unsecured financing since the beginning of 2021, the DTCC Decision contains no analysis or reasoning as to why the "draconian" relief of ceasing to act,

which appears to be unprecedented with respect to a fully functioning clearing firm, is absolutely necessary instead of a lesser sanction. In the Clearing Agencies Opposition to LSC's motion to Stay, the Clearing Agencies merely stated that they have prepared to cease to act for other firms "on a number of occasions." DTCC Opposition to Motion to Stay at 14. In those cases, the Clearing Agencies claim that some of those "firms took steps to increase capital and liquidity levels sufficient to meet their Clearing Fund obligations" and therefore the Clearing Agencies did not need to proceed with the cease to act. *Id.* Yet, those generalized statements are consistent with what LSC has done.

Further, the Clearing Agencies imposed the harshest sanction available without considering or explaining whether a lesser sanction would be able to address their concerns and continue to allow LSC to operate. When the Clearing Agencies choose to impose the most draconian remedy at their disposal, they have the burden to show with particularity why that sanction, and not a less severe sanction, is appropriate. *See Steadman v. SEC*, 603 F.2d 1126, 1137 (5th Cir. 1979), *aff'd on other grounds*, 450 U.S. 91 (1981). The DTCC Decision does not contain that type of required analysis.

V. Conclusion

DTCC's refusal to provide guidance to LSC with respect to its vague and subjective capital and liquidity requirements; DTCC's refusal to objectively consider the adequacy of the Lek Holdings Note Program because it was "novel" and did not check the box of a traditional external line of credit; the apparently unprecedented decision to cease to act for a solvent broker that has never missed a financial obligation; the failure to consider whether a sanction short of ceasing to act would be effective; and the failure to weigh the impact on competition by forcing

out of business one of the last self-clearing brokers that provides clearing and custody services to underserved Small Firms, all are inconsistent with the Exchange Act's fairness requirement.

Our legal system requires that laws regulating persons or entities must give fair notice such that respondents can have a meaningful opportunity to defend themselves and avoid arbitrary and standardless enforcement. That was impossible for LSC to do here because the Clearing Agencies reached their own conclusions by applying criteria known only to them and not found in any rules, public guidance, or dialogue with LSC. The Clearing Agencies are punishing LSC for not a meeting a secret set of standards. The Commission cannot permit that type of regulatory abuse.

For the foregoing reasons, the Commission should reverse all of the findings of the DTCC Decision against LSC.

Dated: June 30, 2022

Respectfully submitted,

Kevin J. Harnisch
Ilana B. Sinkin
NORTON ROSE FULBRIGHT US LLP
799 9th Street NW
Suite 1000
Washington, DC 20001-4501
Tel: (202) 662-0200
Kevin.harnisch@nortonrosefulbright.com
Ilana.sinkin@nortonrosefulbright.com

CERTIFICATE OF SERVICE

Pursuant to Rule 151(d) of the Commission's Rules of Practice, on June 30, 2022, the undersigned caused a true and accurate copy of the foregoing to be served by electronic mail on the following persons:

DTCC Corporate Secretary (corporatesecretary@dtcc.com)
Margaret A. Dale, Esq. (mdale@proskauer.com)
Ben Catalano (bcatalano@proskauer.com)
Tim Burroughs (tburroughs@proskauer.com)
James Anderson (jaanderson@proskauer.com)

Dated: June 30, 2022

Kevin J. Harnisch

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20808

In the Matter of

LEK SECURITIES CORPORATION,

Petitioner.

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

Exhibit	**Description**
A.	LSC's Petition with DC Circuit, dated June 6, 2022
B.	DTCC Letter with Dates of Cease to Act, dated June 10, 2022
C.	D.C. Circuit Order Denying Stay, dated June 28, 2022
D.	Lakeside Bank Email, dated June 16, 2022

LSC EXHIBIT A

No. 22-_____

IN THE
United States Court of Appeals for the District of Columbia Circuit

---

IN RE LEK SECURITIES CORPORATION,

Petitioner.

PETITION PURSUANT TO THE ALL WRITS ACT FOR STAY PENDING ADMINISTRATIVE REVIEW

JONATHAN S. FRANKLIN
KEVIN J. HARNISCH
ILANA B. SINKIN
DAVID T. KEARNS
NORTON ROSE FULBRIGHT US LLP
799 9th Street, N.W., Suite 1000
Washington, D.C. 20001
(202) 662-0466
jonathan.franklin@nortonrosefulbright.com

Counsel for Petitioner
Lek Securities Corporation

June 6, 2022

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES:

OS Received 06/30/2022

STATUTES AND RULES:

INTRODUCTION

Lek Securities Corporation ("LSC") files this petition for issuance of a writ under the All Writs Act, 28 U.S.C. § 1651, directing respondent Securities and Exchange Commission ("SEC") to stay cease-to-act determinations issued against LSC by the National Securities Clearing Corporation ("NSCC") and the Depository Trust Company ("DTC"). On March 10, 2022, the Depository Trust and Clearing Corporation ("DTCC"), NSCC's and DTC's corporate parent and a "self-regulatory organization" subject to the SEC's authority, 5 U.S.C. §78c(a)(26), upheld those cease-to-act determinations in a decision ("Hearing Decision," Ex. A hereto)[1] from a hearing panel ("Panel"), and on May 31, 2022 the SEC declined to stay those determinations pending its review of LSC's appeal from the Hearing Decision ("SEC Opinion," Ex. B hereto). Relief is necessary now from this Court because NSCC has agreed to give LSC only ten days' notice before cutting off LSC's vital authorization to provide stock clearing and settlement services to its customers, even though the appeal from the Hearing Decision to the SEC will not even be briefed until mid-August.

LSC therefore respectfully requests that this Court preserve its eventual jurisdiction to review this case by promptly directing the SEC under the All Writs

---

1 All exhibits to this petition were filed in the underlying SEC proceeding, *In re Lek Securities Corp.*, No. 3-20808.

Act, 28 U.S.C. § 1651, to stay the cease-to-act determinations pending the SEC's own review and, if it occurs, later review by this Court. There are ample grounds for exercising that authority. By denying a stay of the cease-to-act determinations, the SEC has ensured that irreparable harm—which the SEC "d[id] not dispute" would occur, SEC Opinion 11, and which is akin to other sanctions this Court has described as "the securities industry equivalent of capital punishment," *PAZ Sec., Inc. v. SEC*, 494 F.3d 1059, 1065 (D.C. Cir. 2007)—will befall LSC once the cease-to-act determinations are implemented. And LSC has a strong likelihood of prevailing on its challenge to those determinations, given that the Panel applied unwritten standards that are meaninglessly vague and imposed a corporate death penalty without adequate justification. But both the SEC and this Court will be effectively deprived from hearing those challenges and preventing the acknowledged irreparable harm to LSC if the determinations themselves destroy LSC's business in the meantime.

Accordingly, this Court should employ its All Writs Act power to immediately direct the SEC to stay implementation of the cease-to-act determinations. Such a stay, which is needed before NSCC and DTC impose their unwarranted penalty, would merely preserve the status quo, thereby avoiding LSC's destruction and protecting this Court's review jurisdiction.

OS Received 06/30/2022

JURISDICTION

This Court has jurisdiction to order the SEC to stay the cease-to-act determinations under the All Writs Act, 28 U.S.C. § 1651. This Court "may issue all writs necessary or appropriate in aid of [its] … jurisdiction[]." *Id*. The Court may therefore issue orders to agencies "to preserve its prospective jurisdiction." *In re NTE Conn., LLC*, 26 F.4th 980, 987 (D.C. Cir. 2022) (citing *Nken v. Holder*, 556 U.S. 418, 327 (2009); *Reynolds Metals Co. v. FERC*, 777 F.2d 760, 762 (D.C. Cir. 1985)). Jurisdiction "extends to the potential jurisdiction of [an] appellate court where an appeal is not then pending but may later be perfected" when a writ would "aid [] the appellate jurisdiction of the higher court which might otherwise be defeated." *FTC v. Dean Foods Co.*, 384 U.S. 597, 603 (1966) (quotation omitted) (alterations added). All Writs Act jurisdiction exists here because this Court has jurisdiction to review final SEC decisions, and therefore has prospective jurisdiction over the eventual SEC decision reviewing the Hearing Decision. *See Stoiber v. SEC*, 161 F.3d 745 (D.C. Cir. 1998); 15 U.S.C. § 78y(a)(1).

ISSUE PRESENTED

Whether cease-to-act determinations issued by self-regulatory organizations that clear and settle public securities transactions should be stayed pending review by the SEC and this Court when those determinations, if not stayed, would likely end petitioner's business before any final, reviewable order could issue.

OS Received 06/30/2022

FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties.

Petitioner LSC is an SEC-registered agency-only, self-clearing broker. LSC's core business involves effecting and clearing trades on the public securities markets for its clients. Stay Mot. Ex. D, ¶¶ 13, 17 (Ex. C hereto).

DTC and NSCC are clearing agencies that supply the infrastructure needed to settle and clear securities transactions. DTCC is their corporate parent. NSCC acts as a central party for clearing and settlement by guaranteeing payment and delivery through its systems. Hearing Decision 1. DTC is a central depository for domestic securities transactions. *Id.* Both NSCC and DTC bear the risk if one party to a trade defaults. *See id.* Both are, in effect, the ***only*** means through which most public securities trades can be settled, and both are subject to oversight from, and review by, the SEC. *See* 15 U.S.C. § 78s(d)(1)-(2); 17 C.F.R. § 240.19d-3. LSC became a member of NSCC and a participant in DTC in 1999. Ex. C, ¶ 20.

B. DTCC's Market Role.

Settlement is the process through which money and securities are actually exchanged between counterparties to a securities transaction. Settlement for stocks occurs two days after a trade, while bond and options trades settle in one day. Hearing Decision 6. During the settlement window, DTCC, through its

subsidiaries, bears the responsibility to receive the securities and payment, and it bears the risk should either party default. *Id.* at 1, 6.

As part of its robust risk-management system, each day NSCC requires each broker-dealer to post margin—*i.e.*, collateral—calculated by NSCC's margin system. *Id*. at 6. NSCC calculates an initial required margin, and it may later adjust that required margin to account for potential swings in a security's price during the settlement window. *Id*. at 6, 11. Broker-dealers' unencumbered funds and unsecured borrowings are used to meet margin requirements. Ex. C, ¶ 52.

C. Factual Background.

The central issue in this petition arises from DTC's and NSCC's cease-to-act determinations, upheld by the Panel and unstayed by the SEC, that will prohibit LSC from providing stock clearing and settlement services to its customers. Those determinations arose from purported concerns over LSC's ability to meet its NSCC margin requirements ***even though LSC has never missed any such payments***. In January 2021, LSC held two bank credit lines totaling $100 million, both of which were closed later that year: a $25 million line with Texas Capital Bank ("Texas Capital") and a $75 million line with Bank of Montreal Harris ("BMOH"). Hearing Decision 7. Of that $100 million in available bank financing, however, only a small portion—$8 million of the BMOH line—were permitted unsecured borrowings available to post margin. Ex. C, ¶¶ 52, 60.

OS Received 06/30/2022

In late 2020, Texas Capital began curtailing its broker-dealer financing business. Ex. C, ¶ 50; *see also* Hearing Decision 13-14. Accordingly, Texas Capital did not renew LSC's credit line when it expired on March 31, 2021, by which time LSC had not even used it for roughly nine months. Ex. C, ¶¶ 50-51. After BMOH provided notice to LSC on July 8, 2021, BMOH closed LSC's credit line in October, 2021. *See* Hearing Decision Ex. 16 at 3 (Ex. D hereto); Ex. C, ¶¶ 63, 73-74.

Meanwhile, LSC took steps to address its continued access to funding. In June, LSC increased a preexisting $12.5 million credit line with Lakeside Bank ("Lakeside") to $30 million. Ex. C, ¶ 30. LSC also increased the unsecured portion of that credit line from $7.5 million to $10 million. *Id.* In addition, earlier that year, in February 2021, in order to further enhance its financing to satisfy NSCC margin requirements, LSC also created the Lek Holdings Note Program (the "Program"), which gave LSC access to significant additional liquidity—currently up to $100 million—through unsecured loans from Lek Securities Holdings Limited ("Lek Holdings"), LSC's parent company. *Id.* ¶¶ 41-43. Through that Program, LSC's customers invest in Lek Holdings, which then can lend that money to LSC on an unsecured basis to cover LSC's margin obligations. *Id.* ¶ 43.

The Lek Holdings Note Program is specifically designed to address the financial impact of any high-margin trades by requiring LSC to receive from the

program sufficient funds ***before those trades are placed***. Indeed, LSC will not enter high-margin trades—any trade in excess of $500,000 or any trade in microcap securities creating an aggregate position over $500—until it receives an advance from Lek Holdings in an amount necessary to offset the margin impact. Stay Mot. Ex. L, ¶¶ 13-14, 27 (Ex. E hereto).

D. Procedural History.

Leading up to their October 26, 2021 cease-to-act determinations, LSC and DTCC corresponded several times. In responding to information requests on April 7, 2021, LSC mistakenly noted that its credit facilities were unchanged, since LSC's Texas Capital credit line had expired a week before. Hearing Decision 14. However, LSC provided DTCC with the relevant portion of an audited financial statement showing an expiration date for that credit line and explained that Texas Capital had been exiting broker-dealer financing arrangements. Hearing Decision Ex. 40, at 2 (Ex. F hereto). The statement also showed that the Texas Capital credit line (which was not unsecured and therefore unavailable for NSCC margin requirements) was not in use. *Id*. LSC made the same disclosures on May 3, 2021, and it unequivocally disclosed the closure of the Texas Capital line ten days later. Hearing Decision Ex. 42, at 2 (Ex. G hereto); Hearing Decision 14.

Similarly, LSC disclosed the pending closure of its BMOH credit line only a few weeks after LSC received a closure timeline from BMOH on July 8, 2021 and

forwarded that letter to DTCC on July 26, 2021 after DTCC had requested information about the BMOH accounts on July 21, 2021. Hearing Decision 14-15, 10; Hearing Decision Ex. 10 (Ex. H hereto). Accordingly, LSC disclosed its correspondence with BMOH long before BMOH closed LSC's credit line in October and two weeks before BMOH made any change to LSC's unsecured credit line. Ex. D at 3.

Months later, on October 26, 2021, DTCC sent LSC notices of the cease-to-act determinations. Hearing Decision, Exs. 1, 2 (Exs. I, J hereto). DTCC primarily claimed that LSC's weak capital and liquidity, coupled with its allegedly inadequate and misleading disclosures, warranted ceasing to provide clearing and settlement services to LSC, and it cited "deficient internal controls" as a third reason. Ex. I at 3-6; Ex. J at 2-5. NSCC immediately imposed an activity cap limiting LSC to $300 million in unsettled trades per day. Ex. I at 1. DTCC also required LSC to post a $27 million daily minimum margin payment—up from an initial $20 million requirement—even if LSC's actual margin was lower; fined LSC $100,000 for violating the $300 million activity cap, raised the cap to $400 million; and fined LSC another $20,000 for violating the raised cap. Hearing Decision, Exs. 3, 4 (Exs. K, L hereto).

LSC timely requested a hearing. *See* Hearing Decision, Ex. 7 (Ex. M hereto). DTCC rejected a hearing on the increased daily minimum required

margin, *see* Hearing Decision 4 n.3, but proceeded with a hearing on the other issues on February 17 and 24, 2022. *See* Stay Mot., Ex. N at 1 (Ex. N hereto); Stay Mot. Ex. O at 1 (Ex. O hereto).

On March 10, 2022, the Panel issued its decision. Although it found the claims regarding LSC's internal controls "insufficient to support a determination as draconian as a cease to act notice," it otherwise found the cease-to-act determinations to be "proper and supported by the evidence." Hearing Decision 13, 20. The "principal[] reason" was a purported concern about LSC's liquidity, even though LSC undisputedly exceeded the SEC's net capital requirement. *Id*. at 5-7. The Panel focused on various aspects of the Lek Holdings Note Program, namely that LSC did not have written procedures regarding the Program's operation. *Id*. at 8. The Panel added that, based on LSC's purported material misstatements, DTCC could not rely on LSC's internal controls or LSC's explanation to be sure exactly how the Program worked. *Id*. at 9-10. The Panel concluded that "LSC has a 'single threaded' source of liquidity" through the Program, which is "highly suspect and unreliable." *Id*. at 12. The Panel so held notwithstanding that it was undisputed that the Program had without exception allowed LSC to satisfy its margin requirements for many months. Hearing Decision 7-9.

Regarding the purported misstatements, the Panel determined primarily that LSC's failure to disclose the changes in its bank credit lines as quickly or clearly as DTCC preferred supported the cease-to-act determinations. LSC's purported "misrepresentations and omissions" regarding its credit lines were "material" because the Panel had already determined that "LSC's liquidity [wa]s inadequate to continue as a NSCC member and DTC participant." Hearing Decision 13. While recognizing that some purported misrepresentations were either explainable or insignificant,[2] it nonetheless held that "LSC showed a repeated pattern of hair splitting and tortured interpretations … to avoid providing DTCC with material information that LSC thought would put LSC in an unfavorable light…." *Id.* at 19. Finally, the Panel affirmed the activity cap and related sanctions. *Id*. at 20.

On March 30, 2022, NSCC informed LSC that it would cease to accept trades for settlement starting May 4, 2022. *See* Stay Opp. Ex. 11 (Ex. P hereto). LSC timely appealed the Hearing Decision to the SEC on April 3, 2022, and simultaneously sought to stay the cease-to-act determinations. *See* Stay Mot. 1 & n.1 (Ex. Q hereto). Subsequently, NSCC deferred implementing the cease-to-act

---

2 *See*, *e.g.*, Hearing Decision 14 (recognizing that LSC disclosed expiration date of Texas Capital line but noting that LSC "could have plainly stated" change to credit line); *id*. at 18 (recognizing that some DTCC information requests "were ambiguous"); *id*. at 19 (noting that LSC's failure to deliver a report for a few months did not justify cease-to-act order).

determinations and agreed to provide LSC at least ten days' notice before doing so. SEC Opinion 5.

On May 31, 2022, the SEC denied LSC's motion for a stay pending review and set a briefing schedule extending through August 15, 2022. *Id*. at 12. The SEC concluded that LSC had not even "raise[d] a serious legal question" because, "[a]t this stage of the proceeding," certain of DTCC's findings "appear to present a reasonable basis for the Decision's conclusion that the Lek Holdings Note Program is unreliable as a means for [LSC] to meet its margin requirements." *Id*. at 7. In the SEC's view, LSC had not shown that DTCC's "concerns" about the Lek Holdings Note Program "[we]re unfounded," *id*. at 7-8; that the standards DTCC applied were too amorphous to have been fair, *id.* at 9-10; or that the cease-to-act determinations were unnecessarily harsh, *id*. at 10-11. Importantly, the SEC "d[id] not dispute that the cease to act determinations will cause [LSC] to suffer irreparable harm." *Id*. at 11. But it ignored that factor based on its decision that LSC raised no "serious legal question on the merits." *Id*. Finally, the SEC briefly determined that ceasing to act would not harm third parties or the public because the governing DTCC rules provide an orderly wind-down process and because DTCC had already "determined that continuing to act for [LSC] poses an unacceptable settlement risk." *Id*. at 11-12.

Because the SEC has denied a stay and DTCC has stated that it will cease to act on as little as ten days' notice, LSC has filed this petition seeking a stay from this Court that will preserve both the status quo and this Court's jurisdiction to review any eventual decision by the SEC. Given the draconian sanctions at issue, unless this Court promptly intervenes, LSC's business could effectively be destroyed before it has had any opportunity to pursue SEC or judicial review.

REASONS WHY THE WRIT SHOULD ISSUE

I. ORDERING THE SEC TO STAY THE CEASE-TO-ACT DETERMINATIONS IS NECESSARY TO PROTECT THIS COURT'S PROSPECTIVE JURISDICTION.

The All Writs Act grants this Court jurisdiction to issue any "writ[] necessary or appropriate in aid of [its] … jurisdiction[]," including its "prospective jurisdiction." *NTE*, 26 F.4th at 987 (quotations omitted). This Court has therefore ordered agencies to maintain the status quo when failing to do so would prohibit this Court from later reviewing their decisions. In *NTE*, this Court issued an emergency writ to stay a FERC order that, if allowed to operate, would have prevented the petitioner from participating in an electricity auction before it could appeal the order. *Id*. at 983. Such an appeal was unripe when the petition was filed, but missing the auction would have been irreversible by the time an appeal could have been filed. *Id.* at 987. Accordingly, the stay protected the Court's prospective jurisdiction over that appeal. *Id.*; *see also Am. Pub. Gas Ass'n v. Fed.*

OS Received 06/30/2022

Power Comm'n, 543 F.2d 356, 357 (D.C. Cir. 1976) (issuing emergency order requiring agency to take action to allow possibility for eventual appeal).

Other courts have taken a similar approach. In *Board of Governors of the Federal Reserve System v. Transamerica Corp.*, 184 F.2d 311, 313 (9th Cir. 1950), the court enjoined the respondent from consummating a complex merger while related Federal Reserve proceedings were ongoing. An injunction was needed because the merger would be irreversible, such that the court's ability to review the Federal Reserve's final action would be jeopardized unless the merger were enjoined in the meantime. *Id.* at 315-16.

The same need arises here. The SEC declined to stay the cease-to-act determinations despite its recognition that they would cause LSC irreparable harm. SEC Opinion 11. The DTC and NSCC are effectively the ***only*** means by which self-clearing brokers like LSC may clear and settle trades. Once the cease-to-act determinations are effective, LSC will no longer be able to provide trade execution services, and its customers will need to transition their accounts to LSC's competitors. Stay Mot. Ex. P., ¶ 10 (Ex. R hereto). Were LSC to somehow survive that process—which is unlikely—even a complete reversal of the Hearing Decision and LSC's reinstatement could not ensure that those lost customers would return to LSC. LSC's injury from even a temporary lapse in market access is

therefore indistinguishable from the injuries that motivated this Court in *NTE* and *American Public Gas Association*. Relief is required here for the same reasons.

Indeed, in reviewing an SEC order regarding a different self-regulatory organization, this Court has described "an order expelling a member from [that self-regulatory organization] or barring an individual from associating with [its] member firm" as "the securities industry equivalent of capital punishment." *PAZ*, 494 F.3d at 1065. The Court has likewise recognized that the "destruction [of a business] in its current form" is an irreparable injury. *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 & n.2 (D.C. Cir. 1977).

LSC faces the same injury. The Panel described the cease-to-act sanction as "draconian," Hearing Decision 13, yet DTCC argued that LSC could somehow change its business from a self-clearing broker into an introducing broker that merely places trades through another broker with settlement privileges, Stay Opp., 16-17 (Ex. S hereto). But that approach would take months without a guaranteed successful outcome. LSC would need to negotiate with another clearing firm, work out the technical challenges between LSC's systems and the new clearing firms, satisfy regulatory requirements and secure necessary regulatory approvals, and find a way to meet its payroll and other obligations, all without its primary source of revenue. Stay Reply 10 (Ex. T hereto). Achieving all those steps before LSC becomes insolvent is unrealistic. And even if that solution were practically

possible—and it is not—LSC's business would still be destroyed "***in its current form***." *Wash. Metro.*, 559 F.2d at 843 (emphasis added).

Thus, implementation of the cease-to-act determinations would leave LSC without the means to pursue its SEC appeal, let alone to litigate any possible appeal in this Court. In addition to protecting LSC's ability to last through the appeal before the SEC, a stay is necessary to protect this Court's jurisdiction over any appeal from the SEC's final order reviewing the Hearing Decision.

II. LSC IS ENTITLED TO A STAY.

This case also meets the traditional requirements for a stay pending appeal. *See NTE*, 26 F.4th at 987. Such a stay seeks only "to maintain the status quo pending a final determination of the merits of [a] suit." *Wash. Metro.*, 559 F.2d at 844. The petitioner must show that it is likely to succeed on its challenge, that it will be irreparably harmed absent a stay, and that a stay will not harm other parties and is in the public interest. *NTE*, 26 F.4th at 987; *Nken*, 556 U.S. at 434. A party need not "show[] a mathematical probability of success." *Wash. Metro.*, 559 F.2d at 844. That is because an order "maintaining the status quo is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury on the movant." *Id.*

LSC satisfies each of these requirements. The Hearing Decision is procedurally and substantively flawed, primarily because it does not rest on any concrete criteria but only on DTCC's asserted unbounded discretion to cease to act for any broker-dealer based on its subjective assessment that the firm poses an unspecified credit risk unsupported by any written criteria. Further, DTCC applied the harshest sanction available—a sanction the Panel itself described as "draconian"—without considering or explaining why a lesser sanction might address its concerns while allowing LSC to continue to operate. And to remove any concern about LSC being a financial risk to DTCC or the market more broadly, LSC has agreed that, during the pendency of the SEC appeal, it will keep its NSCC margin requirements below the $27 million minimum daily deposit that NSCC currently requires from LSC. Ex. T at 1. That minimum is already millions more than LSC's ***actual*** daily margin since last November when the minimum deposit was set to $27 million. Stay Reply Ex. A, ¶¶ 4-5 (Ex. U hereto) (noting average actual margin requirements of roughly $10 million since November, 2021). Consequently, there is no reasonable risk to anyone in preserving the status quo pending the appeal to the SEC. This Court should therefore grant the petition and order the SEC to stay the cease-to-act determinations pending further review.

A. LSC Has A Strong Likelihood Of Success.

The Panel reached the apparently unprecedented conclusion that a solvent broker that has, for over twenty years, never failed to post its required margin or otherwise defaulted on a financial obligation should be wound down. In so holding, the Panel's decision suffers from critical flaws. Its conclusion that "LSC's liquidity position" presented "an unacceptable settlement risk to NSCC"—which the Panel described as the "principal" justification for the cease-to-act determinations, Hearing Decision 5—was unsupported by any identified rule or standard and ignored that LSC's access to unsecured financing for posting margin had increased, not decreased. And the SEC's decision denying a stay was unsupported for essentially the same reasons.

Similarly, the Panel's conclusion that LSC either misrepresented or failed to disclose purportedly "material" information—a conclusion that the SEC did not directly address, *see* SEC Opinion 6-7; Ex. Q at 13-14—ignores that the information at issue was ***not*** material to LSC's ability to meet its required margin obligations, nor was it defined as "material" by any cited rule. Further, the Panel made no attempt to explain why the "draconian" sanction it ordered was necessary for the concerns it expressed—an explanation that was required under precedent and that was especially critical in this case because the Panel cited no concrete NSCC or DTC standards that LSC supposedly violated. The Hearing Decision

therefore amounts to a purely subjective and arbitrary determination that LSC should be permanently barred from its current business for not complying with DTCC's standardless, and largely unstated, preferences.

1. The Panel's Illiquidity Finding Was Improperly Arbitrary.

The Panel's illiquidity finding, as well as the SEC's treatment of it in denying a stay, were improper. Legal sanctions require governing rules to give a "person of ordinary intelligence a reasonable opportunity to know what is prohibited." *Upton v. SEC*, 75 F.3d 92, 98 (2d Cir. 1996) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)). Regulatory standards fail when they either do not provide "fair notice of what is prohibited" or are "so standardless that [they] authorize[] or encourage[] seriously discriminatory enforcement." *FCC v. Fox Tel. Stations, Inc.*, 567 U.S. 239, 253 (2012) (quotation omitted). While self-regulatory organizations "enjoy[] congressionally delegated quasi-governmental powers to discipline their members," those powers are "subject to plenary review by the SEC." *Nat'l Ass'n of Sec. Dealers, Inc. v. SEC*, 431 F.3d 803, 807 (D.C. Cir. 2005). Accordingly, self-regulatory organizations function as "first-level adjudicator[s]" in "disciplinary actions," and the SEC's review of those actions is subject to well-established Administrative Procedure Act standards when reviewed in this Court. *See id.* at 808; *PAZ Sec.*, 494 F.3d at 1065-66 (vacating SEC's

OS Received 06/30/2022

decision affirming self-regulatory authority's expulsion of member); *Saad v. SEC*, 718 F.3d 904, 912-14 (D.C. Cir. 2013) (same).

In *Upton*, the SEC attempted to penalize a company practice that complied with the literal terms of a specific SEC rule. 75 F.3d at 94. The Court held that the penalty was improper at least until the SEC had publicly interpreted that rule to prohibit the accused practice. *Id.* at 98. *See also KPMG, LLP v. SEC*, 289 F.3d 109, 116 (D.C. Cir. 2002) (defendant had no fair notice of SEC's interpretation of self-regulatory organization's rule, even if rule were "reasonably susceptible to" such interpretation); 17 C.F.R. § 240.17Ad-22(e)(1) (SEC rule requiring clearing agencies' "written policies and procedures" to, *inter alia*, "[p]rovide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities").

Under these principles, the Panel's decision that LSC has inadequate liquidity was unfounded. The Panel identified ***no*** objective standard that LSC failed to meet. *Cf.* Hearing Decision 5-12; *see* Ex. N at 236:11-237:19 (DTCC witness admitting that there is no "magic number" for brokers' liquidity and financial obligations). It cited no rule setting a minimum amount of financing LSC was required to maintain, and LSC undisputedly holds substantially more capital than required under the SEC's net capital rule. Hearing Decision 7-8. And while NSCC has mandated—because LSC presents a "heightened" risk from trades in

microcap and illiquid securities, *see id.* at 6, 7 n.10—that LSC maintain a daily minimum deposit of $27 million, LSC has ***never*** failed to post either this or any higher required amount incurred in the ordinary course of its trading.

Tellingly, the only DTC or NSCC rules the Panel cited turn on each agency's subjective determinations. Under NSCC Rule 46, NSCC may "prohibit or limit" access to its services if NSCC, "***in its discretion***," determines that a member "is in such financial or operating difficulty … that such action is necessary…." Hearing Decision 5 n.4 (emphasis added) (quoting NSCC Rule 46, Sec. 1). And DTC Rule 2 states only that the DTC must make a "determination" that a member "meets the standards of financial condition" and has "sufficient financial ability" to make required deposits. *Id.* (quoting DTC Rule 2 Sec. 1(a)). Neither Rule requires a broker to maintain any specific amount of credit in any specific form. The Securities Exchange Act requires DTC and NSCC to provide a "fair procedure with respect to the disciplining of participants … and the prohibition or limitation by [DTC and NSCC] of any person with respect to access to services…." 15 U.S.C. § 78q-1(b)(3)(H). Ceasing to act based solely on an unstated, nebulous standard cannot be considered a "fair procedure."

Nor did the SEC meaningfully confront this problem. It determined only that DTCC's decision was "grounded" in the same standardless, discretionary rules DTCC itself cited. *See* SEC Opinion 9-10. But the problem with DTCC's

OS Received 06/30/2022

determination was not that it failed to cite any rules, but that the rules it did cite are completely standardless. *See Fox Tel. Stations*, 567 U.S. at 253. On that point, the SEC offered only a bald conclusion, in a footnote, that LSC had "not shown that there is a serious question" as to whether the (standardless) rules DTCC applied are "well-founded, clear, [and] transparent." *See* SEC Opinion 9 n.21; 17 C.F.R. § 240.17Ad-22(e)(1). For the same reason, the SEC's discussion of DTCC's factual analysis is flawed. The SEC recited a number of facts that DTCC relied on in reaching its conclusion. *See* SEC Opinion 7-8. But without any identifiable standards to govern DTCC's discretion, the facts to which DTCC cite make its conclusion no less arbitrary.

In any event, DTCC's liquidity concerns were unjustified on their face. As LSC explained, the closure of its two lines of credit in 2021 had no significant effect on its ability to meet its margin requirements in part because (1) nearly all of that credit was ***secured*** and therefore not useful to cover margin,[3] and (2) LSC acquired additional ***unsecured*** credit through Lakeside and the Lek Holdings Note Program. Only $8 million of the $75 million in credit available from BMOH and

[3] If a broker-dealer borrows funds secured by customer assets, it must place those funds into its special reserve account so that they are available to meet customer withdrawals. *See* Ex. C, ¶¶ 32-33 & n.4. Accordingly, secured loans are not useful for meeting margin requirements, as the Hearing Panel appeared to recognize. *See* Hearing Decision 7 n.10 (reasoning that only the unsecured portion of the Lakeside credit line could be used for margin obligations).

OS Received 06/30/2022

none of the Texas Capital credit at the start of 2021 was unsecured and therefore available for margin payments. *See* Ex. C, ¶ 63; Ex. E, ¶ 59. In June 2021, LSC increased its credit line with Lakeside to $30 million, which included an increase in the unsecured portion from $7.5 million to $10 million. Ex. C, ¶ 75.

The Lek Holdings Note Program provided significantly ***more*** unsecured credit than LSC ever received from BMOH. The Panel's concerns about that Program ultimately miss the mark because, as explained above, the Panel never identified any specific liquidity threshold that LSC needed to meet. *See* Ex. N at 236:11-237:19. Moreover, the Program relies on NSCC's own calculation of margin to compute the required margin for a trade and places that trade ***only if*** it receives in advance from its corporate parent funds derived from the customer's purchase of a note to cover the margin that the trade requires, as well as a "cushion" to account for any margin fluctuations that might occur prior to settlement. Ex. N at 76:11-79:11; Ex. E, ¶¶ 13-14, 27. That means high-margin trades are not even entered unless LSC has the funds to cover the resulting margin.

The Panel discounted this "novel and inventive" program as a viable source of funding because of supposed "numerous disqualifying features," Hearing Decision 8, 10-11, and the SEC merely repeated them in denying a stay, SEC Opinion 8, 10. But the Panel's concern that some of the steps required for LSC to receive funds from the Lek Holdings Note Program are not "required through any

contract, rule or other legally binding requirement," Hearing Decision 8, amounts to a mere quibble. LSC ***will not enter*** trades that have a significant margin impact unless and until LSC receives funds up front to cover the resulting margin obligations, and there is no evidence to the contrary. *Supra* at 6. Accordingly, any concerns about whether the Program was sufficiently documented miss the mark because trades will not occur unless LSC first receives the appropriate margin funds. And any concern about the lack of documentation could have been addressed by requiring additional documentation, rather than ceasing to act for LSC. *See infra* at 26-27; *see also* NSCC Rule 15, Sec. 2(b) (offering non-exhaustive list of "assurances" NSCC can require from members). Accordingly, the Panel's liquidity findings were arbitrary and fundamentally flawed.

2. The Panel's Misrepresentation Finding Was Arbitrary.

The Panel's finding that LSC misrepresented or failed to disclose purportedly "material" information was similarly improper.[4] The Panel cited no rule from either DTC or NSCC that defines "material" information. *See* Hearing Decision 13 n.19. That is because no such rule exists. But the NSCC Rules do provide examples of material information:

> Each Member shall submit to the Corporation written notice of any event that would effect a change in control of the participant or could

[4] The SEC did not address this issue in denying a stay. *Supra* at 17.

> have a material impact on such participant's business and/or financial condition, including but not limited to:
>
> (i) material changes in ownership, control or management;
>
> (ii) material changes in business lines, including but not limited to new business lines undertaken; or
>
> (iii) participation as a defendant in litigation which could reasonably be anticipated to have a direct negative impact on the participant's financial condition or ability to conduct business.

NSCC Rule 2B, Sec. 2(B)(b) (https://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf). There is no allegation that LSC ever failed to provide any information specifically identified in this rule.

The Panel focused primarily on LSC's supposed failure to disclose information relating to the closure of its credit lines, predominately ***secured*** financing, with BMOH and Texas Capital. *See* Hearing Decision 13-17. But the Panel cited no standard, precedent, or other authority requiring the disclosure of information concerning ***secured*** credit lines—which are generally immaterial for purposes of posting margin, *see supra* note 5—as an example of "material" information. *See* NSCC Rule 2B, Sec. 2(B)(b). Accordingly, the governing rules provided no reasonable notice to LSC that failing to immediately report information concerning its secured credit line would be grounds for the draconian sanction the Panel affirmed. *See Upton*, 75 F.3d at 98 (law must adequately inform parties as to what is prohibited).

OS Received 06/30/2022

Nor did the Panel's attempt to fill this gap suffice. The Panel reasoned that it could not determine whether credit information was material until LSC disclosed it. Hearing Decision 15-16. But under that logic, a broker would have to disclose every conceivable fact about its business just to avoid the possibility that the DTC or NSCC might later find out about it, determine it was "material," and then assess a "draconian" sanction on that basis. Accepting that standardless approach would give DTCC carte blanche to cut off settlement services to any member for any reason or no reason at all, which is impermissible. *See Fox Tel. Stations*, 567 U.S. at 253; 17 C.F.R. § 240.17Ad-22(e)(1).

In fact, LSC could reasonably consider the changes to its credit lines immaterial, since they were mostly neutral in light of LSC's actual use of them. LSC's credit line with Texas Capital had no unsecured component, and LSC had not used it for about nine months when it closed. Ex. C, ¶¶ 51-52. Similarly, throughout 2021 LSC used only about a third of its secured credit with BMOH. *Id*., ¶ 58-59. And only $8 million of the BMOH credit line was unsecured. *See id.*, ¶¶ 63-64. Meanwhile, LSC had increased the unsecured portion of its credit line with Lakeside from $7.5 million to $10 million. *See id*., ¶ 30. And the Lek Holdings Note Program—which has operated exactly as intended and can supply substantially more unsecured credit to fund increased trading—was already in place by then. *Supra* at 6.

Even the Panel's treatment of LSC's purported disclosure failures makes little sense. The Panel recognized that ultimately LSC ***did***, in fact, disclose the expiration of Texas Capital credit line. *See* Hearing Decision 14; Ex. F at 2; Ex. G at 2. Accordingly, the purported failure to disclose this information is merely a quibble over the ***manner*** in which LSC disclosed it. Further, the evidence that BMOH informed LSC that it would close its credit line on July 8, 2021, and that LSC disclosed this information a mere "two and a half weeks" later. Hearing Decision 14-15. Given that the credit line would remain mostly in place until October of that year, LSC's short delay could hardly be considered material.

3. DTCC's "Draconian" Sanction Was Unsupported And Unnecessary Under The Circumstances.

DTCC offered no real justification for its admittedly draconian sanction, especially when other, lesser sanctions could have addressed its concerns. When a government agency "chooses to order the most drastic remedies at its disposal," it must "show with particularity the facts and policies that support those sanctions and why less severe action would not serve to protect investors." *Steadman v. SEC*, 603 F.2d 1126, 1137, 1139 (5th Cir. 1979); *see also id.* at 1139 ("Where, as here, the most potent weapon in the [SEC's] arsenal of flexible enforcement powers is used, the [SEC] has an obligation to explain why a less drastic remedy would not suffice.") (quotation omitted). This Court has likewise held that an agency "must be particularly careful to address potentially mitigating factors

before it affirms an order expelling a member from [a self-regulatory organization] or barring an individual from associating with [its] member firm," since that sanction is "the securities industry equivalent of capital punishment." *PAZ*, 494 F.3d at 1065-66;[5] *see also Saad*, 718 F.3d at 912-14.

Here, DTCC failed to justify its sanction. Ceasing to act is the strongest sanction DTCC could levy, but each of its stated concerns are correctable. For example, DTCC raised concerns that LSC's internal controls and documentation were not sufficiently robust to ensure that the Lek Holdings Note Program continues to work as it has since its inception. Hearing Decision 8. But a lesser sanction such as requiring LSC to modify those internal controls would have addressed DTCC's concerns. *See*, *e.g.*, NSCC Rule 15 Sec. 2(b) (listing adequate assurances NSCC can demand regarding members for which it has financial or operational concerns). Indeed, for months DTCC has required LSC to maintain minimum daily margin of $27 million, even though its actual margin requirements are typically much less, *see* Ex. K at 2-3, and LSC has met this requirement without fail. Similarly, LSC has taken its own steps to mitigate margin concerns

---

5 Although this Court later upheld the SEC's affirmance of the expulsion order at issue in *PAZ*, it did so only after remanding the case to ensure the SEC had fully considered the relevant issues. *See* 494 F.3d 1066; *PAZ Sec., Inc. v. SEC*, 566 F.3d 1172, 1176 (D.C. Cir. 2009). Without an order staying the cease-to-act determinations now, however, LSC would likely be defunct before the SEC could even act initially.

OS Received 06/30/2022

by using its robust risk-control systems to block trades in excess of $500,000 and high-margin microcap trade in excess of $500 unless LSC first receives funds from Lek Holdings to cover the margin that trade generates. Ex. E, ¶ 13-14, 27. Given these other effective remedies, imposing "the securities industry equivalent of capital punishment," *PAZ*, 494 F.3d at 1065, was improper.

The SEC's treatment of this issue fares worse. The SEC claimed that LSC identified no statute or governing rule to require that DTCC explain why a lesser sanction than its self-described "draconian" one would not have sufficed. SEC Opinion 10-11. But LSC cited to *Steadman*, 603 F.2d at 1137, which articulates that very principle. *See* Ex. Q at 13. Further, the SEC accepted at face value DTCC's wholly conclusory assertion that in unspecified "other cases" where a cease-to-act determination has been threatened,[6] firms "took steps to increase capital and liquidity to levels sufficient to meet their obligations." SEC Opinion 11. But DTCC here levied its harshest sanction without ever explaining what amount of capital or liquidity would suffice, despite LSC's repeated inquiries into what amount DTCC would consider adequate.

---

6 The DTCC exhibit the SEC apparently refers to states only that DTCC recounted only other circumstances in which it "***considered*** ceasing to act" but did "not proceed[] with a formal cease to act" after the member firm responded to its concerns one way or another. Stay Opp. Ex. 18, ¶ 4 (Ex. V hereto).

Similarly, the Panel made no attempt to justify ceasing to act based on LSC's purported failure to report information that was immaterial to the margin concerns DTCC raised. Nearly all of the credit LSC could previously access through BMOH and Texas Capital was ***secured*** credit that was not useful for covering LSC's margin requirements. And LSC more than offset the ***un***secured credit from BMOH that closed in late 2021 through expanded credit from Lakeside and the Lek Holdings Note Program earlier that year. While LSC may not have consistently produced all of the information requested as promptly or as clearly as DTCC would have liked, the Panel admitted that the DTTC's requests were at times ambiguous. *Supra* at 10 & n.2.

B. LSC Will Suffer Irreparable Injury Absent A Stay.

As already explained, LSC will suffer irreparable harm unless DTCC's cease-to-act determinations are stayed pending review. Being able to self-clear is the core of LSC's business; being unable to provide those services is effectively a corporate death sentence. *See PAZ*, 494 F.3d at 1065. Indeed, the SEC has not disputed that LSC will suffer irreparable harm, and it further cited NSCC's rules allowing it to "provide notice" to LSC's customers of its determination not to act for LSC as part of an orderly process of removing LSC from its access to clearing services. *See* SEC Opinion 11-12. But providing clearing and settlement services

is LSC's core business. Accordingly, even the SEC recognizes that the cease-to-act determinations will effectively shut down LSC.

Even if LSC were to somehow survive such a fundamental blow, it would still suffer irreparable harm. Financial harm can be "irreparable where no adequate … corrective relief will be available at a later date…." *NTE*, 26 F.4th at 990-91 (quotation omitted). Here, even if LSC could miraculously manage to survive its loss of clearing and settlement services during the time the SEC, and then, if necessary, this Court, reviews this matter, it will necessarily have lost most of its customers and goodwill in the meantime. Any ultimate reversal of DTCC's cease-to-act determinations will not require those lost customers to return—and LSC could not seek monetary compensation from DTCC in this case—so even complete vindication on appeal would not and could not make LSC whole. LSC therefore faces irreparable injury if the cease-to-act determinations go into effect as planned.

C. A Stay Will Not Injure Other Parties And Favors The Public Interest.

Finally, the remaining stay factors both support an order staying the cease-to-act determinations. First, no party faces any likely injury if the status quo is maintained pending review. In its filing with the SEC, DTCC claimed only that a stay would harm other parties because LSC poses a risk to the market, Ex. S at 17-19, which the SEC accepted with minimal discussion, SEC Opinion 12. But that is just a restatement of the purported merits of DTCC's decision, which, as

explained above, are merely arbitrary pronouncements. Neither DTCC nor the SEC has cited to any evidence as to how allowing a company that has ***never*** missed a margin payment or defaulted on a financial obligation, and is subject to the current activity cap and daily margin requirement, to continue operating will present any market risk.

This Court has rejected similar attempts by other agencies to conflate their views on the merits with any likelihood of harm. In *Washington Metropolitan*, this Court rejected a claim that allowing the petitioner to operate during review of a transit commission's decision would "seriously undermine[] the stability of the motor coach tour service industry." *See* 559 F.2d at 843 & n.3. This Court held that that claim was unsubstantiated at least without any evidence of a "severe economic impact" on other parties. *Id*.

DTCC's allegation of harm to the market is no more substantiated here. LSC has been operating for decades and has never once failed to meet its margin fund requirements, Ex. C, ¶ 20; indeed, DTCC's cease-to-act determinations in this case appear to be unprecedented in this respect. LSC explicitly represented to the SEC that it would be willing to condition any stay on maintaining the $27 million minimum margin obligations that NSCC has been imposing for months, such that NSCC will necessarily have sufficient collateral on hand from LSC in the event

LSC were to default. Ex. T at 1. These conditions remove any concerns about LSC being able to meet its margin obligations during the pendency of the appeal.

The Panel's conclusion that LSC's purportedly inadequate liquidity somehow poses a threat to the entire financial system, *see* Hearing Decision 2; Ex. S at 4, is wholly unfounded. LSC is relatively small and provides clearing and custody services to a niche market. Ex. Q at 17. The Panel never explained how a margin default by LSC—which there is no evidence would ever occur—could conceivably cause any serious damage to the stability of the broader trading markets. That is especially true in light of DTCC's claim that it already collects from its members margin payments sufficient to "ensure a confidence level that exceeds 99 percent" for each member. Hearing Decision 6. Any claim that LSC poses a market-wide risk rings hollow.

Finally, staying the Hearing Decision so that LSC can challenge it serves the public by limiting the ability of monopoly self-regulatory organizations to arbitrarily control the market. As explained above, the Hearing Decision rested its self-described "draconian" sanction purely on discretionary, undefined criteria. *Supra* at 19-20. DTCC, as confirmed by its Panel, found that LSC poses a threat to the market because it does not have enough liquidity to cover its margins—even though it has always done so and takes affirmative steps to ensure it does not enter trades before receiving sufficient cash to offset resulting margin obligations—but

neither the Panel nor DTCC ever explained how much liquidity would be enough. Similarly, the Panel found that LSC did not adequately disclose material information, but cited no rule establishing that that information at issue was material. Allowing DTCC to cut off clearing and settlement services without even articulating the standards for doing so would damage the market in addition to flouting governing law. Nor is the public served by allowing DTCC to put that decision effectively beyond review simply by imposing a sanction so severe that LSC likely cannot survive to challenge it.

CONCLUSION

LSC respectfully requests that the Court immediately issue an order under the All Writs Act directing the SEC to staying the cease-to-act determinations pending review of those determinations by the SEC and, if necessary, this Court.

June 6, 2022

Respectfully submitted,

/s/ Jonathan S./ Franklin

Jonathan S. Franklin
Kevin J. Harnisch
Ilana B. Sinkin
David T. Kearns
NORTON ROSE FULBRIGHT US LLP
799 9th Street, N.W., Suite 1000
Washington, D.C. 20001
(202) 662-0466
jonathan.franklin@nortonrosefulbright.com

Counsel for Petitioner Lek Securities Corporation

CERTIFICATE OF COMPLIANCE

I hereby certify that that the foregoing petition complies with the type-volume limitations of Fed. R. App. P. 21(d), excluding the items exempted by Fed. R. App. P. 32(f), because it contains 7,765 words. I further certify that the foregoing petition complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) and (a)(6) because it was prepared in Microsoft Word using a proportionally spaced, Times New Roman, 14-point font.

Dated: June 6, 2022

Respectfully submitted,

/s/ Jonathan S. Franklin
Jonathan S. Franklin

Counsel for Petitioner Lek Securities Corporation

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rules 21(d) and 28(a)(1)(A), Petitioner Lek Securities Corporation submits this certificate as to parties, rulings, and related cases:

Parties, Intervenors, and Amici

Lek Securities Corporation is the Petitioner in this action, and the Securities and Exchange Commission is the Respondent. At this time no other party has moved to intervene in this Court, and there are no amici curiae.

In the decision currently appeal to the Securities and Exchange Commission, the National Securities Corporation, Depository Trust Corporation, and Depository Trust and Clearing Corporation are appellees.

Rulings Under Review

No ruling is directly under review in this Petition, but the SEC did issue a relevant interlocutory order denying a stay. *See In re Lek Securities Corp.*, Exchange Act Release No. 95014 (May 31, 2022) (attached hereto as Exhibit B).

Related Cases

Petitioner Lek Securities Corporation is not aware of any cases relating to the subject matter of this Petition.

Dated: June 6, 2022

Respectfully submitted,

/s/ Jonathan S. Franklin
Jonathan S. Franklin

Counsel for Lek Securities Corporation

CORPORATE DISCLOSURE STATEMENT OF LEK SECURITIES CORPORATION

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rules 21 and 26.1, Lek Securities Corporation states as follows:

a) Lek Securities Corporation is a wholly-owned subsidiary of Lek Securities Holdings Limited, which is privately owned. No publicly-held corporation has a 10% or greater ownership in Lek Securities Corporation.

b) Lek Securities Corporation is an agency-only, independent, order-executing, self-clearing broker engaged in the business of executing and clearing orders to trade securities, including equities, options, and fixed-income instruments.

Dated: June 6, 2022

Respectfully submitted,

/s/ Jonathan S. Franklin
Jonathan S. Franklin

Counsel for Lek Securities Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2022, I caused copies of the foregoing Petition for Review and Corporate Disclosure Statement to be delivered via first-class mail to the following, as well as a courtesy copy delivered by email to the Office of the Secretary:

Vanessa A. Countryman
Secretary
Office of the Secretary, Securities & Exchange Commission
100 F Street NE
Washington, DC 20549
(202) 551-5400
Secretarys-Office@sec.gov

Dan Berkovitz
General Counsel
Office of the General Counsel, Securities & Exchange Commission
100 F Street NE
Washington, DC 20549
(202) 551-5100

Counsel for Securities and Exchange Commission

And to the following, who were the primary persons to be served for the parties to the proceedings below as they appeared in the SEC proceeding:

DTCC Corporate Secretary
55 Water Street #21
New York, NY 10041
corporatesecretary@dtcc.com

Margaret A. Dale
Timothy E. Burroughs
Benjamin J. Catalano
11 Times Square
New York, NY 10036
mdale@proskauer.com
tburroughs@proskauer.com
bcatalano@proskauer.com

James R. Anderson
One International Place
Boston, MA 02110
jaanderson@proskauer.com

Counsel for Depository Trust & Clearing Corporation, National Securities Clearing Corporation, and The Depository Trust Company

Dated: June 6, 2022

Respectfully submitted,

/s/ Jonathan S. Franklin
Jonathan S. Franklin

Counsel for Petitioner Lek Securities Corporation

OS Received 06/30/2022

ADDENDUM – INDEX OF EXHIBITS

Exhibit	Description
A	Hearing Decision (DTCC Mar. 10, 2022)
B	*In re Lek Securities Corp.*, Exchange Act Release No. 95014 (SEC May 31, 2022)
C	Stay Motion Ex. D, Affirmation of Charles F. Lek (Excerpted)
D	Hearing Decision Ex. 16, July 8, 2021 Letter from BMOH
E	Stay Motion Ex. L, Reply Affirmation of Charles F. Lek (Excerpted)
F	Hearing Decision Ex. 40, Apr. 7, 2021 Lek Securities Information Response (Excerpted)
G	Hearing Decision Ex. 42, May 3, 2021 Lek Securities Information Response
H	Hearing Decision Ex. 10, July 26, 2021 Lek Securities Information Response
I	Hearing Decision Ex. 1, Oct. 26, 2021 NSCC Cease-to-Act Determination
J	Hearing Decision Ex. 2, Oct. 26, 2021 DTC Cease-to-Act Determination
K	Hearing Decision Ex. 3, Nov. 5, 2021 DTCC Notice of Modified Activity Cap and Fines
L	Hearing Decision Ex. 4, Nov. 7, 2021 DTCC Notice of Violation of Activity Cap and Fines
M	Hearing Decision Ex. 7, Nov. 9, 2021 Lek Securities Written Statement Supporting Hearing Request
N	Stay Motion Ex. N, Transcript of Feb. 17, 2022 Hearings (Excerpted)
O	Stay Motion Ex. O, Transcript of Feb. 24, 2022 Hearings (Excerpted)
P	Opposition to Stay Motion Ex. 11, Apr. 4, 2022 Email from DTCC Counsel Indicating Cease-To-Act Dates
Q	Stay Motion, Apr. 3, 2022 (Excerpted)
R	Stay Motion Ex. P, Affirmation of Charles F. Lek
S	Opposition to Stay Motion, Apr. 8, 2022 (Excerpted)
T	Reply Supporting Stay Motion, Apr. 13, 2022 (Excerpted)
U	Reply Supporting Stay Motion Ex. A, Affirmation of Charles F. Lek
V	Opposition to Stay Motion Ex. 18, Declaration of Timothy Cuddihy

EXHIBIT A

Before a Hearing Panel of The Depository Trust & Clearing Corporation

----------X

In the matter of

LEK SECURITIES CORPORATION.

----------X

This Hearing Panel of the Depository Trust & Clearing Corporation ("DTCC") has been duly constituted pursuant to the rules applicable to DTCC, including the Rules of the National Securities Clearing Corporation ("NSCC")[1] and The Depository Trust Company ("DTC").[2] This constitutes the Hearing Panel's decision with regard to the appeal by Lek Securities Corp. ("LSC") of certain determinations made by NSCC, DTC, and/or DTCC, regarding LSC, as identified particularly below.

As discussed herein, we find that the cease to act determinations by NSCC and DTC regarding LSC were appropriate and supported by the evidence. We also find that the activity cap, financial penalties and censures applied to LSC were also appropriate and supported by the evidence.

I. BACKGROUND AND PROCEDURAL HISTORY

DTCC, through its several subsidiaries, serves as the leading post-trade market infrastructure in the securities industry. It stands at the center of global trading activity, daily processing trillions of dollars of securities transactions. Through its subsidiaries, DTCC offers services in clearance, settlement, asset servicing, global data management and information services for equities, corporate and municipal bonds, government and mortgage-backed securities, derivatives, money market instruments, syndicated loans, mutual funds, alternative investment products and insurance transactions. DTCC is owned and governed by its user members, also known as participants, all of whom commit capital as owners, pay fees for its services and ultimately benefit from the safeguards, efficiencies and risk mitigation that DTCC provides to all its members.

NSCC provides central counter-party clearance and settlement services, guaranteeing payment and delivery of securities for counterparties through its Continuous Net Settlement system for virtually all transactions in equities and other types of securities in the United States. Because NSCC guarantees completion of each member's unsettled transactions in the event of a default, it is potentially exposed to substantial credit risk. DTC is a central securities depository for U.S. transactions in equity and other securities. As such, DTC is faced with the credit risks associated with each participant's end-of-day net funds settlement of securities transactions on each business day. (Affidavit of Timothy J. Cuddihy, sworn to December 23, 2021 ("Cuddihy Aff."), at ¶ 6.)

[1] *See* NSCC Rules 37 and 46.
[2] *See* DTC Rule 22.

OS Received 06/30/2022

Each of NSCC and DTC has been named a "Systemically Important Financial Market Utility," or "SIFMU," by the Federal Financial Stability Oversight Council, two of only eight financial institutions functioning as Financial Market Utilities, or FMUs, in the United States to be named SIFMUs. A SIFMU is systemically important because the failure of or a disruption to a FMU that is so designated as a SIFMU could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the entire United States financial system. Among other things, SIFMUs face heightened standards for their Boards of Directors, comprehensive and broader risk management expectations, and expanded rules and procedures requirements concerning liquidity risks.

To help fulfill its obligations, DTCC maintains robust risk management systems, including groups devoted to analyzing and managing Counterparty Credit Risk and Systemic Risk functions. Both NSCC and DTC are clearing agencies registered with the United States Securities and Exchange Commission ("SEC") and are subject to strict requirements by the SEC and other regulatory bodies. DTCC's risk management functions identify and monitor potential threats to NSCC, DTC, their respective members and participants, and the securities marketplace generally, from risks of a member's default in its settlement obligations.

LSC is a wholly owned subsidiary of Lek Securities Holdings Limited. (Affirmation of Charles F. Lek, dated December 27, 2021 ("Lek Aff."), at ¶ 13.) LSC has been a member of NSCC and a participant in the DTC system since 1999. (Lek Aff. ¶ 20.)

On October 26, 2021, DTCC sent two separate letters to LSC, each informing LSC of a cease to act determination regarding LSC by each of NSCC and DTC. Each letter was sent by Andrew I. Gray, Managing Director and Group Chief Risk Officer of DTCC.

By letter dated October 26, 2021, Mr. Gray provided to LSC a certain "Notice of NSCC's Determination to Cease to Act for Lek Securities Corp. ("Lek") and Summary Limitation of Clearing Activity" (the "October 26 NSCC Cease to Act Notice"). The cease to act determination was made pursuant to two separate NSCC Rules: Rule 46, Section 1, and Rule 2A, Section 1.g.ii.

As stated in the October 26 NSCC Cease to Act Notice, NSCC Rule 46, Section 1, provides in relevant part:

> The Board of Directors may suspend a Member … or prohibit or limit such participant's access to services offered by the Corporation in the event that … (c) the participant is in such financial or operating difficulty, that the Corporation determined, in its discretion, that such action is necessary for the protection of the Corporation, the participants, creditors or investors … (f) such participant has failed to comply with any financial or operational requirement of the Corporation, or (g) in any circumstances in which, in the discretion of the Corporation, adequate cause exists to do so.

Also as stated in the October 26 NSCC Cease to Act Notice, with respect to the cease to act, NSCC Rule 2A, Section 1.G.ii, provides in relevant part:

OS Received 06/30/2022

> The Corporation may . . . . cease to act for any participant when such participant or its Controlling Management has a record that reflects . . . the applicant or its Controlling Management is responsible for . . . making a misstatement of a material fact or has omitted to state a material fact to the Corporation in connection with its application to become a Member or thereafter …

The October 26 NSCC Cease to Act Notice informed LSC that the determination to cease to act for LSC was based upon three separate grounds, which are discussed below. Under this cease to act determination, once fully implemented, LSC will be restricted from access to the NSCC system.

In addition to the cease to act determination, the October 26 NSCC Cease to Act Notice also imposed an "Activity Cap" on LSC. Pursuant to the Activity Cap, LSC's "aggregate unsettled clearing activity as measured by the gross market value of its unsettled portfolio each business day coinciding with the approval of Lek's start-of-day margin call" was limited to $300 million. The Activity Cap was imposed, like the cease to act, pursuant to NSCC Rule 46, Section 1, and was to remain in place pending any hearing and final determination regarding the cease to act determination.

The October 26 NSCC Cease to Act Notice stated, among other things, that LSC had a right to request a Hearing pursuant to NSCC Rules 37 and 46 for the purpose of objecting to NSCC's cease to act determination and Activity Cap. The October 26 NSCC Cease to Act Notice further provided instructions to LSC on the procedures required to request such a hearing, should LSC wish to do so.

By separate letter dated October 26, 2021, Mr. Gray also provided to LSC a "Notice of DTC's Determination to Cease to Act for Lek Securities Corp." (the "October 26 DTC Cease to Act Notice"; the October 26 DTC Cease to Act Notice and the October 26 NSCC Cease to Act Notice are sometimes referred to herein collectively as the "October 26 Cease to Act Notices"). According to the October 26 DTC Cease to Act Notice, the cease to act determination was based on DTC Rule 10, which the letter stated provided in relevant part:

> Based on its judgment that adequate cause exists to do so, the Corporation may at any time (a) cease to act for a Participant with respect to … transactions generally … Adequate cause for ceasing to act for a Participant or terminating a Participant's right to act as a Settling Bank shall be deemed to exist if: … (vi) the Board of Directors, or a committee authorized thereby, shall have reasonable grounds to believe (A) that the Participant or its Controlling Management to be responsible for … (2) making a misstatement of a material fact or omitting to state a material fact to the Corporation in connection with its application to become a Participant or thereafter … or (B) that such ceasing to act is necessary for the protection of the Corporation, other Participants or Pledgees or to facilitate the orderly and continuous performance of the Corporation's services . . ".

The October 26 DTC Cease to Act Notice cited as its basis the same three grounds as in the October 26 NSCC Cease to Act Notice. Under this cease to act determination, once fully implemented, LSC will be restricted from access to the DTC system.

The October 26 DTC Cease to Act Notice informed LSC that it had a right to a hearing pursuant to DTC Rule 22.

By letter dated November 5, 2021 (the "November 5 NSCC Notice"), Mr. Gray informed LSC that NSCC had determined, in response to LSC's request, to increase the Activity Cap applicable to LSC unsettled daily clearing activity to $400 million. However, the November 5 NSCC Notice also noted that LSC had violated the $300 million Activity Cap on each of November 1, 2, 3, 4, and 5, 2021. The November 5 NSCC Notice informed LSC that, pursuant to NSCC Rule 48, NSCC had determined to impose a $20,000 penalty on LSC for each violation, for an aggregate penalty of $100,000. The November 5 NSCC Notice also informed LSC that in addition to the financial penalty, LSC was being censured via publication to the NSCC membership. Like the two notices on October 26, 2021, the November 5 NSCC Notice informed LSC of its right to request a hearing regarding the imposition of these penalties.

By letter dated November 7, 2021 (the "November 7 NSCC Notice"), Mr. Gray informed LSC that because LSC had violated the Activity Cap (under both the $300 million and $400 million limit) on November 8, 2021, NSCC was imposing an additional censure and fine of $20,000 on LSC. Like the other letters, the November 7 NSCC Notice informed LSC of its right to request a hearing regarding the imposition of the censure and fine.

By letter dated October 29, 2021, counsel for LSC formally objected to DTCC's determinations as conveyed in the October 26 NSCC Cease to Act Notice and the October 26 DTC Cease to Act Notice and requested a hearing regarding each of NSCC's and DTC's determinations to cease to act for LSC and the Activity Cap. In addition, by letter dated November 8, 2021, counsel for LSC objected to the determinations in the November 5 NSCC Notice and the November 7 NSCC Notice modifying the Activity Cap and imposing fines and censures on LSC.[3]

Pursuant to NSCC Rules and DTC Rules, which are identical in this regard, a hearing panel (the "Hearing Panel") was duly appointed to hear LSC's appeal of the referenced determinations by NSCC and DTC. The undersigned members of the Hearing Panel are all members of the DTCC Board of Directors. As provided for in the NSCC Rules and DTC Rules, which are substantively identical in this regard, each of LSC and DTCC appeared before this panel, submitted written testimony and documents, and participated in a live hearing held over an electronic platform on February 17, 2022, and February 24, 2022, to hear further testimony of the witnesses who had submitted written testimony.

[3] In its November 8, 2021, letter, LSC also objected to NSCC's determination to increase LSC's minimum Required Fund Deposit, as communicated in the November 5 NSCC Notice. In a written opinion dated December 8, 2021, this Hearing Panel ruled that NSCC's determination to increase LSC's minimum Required Fund Deposit was not subject to review under NSCC Rules by a Hearing Panel.

OS Received 06/30/2022

In total, LSC submitted affirmations or affidavits from three witnesses and a total of 87 documents or other exhibits. DTCC submitted three affidavits and a total of 61 documents or other exhibits. In addition to evidence, each party also submitted opening and reply memoranda of law and demonstrative exhibits used during closing arguments, which are included in the record. Also included in the record are various letters submitted by the parties on discrete issues, on their own initiative or at the request of the Hearing Panel. Finally, the record includes transcripts of the proceedings on each hearing day.

Following closing arguments on February 24, 2022, the Hearing Panel closed the record. The Hearing Panel read and considered all parts of the record in reaching its decision, whether or not specifically referenced herein. This opinion constitutes the decision of the Hearing Panel.

II. THE DETERMINATIONS TO CEASE TO ACT

As noted above, each of the NSCC and DTC determinations to cease to act for LSC were based on the same three grounds: (i) LSC's weak capital and liquidity position; (ii) LSC's deficient internal controls; and (iii) LSC's inadequate responses, failures to respond, and misleading representations, all in connection with communications with DTCC's risk management staff. We will address each in turn.

A. LSC's Weak Capital and Liquidity Position

The first, and in our view principal, reason for the October 26 Cease to Act Notices was that LSC's liquidity position, including its capital position, was so weak as to present an unacceptable settlement risk to NSCC and NSCC's members other than LSC.

Under both DTC and NSCC rules, membership can only be granted or maintained by a member that has the capability, in DTCC's judgment, to meet its financial obligations to DTCC.[4]

In the financial industry, settlement is the term applied to the exchange of payment to the seller and the transfer of securities to the buyer of a trade. It's the final step in a securities transaction. DTC is the central securities depository for equity securities, such as common stock and debt securities. DTC also processes other types of securities movements such as institutional deliveries, stock loans and financing transactions, including the pledging of securities to the Federal Reserve, commercial banks or the Options Clearing Corporation.

[4] DTC Rule 2 provides, in part: "The Corporation shall approve applications only upon a determination by the Corporation that the applicant meets the standards of financial condition . . . (a) the applicant has demonstrated that it has sufficient financial ability to make any Required Participants Fund Deposit and Required Preferred Stock Investment and meet all of its anticipated obligations to the Corporation . . ."
NSCC Rule 1 provides, in part: "In furtherance of the Corporation's rights and authority to establish standards for membership, the Corporation shall establish, as it deems necessary or appropriate, standards of financial responsibility, operational capability, experience and competence for membership applicable to Members and to Limited Members."
NSCC Rule 46, section 1, provides, in part, "The Board of Directors may . . . prohibit or limit such participant's access to services offered by the Corporation in the event that . . . (c) the participant is in such financial or operating difficulty, that the Corporation determined, in its discretion, that such action is necessary for the protection of the Corporation, the participants, creditors, or investors . . ."

Settlement is the exchange of money and securities between the parties of a trade. Stock trades are settled in 2 business days (T+2), while government bonds and options are settled the next business day (T+1). Because it takes time to settle a trade and to protect the financial integrity of the market, NSCC requires collateral from its member firms. Because trading volume and risk changes every day, firms must adjust their collateral at NSCC daily. Brokers such as LSC must post collateral with NSCC because of the substantial financial risk between the time the securities are purchased to when they are settled.

In the settlement process, NSCC operates as a seller for every buyer, and buyer for every seller. This means that NSCC assumes the responsibility and the risk for receiving, delivering, and paying for the securities. A failure of this system could cause default after default, with the effect of jeopardizing the entire financial system. As Timothy Cuddihy, a Managing Director for Financial Risk Management for DTCC, testified at the hearing, it is through risk management assessments that DTCC seeks "not just to protect the clearing agencies themselves, but also to protect the members, because the clearing agencies mutualize risk among the members, and the market and as the Exchange Act requires." (Tr. 2.24.22 at 490.[5]) NSCC is required to ensure to a confidence level that exceeds 99 percent that its risk-based margin system will cover its potential exposure to default by a member. (Affidavit of Michael Leibrock, sworn to December 23, 2021 ("Leibrock Aff.") ¶ 7.)

LSC, like every NSCC member, is subject to stringent requirements to post margin collateral, and moreover to have available additional sources of liquidity and capital to meet its margin requirements. This is a particularly sensitive requirement in LSC's specific case because a material aspect of LSC's business involves transactions in microcap and illiquid securities[6] that are subject to substantially higher margin requirements compared to other securities due to their limited liquidity and related price volatility. This issue became more critical in February 2021. At that time, an SEC-approved rule change significantly increased the effective NSCC margin requirements applicable to such securities. (*See* Lek Aff. ¶¶ 42-43; testimony of Timothy Cuddihy, Tr. 2.24.22 pp. 434-35; Affirmation of Emre Carr, Ph.D.,[7] dated 27, 2021, ("Carr Aff.") ¶ 48.) LSC has generated elevated NSCC clearing fund margin requirements several times due to its trading activity that includes microcap and illiquid securities. (*See* testimony of Timothy Cuddihy, Tr. 2.24.22 pp. 434-35; Carr Aff. ¶¶ 44-49; Leibrock Aff. ¶ 10.)

DTCC constantly monitors its members' financial and liquidity conditions applicable to their margin requirements. This includes assignment of a credit rating, or "CRRM." Over the past several years, LSC's CRRM rating was within the range of what DTCC considers to be its riskiest members. LSC has been on DTCC "Watch List" since 2006 and has been under "Enhanced Surveillance" as an enhanced credit risk ever since DTCC created this separate category in 2013. (Leibrock Aff. ¶ 11.) LSC has been required to provide daily reporting on its capital since 2017 and its liquidity since 2021. (*Id.*) LSC's available non-segregated cash (the cash and cash equivalents that are not already segregated in other accounts and may be accessed to meet LSC's obligations to DTCC) ordinarily is a low percentage of its assets. LSC's cash-to-

[5] Citations to the transcript of the hearing held in this matter are in the form 'Tr., date of hearing, and page.'
[6] Microcap and illiquid securities represented 15-20% of Lek's revenues during early- to mid-2021. (*See* Leibrock Aff. ¶ 10.)
[7] Dr. Carr's direct testimony is labelled "Affidavit" but actually is in the form of an Affirmation.

assets ratio has ranged between approximately 7% to a low of approximately 1% over the period from December 31, 2020, through September 30, 2021. (*Id.* at ¶ 14.)

As noted above, LSC's margin needs increased substantially in February 2021 due to a change in its margin requirements. However, this occurred at the same time LSC was suffering a substantial diminution in its reliably available sources of liquidity.[8]

At the end of 2020, LSC had $100 million in bank financing from two reputable financial institutions: a $75 million line of credit from Bank of Montreal Harris ("BMOH") and a $25 million line from Texas Capital Bank ("Texas Capital"). Both lines were terminated in 2021. By October 2021, the only bank financing available (only in part) to LSC to meet NSCC margin requirements were two lines of credit with Lakeside Bank totaling $30 million, of which the $20 million line, at least, was secured by LSC's customer securities accounts.[9]

In an attempt to meet its liquidity needs, LSC implemented what it calls the "Lek Holdings Note Program." Under the Lek Holdings Note Program, as it was explained by Mr. Lek at the hearing in this matter, a customer of LSC who wishes to place a trade through LSC, acting as an "investor," loans money on an unsecured basis in an amount necessary to cover what LSC calculates to be the initial required margin on the trade to Lek Securities Holdings Limited ("Lek Holdings"), LSC's parent company, which then loans the money to LSC, which uses it to post the required margin at NSCC. The Lek Holdings Note Program in February 2021 was initially set at $50 million, and then increased to $100 million in April 2021. (Leibrock Aff. ¶ 25.) Mr. Lek testified that while anyone could loan money to Lek Holdings under this program, in practice only LSC customers who wished to place trades have done so. (Testimony of Charles Lek, Tr. 2.17.22 p. 86.)

LSC recognized that by February 2021 its bank financing was inadequate to meet its liquidity needs at NSCC. Mr. Lek conceded in his Affirmation that the new rule in February 2021 resulted in increased margin requirements for LSC that could not be met by LSC's existing or contemplated bank lines of credit. (*See* Lek Aff. at ¶¶ 42-43.)

LSC's own capital, while exceeding the regulatory minimum, is plainly inadequate to meet its liquidity needs. LSC's capital, as reported to DTCC, falls well short of its usual margin requirements. (*See* Leibrock Aff. ¶¶ 14-16.) The addition of the Lakeside lines of credit do not change this; together, LSC's reported capital and bank lines of credit do not meet LSC's NSCC margin requirements.[10] Thus, even aside from movements in securities' values or other post-

[8] LSC's failure to inform DTCC in a timely and forthright fashion in 2021 of the changes in its sources of liquidity is discussed in more detail below. However, for purposes of this Section, how and when DTCC learned of LSC's liquidity sources is not the issue; the issue is whether or not LSC's liquidity sources as they stood on October 26, 2021, were sufficient to allow LSC to remain a member of NSCC and a participant in DTC.

[9] There appears to be some dispute as to whether the $10 million line of credit was secured or unsecured. *Compare* Leibrock Aff. at ¶ 24 ("a secured $10 million line of credit, collateralized by 20% of Lek's securities at DTCC") *with* Lek Aff. at ¶ 30 ("an additional unsecured loan facility with Lakeside in the amount of $10 million"). We note the disagreement, but further note that the distinction makes no difference to our ultimate conclusion that LSC's sources of liquidity are inadequate to satisfy DTCC's needs.

[10] Indeed, it appears that LSC has, or at least would need to, use cash obtained through the Lek Holdings Note Program just to meet its minimum Required Fund Deposit at NSCC. On November 5, 2021, NSCC increased LSC's

trade changes in margin requirements, LSC is dependent on the Lek Holdings Note Program to meet its basic margin requirements at NSCC.

Judged as to whether the Lek Holdings Note Program qualifies as a reliable source of margin funding, we find that it presents numerous disqualifying features.

First, while the Lek Holdings Note Program is certainly novel and inventive, there is no assurance whatsoever that it necessarily will work correctly. Even to fund an initial margin deposit,[11] the program depends on several steps that are not required to happen. As described by LSC, the first step is that when a customer orders a trade, LSC will calculate the NSCC margin requirement for that trade. Mr. Lek stated that this is done through its "Q6" risk management software platform. (*See, generally,* 2.17.22 Tr. at 157, *et seq.*) Then, as described by LSC, the customer is required to become an "investor" in Lek Holdings by loaning cash in the amount of the margin requirement to Lek Holdings (LSC's parent company), which in turn loans the cash to LSC, which then uses it to post the required margin at NSCC. Not a single one of these steps (other than LSC's requirement to post margin at NSCC) is required through any contract, rule, or other legally binding requirement. Customers may have note agreements with Lek Holdings, but they are not contractually obligated to loan money. Lek Holdings may have a note agreement with LSC, but it is not contractually obligated to loan money. Indeed, as far as we can tell, LSC itself is not actually required even by its own internal procedures to ask that its customers actually loan anything to Lek Holding before being allowed to trade.[12] While we are mindful of LSC's argument that it has a strong incentive to make the program work properly, that is not the same as everyone involved, some of whom may not share LSC's incentive, being legally obligated to fulfill their part in the arrangement.[13]

We note as well that DTCC has asserted a finding that LSC's deficient internal controls warrant the cease to act determinations. As an independent basis for the cease to act

---

minimum Required Fund Deposit from $20 million (already a heightened number due to LSC's risk profile) to $27 million. Mr. Lek testified that LSC does not use secured lines of credit to fund NSCC margin requirements (2.17.22 Tr. at 65). Even assuming that the $10 million Lakeside line of credit is unsecured, even with its reported capital LSC does not have sufficient liquidity to fund its minimum Required Fund Deposit. Therefore, even if there was no trading activity at all, LSC would still have to utilize the Lek Holdings Note Program to obtain sufficient cash to fund its required Minimum Fund Deposit. Even assuming all other factors working perfectly, it is not clear that any of LSC's customers would be willing to loan money to Lek Holdings under this program without making a corresponding trade.

[11] As discussed below, a fundamental problem with the Lek Holdings Note Program is it has no provisions for covering market swings or other changes in margin requirements between trade and settlement.

[12] LSC proffers two documents as governing its Q6 risk management platform. (*See* LSC Exs. 64 and 65 and Lek Aff. ¶ 37.) LSC Ex. 64 is dated February 2018, three years before the Lek Holdings Note Program was even instituted. LSC Ex. 65 is undated but makes no reference to the Lek Holdings Note Program. Thus, LSC has offered no evidence establishing any internal procedures at all governing how the Lek Holdings Note Program works.

[13] There is also a stark difference between customer loans in the Lek Holdings Note Program and bank lines of credit, either committed or uncommitted. Established financial institutions such as banks are in the business of lending money. They have the reliable sources of capital to lend and the infrastructure to assure that lines of credit work effectively, reliably, and on short notice. DTCC cannot rely on any of the actors in the Lek Holdings Note Program the same way. DTCC's risk management staff found that LSC presented no evidence to it regarding the reliability of the Lek Holdings Note Program prior to the October 26 Cease to Act Notices, and LSC also presented no evidence in this proceeding showing that the program was a reliable source of funds.

determinations, this is discussed and rejected below. However, concerns about LSC's internal controls are a significant factor in our liquidity determination. Certainly, LSC has advanced no evidence that gives us any confidence it can adequately control its own processes. Certain facts such as the outdated risk management controls that on their face do not involve the Lek Holdings Note Program, yet are advanced as part of it, are certainly important. Also important, as discussed below, are the repeated instances of LSC making misleading statements to DTCC, including statements regarding its internal controls.

Regarding an independent consultant's report by BRG (defined below), LSC made representations to DTCC to persuade DTCC to return a portion of an adequate assurance deposit to LSC. Following the filing of an SEC complaint against LSC in 2017, NSCC requested and received a $1.9 million additional adequate assurance deposit from LSC. (*See* DTCC Ex. 59; Leibrock Aff. ¶ 69.) FINRA filed a complaint against LSC in 2018. (*See* DTCC Ex. 59.) LSC settled both lawsuits. (*Id.*) At LSC's request, NSCC returned half of the additional deposit ($950,000) in May 2020, but retained the other half pending LSC's certification that it had complied with several components of LSC's settlements with the SEC and FINRA. (*Id.*) In June 2020, LSC made all the necessary certifications to DTCC, including that it had fully complied with the BRG report, and NSCC returned the remaining $950,000 of the additional deposit. (*See* Leibrock Aff. ¶ 69; DTCC Ex. 50.) This certification to DTCC was false: LSC had not fully implemented all of the recommendations of the BRG report. That LSC had concerns with the BRG report, legitimate or not, is simply beside the point, as is whether or not LSC had a report from another independent consultant that did not make findings similar to BRG. The point is, LSC made certain representations to DTCC regarding its internal controls that it knew were false.

Also troubling in this regard are statements made by Mr. Lek in his testimony in this proceeding concerning FINRA's statements regarding the Lek Holdings Note Program. In his Affirmation, Mr. Lek, the chief executive officer of LSC, indicated that information provided by LSC had "answered FINRA's questions about the Lek Holdings Note Program and alleviated any concerns it had." (Lek Aff. ¶ 130.) Mr. Lek further testified in his Affirmation that in a telephone call Brian Kowalski, FINRA's Senior Director of Risk Monitoring, "acknowledged that FINRA now believes that the Lek Holdings Note Program adequately addresses any liquidity risks associated with NSCC funding requirements." (*Id.*) These statements were knowingly false. In reply to this Affirmation, DTCC submitted an Affidavit from Mr. Kowalski in which Mr. Kowalski testified that Mr. Lek's statements regarding what FINRA had told LSC about the Lek Holdings Note Program were incorrect and that FINRA "continues to have concerns on the subject of whether the Lek Holding Promissory Note Program adequately addresses liquidity risks associated with NSCC funding requirements." (Affidavit of Brian C. Kowalski, sworn to January 15, 2022, at ¶4.)

During the live cross-examination of Mr. Kowalski by LSC's counsel on February 24, 2022, LSC used a transcript of a video conference involving LSC and FINRA representatives on December 10, 2021. In response to a request from DTCC's counsel during the hearing, LSC was required to produce both the transcript and a recording of the audio portion of that video conference. (*See* LSC Exs. 87 and 86, respectively.) DTCC moved that the transcript be admitted into evidence; LSC objected on the basis that the recording of the video conference,

OS Received 06/30/2022

rather than the transcript, was the true evidence of the video conference. The Panel accepted both the recording and the transcript into the record. *See* Tr. 2.24.22 at pp. 394-401. We note that we find no material difference between the transcript and recording and cite to the transcript as an accurate reflection of the audio portion of the video conference.

The evidence of the call proves unequivocally that Mr. Lek's statements were not accurate. Indeed, the divergence is so great that the conclusion is inescapable that the divergence could not be the result of a mere misunderstanding but must be knowing. The evidence of the call shows that, among many other statements, Mr. Kowalski said, "And so where I would agree is that we have an understanding, again, I don't think we're completely comfortable . . ." (LSC Ex. 87 at p. 2.) Moreover, Ornella Bergeron, a FINRA Senior Vice President and in an even more senior risk management position at FINRA than Mr. Kowalski,[14] also took part in the December 10, 2021, call and was unmistakable in stating FINRA's position. "The way with the current lines that you have, we're definitely not comfortable with the liquidity." (LSC Ex. 87 at p. 13.) In light of having participated in this call and having access to the recording and transcript prior to his written testimony, Mr. Lek could not have reasonably believed that his testimony to this Panel regarding FINRA stating that the Lek Holdings Note Program adequately addressed LSC's NSCC liquidity risks was accurate.

This is not a trivial point, or simply a "gotcha" moment. As discussed above, the Lek Holdings Note Program is not based on legally enforceable obligations – at virtually every step it is based on optional acts that may or may not be done in the course of future actual trading. LSC is asking DTCC to accept on faith that because LSC has an incentive not to go out of business, it will ensure that the Lek Holdings Note Program always works perfectly and DTCC and the financial system are not put at risk. However, as demonstrated by the factors just discussed, as well by the numerous concerns regarding DTCC's many attempts to obtain information from LSC discussed in Section II.C. below, DTCC cannot be expected to take LSC's representations at face value. In the course of its dealings with DTCC's risk management staff and in the course of these proceedings, LSC has failed to demonstrate the candor and openness necessary for DTCC to accept its representations.

The participants in the note program as well are an unknown to DTCC andn to the extent known, insufficient. (*See* Leibrock Aff. ¶¶ 27-29; Cuddihy Aff. ¶ 29.) Lek Holdings itself has no audited financial statements, but it does not appear that that entity itself has sufficient assets to fund the program on its own. (Leibrock Aff. ¶ 27.) The customer/investors who are to be the ultimate source of cash have also not been vetted as to whether they are reliable sources of capital and are, at any rate, not established financial institutions. DTCC simply does not know who or what they are and whether or not they can be relied on as dependable lenders.

Furthermore, even if working at its ideal, the Lek Holdings Note Program only deals with the initial margin requirement at the time of the trade.[15] Settlement occurs days after the trade. There can be fails. And the value of the trade can vary greatly after it is put on. As LSC's expert

[14] *See* Testimony of Brian Kowalski, 2.24.22 Tr. at 377-78.

[15] Even calculating the initial margin requirement at the time of the trade is something of a hope, not an exact science. There are multiple components involved and there can be no assurance a calculation in advance will be accurate.

witness Dr. Carr, conceded, NSCC is exposed to losses because securities prices can fluctuate between trade and settlement. (Carr Aff. ¶ 30.) Simply put, in the two days between a trade and settlement, a securities' value can change significantly, and the margin required to cover a potential failed trade would change significantly with it. Given LSC's customers' heavy trading in illiquid and microcap securities, margin swings for LSC are even more likely to happen and be material. NSCC members must be able to account for potential swings as well as an initial margin estimate.

LSC has essentially no liquidity sources, and certainly no reasonably assured liquidity sources, to compensate for significant moves in margin requirements in the time between trade and settlement. The two most likely sources for NSCC members for increased margin requirements are a firm's own capital and bank lines of credit. LSC has little capital of its own with which to work, and extremely small lines of credit with Lakeside as compared to its margin requirements.[16]

LSC argues that it is purely an "agency" broker acting for customers and does not engage in proprietary trading. In LSC's view, this means that it presents a lower risk profile for DTCC. We disagree. From a settlement risk perspective, the distinction is irrelevant. A trade on NSCC's books presents the same settlement risk profile to NSCC regardless of whether the NSCC member put the trade into the DTCC system acting as a broker or a principal.[17]

LSC also emphasizes that it has never failed to meet a NSCC margin call or other material DTCC obligation. While true, it is also simply not determinative, or even particularly relevant, to DTCC's determination to cease to act for LSC. While LSC is looking to the past, DTCC's mission is to look prospectively and must guard against what may happen. With that in mind, even LSC conceded that were it to fail even once it would be out of business. Unfortunately, a failure by LSC would not be a failure for LSC alone. It would cause harm to DTCC and potentially the entire financial system. That is why DTCC maintains a risk management department and engages in extensive analyses of its members to find potential risks. If it were enough to remain a member to have never caused a default, DTCC would not need a risk management function at all. But it is not enough. DTCC has an obligation to itself, its entire membership, and the financial system as a whole, to find and eliminate potential problems before they happen. And it must do so to a greater than 99 per cent confidence level. Looked at prospectively, as DTCC must, and not just retrospectively, as LSC urges, LSC presents an unacceptable risk.

[16] LSC's balance sheet shows only $5,270,685.80 in total current assets as of June 30, 2021 (DTCC Ex. 36) and its lines of credit with Lakeside Bank are only a $20 million secured line and a $10 million line that may be either secured or unsecured, while its margin requirements have at times exceeded $80 million. (*See, e.g.,* Carr Aff. ¶ 44; Leibrock Aff. ¶ 16.)

[17] There is also the possibility of trades being placed into the DTCC system not subject to LSC's purported internal risk management controls. A "correspondent clearing relationship" is one in which trades may be placed through a member by a party other than the member. During his testimony, Mr. Cuddihy stated that it appeared to him from LSC's trading activity that LSC may have correspondent clearing relationships with firms that have the ability to place trades through LSC, and that these may not be subject to review under LSC's internal risk management controls at all. (2.24.22 Tr. 438-441.) If true, this could present another serious risk to DTCC. However, consideration of this factor, while interesting, is not part of our decision.

OS Received 06/30/2022

Were the Lek Holdings Note Program just one part of a comprehensive set of liquidity sources, it might prove acceptable as part of a robust set. However, as the primary source it is completely inadequate. It is simply not sufficiently reliable or robust. Essentially, LSC has a "single threaded" source of liquidity, and that single thread is itself highly suspect and unreliable.

Accordingly, we find that DTCC's determinations in the October 26, 2021 Cease to Act Notices on the grounds that LSC's capital and liquidity are inadequate was supported by the record, and we affirm it. We stress that we find this basis, independent of the other two bases stated by DTCC in the October 26 Cease to Act Notices, as more than sufficient grounds alone to support the cease to act determinations.

We also find that NSCC's determinations on October 26, 2021, and November 5, 2021,[18] to impose on LSC an Activity Cap restricting the aggregate unsettled activity as measured by the gross market value of its unsettled portfolio each business day was appropriate during the pendency of this action given the risks presented by LSC's capital and liquidity position, was also appropriate and we affirm that as well.

B. LSC'S DEFICIENT INTERNAL CONTROLS

Each of the October 26 Cease to Act Notices included as one of its three bases that LSC had "deficient internal controls." The factual basis for this conclusion concerned a certain report by an independent consultant retained by LSC under a FINRA order of settlement. (*See* DTCC Exs. 1 and 2, each at p. 3.)

Pursuant to a FINRA settlement in December 2019, LSC retained an independent consultant, Berkeley Research Group LLC ("BRG"). BRG submitted a report to LSC that included a number of recommendations regarding LSC's internal controls, many of which BRG later concluded LSC had not in fact implemented. On this basis, DTCC concluded that LSC's internal controls were deficient, warranting the cease to act notices.

LSC argues that the BRG report was flawed and biased, that LSC has appealed BRG's findings to FINRA, and that a different independent consultant, Optima, retained pursuant to a SEC settlement did not find deficiencies in LSC's internal controls. LSC also argued that BRG's findings concerned controls in LSC's client onboarding and anti-money laundering functions and not anything that touched on DTCC margin requirements. LSC noted that DTCC has not conducted any analysis of its own regarding LSC's internal controls or concluded based on its own analysis that LSC's internal controls are inadequate.

We believe that DTCC's risk management staff could have conducted a more fulsome analysis of LSC's internal controls, including possible flaws in the BRG report and possible countervailing opinions in the Optima report. According to the October 26 Cease to Act Notices, DTCC's conclusions that deficient internal controls were one of three grounds for the determinations to cease to act were based entirely on the findings of the BRG report. We note that it is not clear whether DTCC's risk management staff considered, or even knew of, some of

[18] DTCC imposed an Activity Cap of $300 million on October 26, 2021, and raised the Activity Cap to $400 million on November 5, 2021.

OS Received 06/30/2022

the additional evidence presented in the course of this proceeding tending to indicate that LSC's internal controls are deficient, such as the seriously outdated internal LSC risk management guidelines that do not have any reference to the Lek Holdings Note Program. However, simply reviewing the conclusions of the October 26 Cease to Act Notices, based as they are solely on the findings of the BRG report and without any independent analysis or review, are insufficient to support a determination as draconian as a cease to act notice.

We would like to emphasize that our finding on this point is limited to the facts of this particular case and we do not mean to imply that DTCC cannot, in an appropriate case, base its finding and sanction on a single data source if sufficiently reliable.

C. LSC'S INADEQUATE RESPONSES, FAILURES TO RESPOND, AND INACCURATE AND MISLEADING REPRESENTATIONS

The third ground stated in each of the October 26 Cease to Act Notices was that LSC failed to inform DTCC properly regarding changes in its financial condition and indeed had affirmatively misrepresented or willfully omitted certain material information when responding to DTCC requests. Each of the October 26 Cease to Act Notices cited twelve instances of such failures by LSC to meet its obligations. When examining them, several of these failings can be grouped together.

As an initial matter, it is unquestionable that LSC had a duty as a NSCC member and DTC participant to provide all material information in a full and fair manner to DTCC, both in response to DTCC's requests and on its own initiative when warranted.[19] While every instance cited by DTCC in the October 26 Cease to Act Notices is not of the same weight or importance, it is clear that, taken as a whole, LSC failed to meet its obligations.

Broadly speaking, nearly all of LSC's misrepresentations and omissions closely relate to the subject of the first ground for the cease to act determinations: the sources and adequacy of LSC's capital and liquidity. DTCC in each of the October 26 Cease to Act Notices identified twelve representations, omissions, or responses as the basis for DTCC's determinations. These may be grouped into three subjects. The first is comprised of the disclosures concerning the termination of the BMOH or Texas Capital lines of credit in 2021. The second is comprised of disclosures concerning the Lek Holdings Note Program and LSC's liquidity plans generally. These first two groups may be discussed together, as they relate to the sufficiency of LSC's liquidity. As such, given that we have found as DTCC's risk management department did that LSC's liquidity is inadequate to continue as a NSCC member and DTC participant, these misrepresentations and omissions are material. The third group of disclosure violations concern LSC's failure to provide copies of the BRG final report in a timely fashion.

1. <u>The Liquidity Related Disclosure Violations</u>

As noted, LSC at one point had a line of credit with Texas Capital that was used, among other things, to provide liquidity to post cash for margin requirements at NSCC. The Texas Capital line of credit expired on March 31, 2021. (Leibrock Aff. ¶ 40.) Regardless of why it

[19] *See* NSCC Rules 2A, 2B. Sec. 2, and 15; DTC Rules 2, 9A.

expired, or whether or not LSC thought it mattered that it had expired,[20] LSC does not question that it expired on March 31, 2021. However, LSC did not inform DTCC in a timely manner that it had expired. To the contrary, even after its expiration, LSC represented to DTCC that it was still in place.

In LSC's April 7, 2021, responses to DTCC's due diligence requests for documents and information, LSC stated that the Texas Capital line of credit was still available to it as a source of liquidity. (*See* Leibrock Aff. ¶ 40; DTCC Ex. 40.) Furthermore, in the April 7, 2021, responses LSC affirmatively represented: "There have been no changes in the terms of the Company's credit facilities." (DTCC Ex. 40 at p. 4.) By April 7, 2021, before making a representation to DTCC regarding the Texas Capital line of credit, LSC certainly knew, or should have known, that it had expired. Therefore, these were knowing misrepresentations.

LSC made additional misrepresentations to DTCC regarding Texas Capital in writing on May 3, 2021. In response to DTCC's due diligence inquiries, LSC again stated that the Texas Capital line of credit was still in place as an "available line[] of credit" (though, like in the April 7, 2021, responses LSC stated that it had a March 31, 2021, expiration date). (*See* Leibrock Aff. ¶ 41; DTCC Ex. 42 at p. 2.) LSC specially referred to Texas Capital as among its lines of credit. (DTCC Ex. 42 at p. 2.) LSC did note that "Texas Capital has made substantial changes in its lending division, and has exited the relationships with many broker dealers in the industry." (*Id.*) It is unclear exactly what LSC meant by this representation. Perhaps, LSC was trying to suggest that it is not one of those broker dealers with which Texas Capital has exited its relationship. At any rate, LSC could have plainly stated that Texas Capital had ended its line of credit with LSC, but it did not so state. In sum, we find that LSC made several material misrepresentations to DTCC regarding the status of the Texas Capital line of credit in April and May 2021. LSC also omitted to state the true facts regarding the Texas Capital line of credit, which even in the absence of affirmative misrepresentations should have been reported. It was not until May 13, 2021, in responding to direct questions by DTCC staff during a virtual site visit, that LSC informed DTCC of the expiration of the Texas Capital line of credit. (*See* Leibrock Aff. ¶ 42.)

LSC also made affirmative misrepresentations to DTCC regarding its line of credit with BMOH and the status of its overall relationship with BMOH. On or about July 8, 2021, LSC's counsel received a letter from BMOH's counsel reciting a long history of BMOH telling LSC that BMOH intended to scale back and ultimately discontinue its relationship with LSC. This recitation included stating that BMOH had earlier reduced the portion of LSC's line of credit available for use for LSC's "NSCC sublimit" on two occasions, September 8, 2020, and November 9, 2020. The letter also reaffirmed what the letter described as BMOH's previous statements to LSC that BMOH intended to terminate its entire relationship with LSC in 2021. (*See* DTCC Ex. 16; *see also* Leibrock Aff. ¶ 44; Lek Aff. ¶¶ 62-63 (acknowledging that BMOH reduced the NSCC sublimit in the line of credit).) LSC does not deny that it did not inform DTCC of any potential changes to its relationship with BMOH until after mid-July 2021, when DTCC, which had heard of issues in the LSC-BMOH relationship from FINRA, made a specific request to LSC for information about BMOH. (*See* Leibrock Aff. ¶¶ 43-44; Lek Aff. ¶72.)

[20] As discussed elsewhere in this opinion, we believe that the expiration of one of only two bank lines of credit that LSC had was material and that their replacement with the Lek Holdings Note Program was a material change.

Then, some two and a half weeks after it had received the BMOH July 8, 2021, letter (DTCC Ex. 16), LSC forwarded it to DTCC. (*See* DTCC Ex. 10.)

While LSC does not deny that it did not notify DTCC of changes in the BMOH line of credit until DTCC asked about it, LSC states that a reduction in the BMOH line of credit was not material to LSC because LSC had or was in the process of obtaining other sources of liquidity, and because LSC did not actually believe that BMOH intended to terminate the relationship until the July 8, 2021, letter. (*See* DTCC Ex. 10; Lek Aff. ¶¶ 61, 73.)

To take LSC's latter justification first, it is hard to accept on face value the credibility of LSC's argument that it thought BMOH was bluffing when it told LSC it was going to terminate the relationship. What remains unexplained is why LSC believed a responsible corporate actor like BMOH would tell LSC something it had no intention of doing. Even if LSC truly believed BMOH did not mean what it said, LSC still was required to disclose to DTCC that BMOH had made the statement. Given that LSC concedes that long before July 8, 2021, BMOH had informed it that BMOH was both reducing credit limits and ultimately terminating the relationship, and in fact reduced the NSCC sublimit on two occasions, we believe BMOH's statements are ones LSC necessarily should have taken seriously.

Moreover, it is worth noting that LSC took BMOH's statements seriously enough to have its counsel send a demand letter on May 14, 2021, in which, among other things, LSC's counsel states that if BMOH closed LSC's settlement account with BMOH, "immediate and irreparable harm to LSC would result." (*See* DTCC Ex. 17; *see also* Leibrock Aff. ¶¶ 50-51 and further exhibits cited therein.) LSC offers two explanations in this proceeding for the statements in its counsel's demand letter. One is that LSC's concern regarding the BMOH relationship was limited to BMOH acting as its settlement bank, and not related to LSC's line of credit. (*See* Lek Aff. ¶ 72[21].) This is not credible. Given that BMOH had made repeated statements to LSC concerning BMOH's intention to terminate the entire relationship and had actually reduced the NSCC sublimit on two occasions, LSC could not have reasonably thought that termination of the line of credit was anything other than at least a serious possibility, if not probability. As such, it should have been reported to DTCC.

LSC's other position on the materiality of its communications with BMOH is that there was no material need to immediately inform DTCC about the potential loss of this bank line of credit because LSC believed that this line as well as the Texas Capital line of credit were immaterial because LSC could fully meet its NSCC liquidity needs from other sources such as the Lek Holdings Note Program.[22] This position must be rejected, for reasons beyond those discussed above concerning the misplaced reliance on the Lek Holdings Note Program to satisfy LSC's liquidity needs. For purposes of disclosure to DTCC, it is not enough that LSC thought

[21] "Until the Firm got clarity about BMOH's actual intentions and timetable, and LSC had the opportunity to consider an appropriate transition plan, I did not believe there was a reason to alert other parties and cause any undue and premature alarm." (Lek Aff. ¶ 72.)

[22] *See, e.g.*, DTCC Ex. 12 (letter of July 30, 2021 from Charles Lek to Michael Leibrock); Transcript of February 17, 2022 proceedings at 11 (argument of counsel that losses of bank lines of credit were not material), 95 (testimony of Charles Lek concerning BMOH statements regarding future termination of services), 108 (same), 134 (testimony of Charles Lek that losses of credit lines were not material in light of other sources), and 143 (testimony of Charles Lek that loss of Texas Capital line of credit was not material).

the bank lines of credit were not necessary or that the Lek Holdings Note Program was sufficient to cover NSCC liquidity needs or that it thought DTCC would (or should) be satisfied with the program if it was fully informed about it. DTCC needed to be fully informed so that DTCC could make its own determination of what was necessary for the protection of DTCC and all its members.

LSC had previously told DTCC that its only bank lines of credit for its liquidity needs included the BMOH and Texas Capital lines of credit. A change in these lines was material. The fact that LSC was beginning in February 2021 to rely on the Lek Holdings Note Program as its liquidity source (*see* Tr. 2.17.22 at 14; *see also* DTCC Ex. 12 at p. 2, where Mr. Lek writes to Mr. Leibrock that the Lek Holdings Note Program "serves to replace the BMOH line of credit" – though this statement was only made some five months after it began replacing it) was also material, and made disclosure about these developments mandatory. NSCC Rule 2B and DTC Rule 2 both make timely notification to DTCC by members of changes to their financial condition mandatory. But instead of full and fair disclosure to DTCC, LSC made less than full disclosures based on its own determination of materiality – a determination that was both self-serving in favor of non-disclosure and materially misleading to DTCC in DTCC's efforts to determine the adequacy of LSC's changing capital and liquidity position.

Mr. Lek's testimony that statements in LSC's counsel's letters to BMOH of May 14, 2021 and June 23, 2021 (DTCC Exs. 17 and 19, respectively) concerning LSC's statements to BMOH that termination of the banking relationship would cause irreparable harm to LSC were just "embellishments" designed to induce (or possibly threaten) BMOH to "[j]ust continue to do business and provide us with OCC clearing services" (Tr. 2.17.22 pp. 99-100) is troubling for multiple reasons. First, that a responsible business would "embellish," *i.e.*, intentionally mislead, a federally regulated banking institution for the purpose of inducing it to extend credit or a banking relationship is in and of itself problematic. Moreover, when viewed in light of LSC's less than forthcoming statement to DTCC regarding its liquidity sources it merely confirms a pattern of behavior. Stretching facts and law to fit LSC's needs of the moment appears to have become a habit at LSC. To avoid making disclosures, LSC repeatedly made self-serving determinations of materiality and non-materiality, as well as simply hoping all would turn out well. These are not the appropriate criteria to apply when determining what should be disclosed to DTCC. To the contrary, they are evidence of an intentional act to mislead. The conclusion that LSC delayed disclosing the losses of its bank lines of credit and details regarding the highly unusual and ultimately inadequate Lek Holdings Note Program to DTCC intentionally in order to avoid the risk of DTCC fairly evaluating or even questioning the adequacy of its liquidity, is inescapable.[23]

As just noted, this behavior by LSC is part of a pattern of obfuscation and non-cooperation with DTCC. For example, in its letter of July 26, 2021, responding to DTCC's requests for information regarding the BMOH lines of credit (*see* DTCC Ex. 10), rather than making forthright disclosures of all facts that could be relevant to DTCC and working

[23] LSC's behavior is reminiscent of the concession by the sanctioned respondent in the case of *In the Matter of the Application of Peter W. Schellenbach*, 50 S.E.C. 798 (1991), at *2-3, where the respondent conceded that the firm avoided telling FINRA about its net capital problem because it believed that if it had disclosed the problem, FINRA would have shut it down.

cooperatively with DTCC to address any issues, LSC took a highly adversarial approach. Mr. Lek in his letter on behalf of LSC accuses DTCC of stating "material inaccuracies" regarding the LSC-BMOH relationship and the Lek Holdings Note Program, but provides no real information or descriptions of his firm's liquidity to address DTCC's legitimate concerns. Mr. Lek concedes that "[w]e agree that it is important to keep DTCC apprised of all developments that could impact our ability to remain a member in good standing at NSCC and DTC." (*Id.* at p. 2.) For a member to keep DTCC apprised of such developments is beyond being merely "important," it is an absolute duty. Mr. Lek tries to justify breaching that duty through a self-serving and objectively flawed determination of materiality.

After conceding LSC should keep DTCC informed, Mr. Lek goes on immediately to conclude: "However, the issues surrounding our sources of funding is not such a development." (*Id.*) We could not disagree more fundamentally with this statement. These issues of LSC's capital and liquidity were fundamental to LSC's ability to remain a member in good standing at NSCC and DTC. However, rather than address them, LSC continued to make unilateral determinations of materiality that cannot be supported objectively and clearly were designed to justify non-disclosure.

DTCC continued to impress upon LSC the seriousness of the issue. For example, in his letter to Mr. Lek dated August 3, 2021 (DTCC Ex. 13), Mr. Leibrock specifically informs LSC that in DTCC's judgment LSC had up to that point failed "to fully address the DTCC requests and questions" and "to adequately demonstrate that LSC had sufficient and reliable liquidity." (*Id.* at p. 1.) Despite this clear warning, LSC continued to fail to provide full and fair information to DTCC regarding the Lek Holdings Note Program. We note that LSC never provided DTCC with, among other things, a narrative explanation of the operation of the Lek Holdings Note Program, how it fit into LSC's risk management system, or full and sufficient financial information regarding all participants in the Lek Holdings Note Program.[24]

2. LSC's Failure To Provide the BRG Report

As described above, following a litigation settlement with FINRA, LSC engaged an "Independent Consultant" called BRG. (*See* DTCC Ex. 39 at p. 2; Leibrock Aff. ¶¶ 13, 65-66; Lek Aff. ¶ 91.) Also as described above, following litigation with the SEC, LSC engaged an "Independent Monitor" called Optima. (*See* Lek Aff. ¶¶ 83-84; LSC Ex. 4.) Each was engaged to evaluate certain of LSC's internal processes and operations. (*See* LSC Exs. 4 and 6.) On April 14, 2021, in advance of a virtual site visit in May, DTCC sent a set of due diligence

[24] Among the violations found by DTCC were that LSC failed to respond to DTCC's September 13, 2021, request for information until after the October 26 Cease to Act Notices were delivered. Whether LSC did in fact attempt to send a response to DTCC on September 23, 2021, was addressed in detail during the course of the hearing on this matter. We find that it appears that Ms. Jessie Quintana, a LSC employee, did make a good faith attempt to electronically transmit a response to DTCC on September 23, 2021, but that for unknown reasons it was never received by DTCC. Thus, we do not find that a failure by LSC to respond to this request is among LSC's violations of its duties to provide information on request or on its own initiative to DTCC. Given the breadth of LSC's other violations, however, this makes no difference to our final determination. We also note that LSC could have, but chose not to, follow up with DTCC after September 23, 2021, to inquire whether LSC had answered all of DTCC's questions.

questions to LSC. (*See* DTCC Ex. 41; Leibrock Aff. ¶ 65.) Questions 9 and 10 were related these reports.[25]

Among LSC's failures to provide documents cited by DTCC in the October 26 Cease to Act Notices was LSC's failure to provide a copy of the BRG Independent Consultant report (DTCC Ex. 39) when it was issued and instead delaying providing it until June 2021, after DTCC had asked for it several times. (*See* DTCC Ex. 1 at p. 5; DTCC Ex. 2 at p.4.) That LSC did not provide the report until June 2021 is uncontested.

In his affirmation, Mr. Lek testified that "LSC appears to have first received a request from DTCC for the BRG Final Report on June 2, 2021 and provided a copy of the report to it on June 10, 2021." (Lek Aff. ¶ 177.) However, besides the April 14, 2021, requests, there were also the "Annual Site Visit (05/13/2021) Follow Up Questions" submitted by DTCC to LSC on May 13, 2021, and repeated on May 19, 2021, and among these was the request: "Please provide all available reports delivered by the Independent Consultant (Berkeley Research Group) produced after February 4, 2020 (date of the report available in our records)." (*See* DTCC Exs. 47 and 48; Leibrock Aff. ¶ 66.) Therefore, it appears that Mr. Lek's statement in his Affirmation is incorrect and that the Report had been requested both generally and specifically earlier and that LSC failed to respond until June 2021.

When asked about this during cross-examination, Mr. Lek justified LSC's failure to produce the BRG report in response to the April 14, 2021 due diligence questions (DTCC Ex. 41) on the grounds that DTCC's request for it was ambiguous and that LSC interpreted the request for the report of the Independent Monitor Optima, because the request included in parentheses "three-year engagement," and only Optima, and not BRG, was subject to a three-year engagement. (*See* Tr. 2.17.22 pp. 118-21.) It is certainly true that DTCC's requests, in this instance, were ambiguous, and that the reference to a three-year engagement should not have been included in Request number 10. However, Mr. Lek's testimony on this point is not credible and does not justify LSC's failure to provide the BRG report to DTCC in a timely fashion.

What Mr. Lek's testimony evidences is that LSC was not acting in good faith in responding to the request. Only a tortured reading of the request in context could lead to the conclusion advanced by Mr. Lek. This conclusion would mean that requests 9 and 10 both were seeking the same report, by Optima (as Optima was the one acting under a three-year engagement). This reading, while independently making no sense because it reads one of the requests out of any meaning whatsoever, also fails to account for the fact that the requests, while both making the three-year reference, are not otherwise identical. One asks for the Independent Monitor report and the other for the Independent Consultant report. Independent Monitor was the term applied to Optima, and Independent Consultant was the term applied to BRG. (*See* Lek Aff. ¶¶ 83, 85, 91, 93.) The only objectively fair interpretation of this pair of requests is that one sought reports by Optima and the other reports by BRG. LSC's reading could only be motivated

[25] "9) Please provide updates on the latest Independent Monitor Compliance Reports and status regarding the recommendations presented by the Independent Compliance Monitor (three-year engagement.)
10) Please provide updates on the latest Independent Consultant Reports and status regarding the recommendations presented by the Independent Consultant (three-year engagement.)" (DTCC Ex. 41.)

by a desire to avoid producing the unfavorable BRG report. Also, if the interpretation advanced by LSC at the hearing in this matter was the one genuinely held by LSC at the time it responded to these requests, LSC would have responded to both the same way by referring to Optima. LSC instead chose not to respond to either request. (*See* DTCC Ex. 42, LSC Ex. 70.)

We understand that LSC disagreed with the BRG report and believed there were numerous problems with its preparation and conclusion.[26] Perhaps LSC's concerns have some merit, particularly in light of the much more favorable Optima Report, though we make no findings on the question. Whether or not LSC had a good faith basis for questioning the BRG report is not the point. The point is that, regardless of what LSC thought of the Report, it should have complied with DTCC's request and promptly provided a copy. A report by an independent consultant commissioned pursuant to a FINRA settlement had been completed questioning a DTCC member's internal processes and controls. DTCC had a right – indeed, the obligation – to ask for the report and LSC had an obligation to provide it. *See* NSCC Rule 2B; DTC Rules 2 and 9(A). LSC could have provided whatever commentary it wished to DTCC along with delivery of a copy of the BRG report, as it did when it objected to FINRA and as it did in Mr. Lek's Affirmation in this proceeding.

Standing alone, the failure to deliver this report for a month or two is not a violation justifying a cease to act determination. We are, however, troubled by it in the context of LSC's repeated failures to provide material information to DTCC. LSC showed a repeated pattern of hair splitting and tortured interpretations in what was plainly an affirmative attempt to avoid providing DTCC with material information that LSC thought would put LSC in an unfavorable light and possibly lead to unfavorable determinations by DTCC.

Moreover, LSC's communications with DTCC risk management were untimely, materially incomplete, and materially misleading. We also find that LSC's failures were not, in most cases, innocent. Rather, LSC's failures were part of a pattern of deliberate obfuscation designed to mislead DTCC. NSCC members and DTC participants have an ongoing duty to provide full, complete, and truthful information about all material aspects touching upon their part in the DTCC system. *See* NSCC Rule 2B; DTC Rules 2 and 9(A). This includes information requested by DTCC. *Id.* DTCC's risk management can only be as good as the information its members provide. Under these circumstances, DTCC's determination that, were it to continue as a member, LSC could not be trusted and relied upon to comply with its ongoing obligations to provide material information to DTCC as required by NSCC and DTC Rules, was supported by the evidence and proper.

Thus, we find that the repeated, knowing, misrepresentations, omissions, and failures to provide information in a timely manner justify and support NSCC's and DTC's determinations to cease to act for LSC.

III. THE ACTIVITY CAP SANCTIONS

By letter dated October 26, 2021, along with the cease to act notice, NSCC informed LSC that NSCC was imposing an "Activity Cap" limiting LSC's unsettled clearing activity to $300

[26] Mr. Lek discusses issues LSC had with the BRG report extensively in his Affirmation. (*See* Lek Aff. ¶¶ 89-99.)

million. (*See* DTCC Ex. 1.) The Activity Cap was modified upward to $400 million by letter dated November 5, 2021. (*See* DTCC Ex. 3.) Also in the letter dated November 5, 2021, DTCC gave notice that it found that LSC violated the Activity Cap by exceeding the $300 million maximum allowed unsettled clearing activity on five days, each of November 1-5, 2021. (*See* DTCC Ex. 3 at p. 3.) By the November 5, 2021, letter, NSCC informed LSC that NSCC was imposing a fine on LSC of $20,000 for each day that the Activity Cap had been exceeded, for a total fine of $100,000. NSCC also informed LSC that it had determined to censure LSC via publication to the NSCC membership for LSC's violations of the Activity Cap. By letter dated November 7, 2021 (a Sunday), DTCC informed LSC that NSCC had determined that LSC violated the $400 million Activity Cap by having aggregate unsettled clearing activity with a start-of-day gross market value of $418.3 million for November 8, 2021, which exceeded the $400 million Activity Cap imposed by the November 5, 2021, letter.

Other than questioning whether imposition of the Activity Cap itself was warranted, a position we reject for reasons stated above, LSC offered no argument that it had not violated the Activity Cap of which it had been notified by DTCC's letters of November 26, 2021, and November 5, 2021. Therefore, we find as a factual matter that LSC did violate the Activity Cap on November 1, 2021, November 2, 2021, November 3, 2021, November 4, 2021, November 5, 2021, and November 8, 2021. We also affirm the sanctions imposed by NSCC of a fine of $20,000 for each day of violation, for a total fine of $120,000, and that LSC be censured in the manner indicated in DTCC's letters of November 5, 2021 and November 7, 2021.

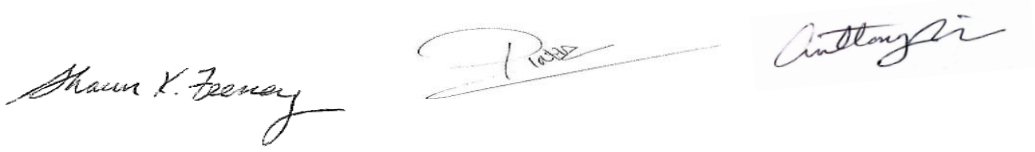
IV. CONCLUSION

For the reasons stated above and based on all the evidence presented in the course of this proceeding, we find that the cease to act determinations made by each of NSCC and DTC as communicated in the October 26 NSCC Cease to Act Notice and October 26 DTC Cease to Act Notice, respectively, were proper and supported by the evidence. They are affirmed.

For the reasons stated above and based on all the evidence presented in the course of this proceeding, we find that the fines and censures determined by NSCC for LSC's violations of the Activity Cap imposed on LSCC on each of November 1, 2021, November 2, 2021, November 3, 2021, November 4, 2021, November 5, 2021, and November 8, 2021, were proper and supported by the evidence. They are affirmed.

This constitutes the unanimous decision of this duly formed Hearing Panel of DTCC.

March 10, 2022



Shawn K. Feeney Pinar Kip Anthony Miller

OS Received 06/30/2022

EXHIBIT B

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 95014 / May 31, 2022

Admin. Proc. File No. 3-20808

In the Matter of the Application of

LEK SECURITIES CORPORATION

For Review of Action Taken by

NATIONAL SECURITIES CLEARING CORPORATION
and THE DEPOSITORY TRUST COMPANY

Appeal filed: April 4, 2022
Motion for stay filed: April 4, 2022
Last brief received: April 13, 2022

ORDER DENYING MOTION FOR A STAY AND SCHEDULING BRIEFS

Lek Securities Corporation seeks a stay, pending review pursuant to Rule 19d-3 under the Securities Exchange Act of 1934 and Commission Rule of Practice 420,[1] of action taken against it by the National Securities Clearing Corporation ("NSCC") and Depository Trust Company ("DTC"). NSCC and DTC (collectively, the "Clearing Agencies") are each wholly owned subsidiaries of the Depository Trust & Clearing Corporation ("DTCC"), a non-regulated holding company. On March 10, 2022, a hearing panel composed of members of DTCC's Board of Directors, who are also members of NSCC's and DTC's boards, issued a decision affirming the Clearing Agencies' determinations to (i) cease to act for Lek; (ii) impose an activity cap on Lek's trading activity; and (iii) impose fines and sanctions for Lek's violation of that activity cap.

Lek is a registered broker-dealer and FINRA member firm, and has been a member firm of NSCC and DTC since 1999. Lek states that it is an agency-only, self-clearing broker that provides execution services directly to its customers and provides clearing brokerage services to other brokerage firms. NSCC provides clearing, settlement, risk management, central counterparty services, and a guarantee of completion for virtually all broker-to-broker trades

[1] 17 C.F.R. § 240.19d-3; 17 C.F.R. § 201.420.

involving equity securities, corporate and municipal debt securities, and certain other securities.[2] DTC provides clearance, settlement, custodial, underwriting, registration, dividend, and proxy services for a substantial portion of all equities, corporate and municipal debt, exchange-traded funds, and money market instruments available for trading in the United States.[3]

With its application for review, Lek requested a stay of the hearing panel's decision affirming the cease to act determinations (the "Decision").[4] The effect of the cease to act determinations would be that Lek could no longer operate as a self-clearing broker. The Clearing Agencies would no longer do business with Lek. The Clearing Agencies oppose Lek's stay request. Because Lek has not met its burden for granting a stay, the motion is denied.

I. Background

On October 26, 2021, the Clearing Agencies provided Lek with written notice of their determinations to cease to act for Lek. They based their determinations on their findings that (1) Lek had weak capital and liquidity, particularly in relation to the level of its 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 and engaged in a pattern of providing incomplete, misleading, or inaccurate information in non-compliance with reporting requirements and the Clearing Agencies' requests.

NSCC's notice to Lek also summarily limited Lek's clearing activity by imposing a cap of $300 million of aggregate unsettled clearing activity as measured by the gross market value of Lek's unsettled portfolio each business day coinciding with the approval of Lek's start-of-day margin call ("Activity Cap"). At Lek's request, on November 5, 2021, NSCC increased the Activity Cap to $400 million. NSCC found, and Lek does not deny, that Lek violated the

---

[2] Order Approving A Proposed Rule Change to Enhance the Calculation of the Family-Issued Sec. Charge, Exchange Act Release No. 88494, 2020 WL 1659286, at *1 (Mar. 27, 2020).

[3] *Atlantis Internet Group Corp.*, Exchange Act Release No. 70620, 2013 WL 5519826, at *1 & n.1 (Oct. 7, 2013).

[4] Although Lek focuses on the Decision's cease to act determinations, Lek contends in a footnote that, "[b]ecause the Decision's bases for upholding the imposition of the Activity Cap and fines are the same as the rationale for upholding the 'cease to act' determinations, the censure and fine should also be stayed pending the SEC appeal." Based on the same reasons, Lek also seeks a stay of a separate decision that the hearing panel issued on April 6, 2022, ordering Lek to pay $383,449.14 in hearing costs. Because we deny a stay with respect to the Decision's cease to act determinations, finding that Lek has not established that serious legal questions exist, we also deny a stay as to the imposition of the Activity Cap, fines, and hearing costs.

OS Received 06/30/2022

Activity Cap six times between November 1 and 7, 2021. On November 5 and 7, 2021, NSCC notified Lek that it was censuring Lek and fining it $20,000 for each violation.

Lek timely requested a hearing regarding the Clearing Agencies' determinations. A panel of members of DTCC's Board of Directors held a two-day hearing in February 2022. On March 10, 2022, the hearing panel issued its Decision upholding the determinations of the Clearing Agencies to cease to act, to impose the Activity Cap, and to censure and fine Lek.

A. The Decision found that the Clearing Agencies had the authority to cease to act for Lek.

The Decision upheld the Clearing Agencies' determinations that their respective rules authorized them to cease to act for Lek. The Decision noted that NSCC Rule 46 authorizes NSCC to prohibit or limit a participant's access to NSCC's services if that participant is "in such financial or operating difficulty" that NSCC determines, "in its discretion, that such action is necessary for the protection of [NSCC], the participants, creditors or investors"; if "such participant has failed to comply with any financial or operational requirement of" NSCC; or "in any circumstances in which, in the discretion of [NSCC], adequate cause exists to do so."[5] The Decision also noted that DTC Rule 10 contains analogous requirements with respect to DTC. As a result, the Decision stated, membership can only be granted or maintained by a member that DTCC determines has the capability to meet its financial obligations to DTCC.

B. The Decision found that Lek's capital and liquidity were inadequate and provided a sufficient basis for the cease to act determinations.

The Decision found that Lek could not assure the Clearing Agencies that it could meet its financial obligations. Lek had been on NSCC's "Watch List" since 2006 and under "Enhanced Surveillance" as an enhanced credit risk since 2013. Then, in early 2021, as a result of a rule change that the Commission approved, Lek's margin requirements with NSCC increased—i.e., the amount of collateral that brokers such as Lek must post due to the financial risk between the time trades are executed and the time trades are settled. Also during 2021, Lek lost two bank lines of credit totaling $100 million. The Decision found that the current bank financing available to Lek is not sufficient to meet its heightened margin requirements and that Lek conceded that if it failed to satisfy its margin requirements even once it would be out of business.

Accordingly, Lek implemented what it called the "Lek Holdings Note Program." Under this program, 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 the trade."

---

[5] NSCC Rule 46, Sec. 1 (c), (f); *see also* Order Approving Proposed Rule Change, Exchange Act Release No. 23151, 1986 WL 626454, at *4 & n.16 (Apr. 21, 1986) ("Action taken by NSCC may include ceasing to act for the Settling Member or such other limits on access to its services that NSCC determines to be appropriate." (citing NSCC Rule 46, Sec. 4)).

The Decision found that the Lek Holdings Note Program presented "numerous disqualifying factors" as a means of meeting Lek's margin requirements. First, the Decision found Lek would have to use the program just to meet its minimum margin obligations. Every NSCC member must post a minimum Required Fund Deposit with NSCC, and in November 2021, NSCC increased Lek's minimum Required Fund Deposit from $20 million to $27 million. The Decision determined that Lek's reported capital and unsecured lines of credit were insufficient to fund the minimum Required Fund Deposit. As a result, the Decision found that "even if there was no trading activity at all Lek would still have to utilize the Lek Holdings Note Program" to meet this obligation. Yet it was "not clear that any of Lek's customers would be willing to loan money to Lek . . . under the program without making a corresponding trade."

Second, the Decision found that the program was problematic "[e]ven to fund an initial margin deposit" for a trade. Under the program, when a customer orders a trade, Lek calculates the NSCC margin requirement for that trade. The customer then loans cash in the amount of the anticipated margin requirement to Lek's parent company. The parent company then loans the cash to Lek, which then uses it to post the required margin at NSCC. But the Decision noted that "[n]ot a single one of these steps (other than [Lek's] requirement to post margin at NSCC) is required through any contract, rule, or other legally binding requirement." The customers are not obligated to loan money to Lek's parent company, and Lek's parent company is not obligated to loan money to Lek. The Decision found that even Lek's own internal procedures did not require its customers to loan anything to Lek's parent company before being allowed to trade.

The Decision also found "a stark difference between customer loans in the Lek Holdings Note Program and bank lines of credit." Established financial institutions such as banks are in the business of lending money; they have reliable sources of capital to lend and the infrastructure to assure that lines of credit work effectively, reliably, and on short notice. The Decision stated that "DTCC cannot rely on any of the actors in the Lek Holdings Note Program in the same way." The Decision added that the client participants in the program are an unknown to DTCC. The customers who are to be the ultimate source of cash have not been vetted to determine whether they are reliable sources of capital. Accordingly, DTCC "simply does not know who or what they are and whether or not they can be relied on as dependable lenders."

The Decision found further that Lek's CEO made "knowingly false" and "unequivocally. . . not accurate" representations about FINRA's statements regarding the Lek Holdings Note Program. In an affirmation, the CEO represented that Lek had "answered FINRA's questions about the Lek Holdings Note Program and alleviated any concerns it had." But the record established that FINRA continued to have concerns about the Lek Holdings Note Program.

Finally, the Decision emphasized that, by Lek's own description, even if the Lek Holdings Note Program worked perfectly, it only covers the initial margin requirement at the time of the trade. The value of securities can change significantly in the two days between a trade and settlement, and the margin required to cover a potential failed trade would change significantly as a result. Indeed, the Decision found that since Lek's customers engage in trading in illiquid and microcap securities, "margin swings for [Lek] are even more likely to happen and be material." The Decision concluded that, in light of Lek's minimal capital and lines of credit,

Lek "has essentially no liquidity sources, and certainly no reasonably assured liquidity sources, to compensate for significant moves in margin requirements between trade and settlement."

For these reasons, the Decision found the Lek Holdings Note Program "completely inadequate" as the primary way for Lek to meet its margin requirements. The Decision noted that Lek's failure to be candid about the Lek Holdings Note Program, such as through its CEO's misrepresentations as discussed above, exacerbated its concerns with the program. Accordingly, the Decision found Lek's lack of adequate capital and liquidity "[w]as more than sufficient grounds alone to support the cease to act determinations." The Decision also found that the Clearing Agencies' determinations to impose the Activity Cap during the pendency of the action was appropriate given the risks presented by Lek's capital and liquidity position. And the Decision affirmed the censure and fines imposed for Lek's violations of the Activity Cap.

C. The Clearing Agencies informed Lek that they would soon cease to act for it.

The Clearing Agencies subsequently notified Lek that NSCC would stop accepting trades for Lek on May 4, 2022, that NSCC would cease to act for Lek on May 11, 2022, and that DTC would cease to act for Lek on June 9, 2022. Lek then filed this appeal and stay request.[6] On April 28, 2022, Lek filed a supplement to its stay request, in which it stated that the Clearing Agencies had informed Lek that they "have temporarily adjourned the effective dates of the cease to act determinations and will provide [Lek] with at least ten calendar days prior notice and six weeks prior notice for the ceases to act for the NSCC and DTC, respectively." Lek stated further that "the effective dates of the cease to act determinations have not been adjourned pending the Commission's decision on the pending Motion to Stay, thus this change in the timing of the effective dates does not obviate the need for the requested stay."

II. Analysis

A stay pending appeal is an "'extraordinary remedy,'" and the movant bears the burden of establishing that relief is warranted.[7] We emphasize that our conclusions with respect to a stay motion are not final, and that final resolution must await the Commission's determination of

---

[6] The Clearing Agencies filed a copy of the index to the record on April 15, 2022, pursuant to Rule 420(e) of the Rules of Practice. 17 C.F.R. § 201.420(e).

[7] *Bloomberg L.P.*, Exchange Act Release No. 83755, 2018 WL 3640780, at *7 (July 31, 2018) (quoting *Nken v. Holder*, 556 U.S. 418, 432–34 (2009)); *accord Alpine Sec. Corp.*, Exchange Act Release No. 87599, 2019 WL 6251313, at *5 & n.51 (Nov. 22, 2019); *Mark E. Laccetti*, Exchange Act Release No. 79138, 2016 WL 6137057, at *2 & n.10 (Oct. 21, 2016).

the merits of an applicant's appeal.[8] We base the conclusions we reach in considering a stay motion only on a review of the record and arguments currently before us.[9]

In determining whether to grant a stay under Rule of Practice 401,[10] we consider whether (i) there is a strong likelihood that the movant will eventually succeed on the merits of the appeal; (ii) the movant will suffer irreparable harm without a stay; (iii) no other person will suffer substantial harm as a result of a stay; and (iv) a stay is likely to serve the public interest.[11] "The appropriateness of a stay turns on a weighing of the strengths of these four factors; not all four factors must favor a stay for a stay to be granted."[12] "The first two factors are the most critical, but a stay decision rests on the balancing of all four factors."[13]

To obtain a stay under this framework, a movant need not establish that it is likely to succeed on the merits, but it must at least show "that the other factors weigh heavily in its favor" and that it has "raised a 'serious legal question' on the merits."[14] "Because the moving party must not only show that there are 'serious questions' going to the merits, but must additionally establish that 'the balance of hardships tips *decidedly* in its favor,' its overall burden is no lighter than the one it bears under the 'likelihood of success' standard."[15] Lek has not met its burden.

A. Lek has not raised a serious question on the merits.

The Decision affirmed the Clearing Agencies' determinations that Lek's "capital and liquidity are inadequate," and found that this conclusion provided "more than sufficient grounds alone to support the[ir] cease to act determinations."[16] We find that Lek has failed to raise a

---

8 *Bloomberg*, 2018 WL 3640780, at *7 (quoting *Harry W. Hunt*, Exchange Act No. 68755, 2013 WL 325333, at *4 (Jan. 29, 2013)).

9 *Id.*

10 17 C.F.R. § 201.401; *see also* Exchange Act Section 19(d)(2), 15 U.S.C. § 78s(d)(2) (authorizing Commission to stay challenged self-regulatory organization action).

11 *Bruce Zipper*, Exchange Act Release No. 82158, 2017 WL 5712555, at *3 (Nov. 27, 2017).

12 *Bloomberg*, 2018 WL 3640780, at *7.

13 *Id.*

14 *Zipper*, 2017 WL 5712555, at *6 (quoting *Sherley v. Sebelius*, 644 F.3d 388, 398 (D.C. Cir. 2011)).

15 *Id.* (quoting *Citigroup Glob. Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010) (emphasis in original)).

16 *See* NSCC Rule 46, Sec. 1 (providing that NSCC may "prohibit or limit" a participant's access to NSCC services if "the participant is in such financial or operating difficulty, that [NSCC] determined, in its discretion, that such action is necessary for the protection of [NSCC], the participants, creditors, or investors" or "in any circumstances in which, in the discretion of

serious question on the merits with respect to its challenge to the Clearing Agencies' cease to act determinations.

Although Lek disputes the Decision's determination that the Lek Holdings Note Program is not a reliable source of margin funding, it does not dispute most of the underlying facts on which that determination was made. Lek does not dispute that the program depends on several steps that are not required to happen, including that customers are not required to loan money to Lek Holdings and that Lek Holdings is not required to loan money to Lek. Nor does Lek dispute that it did not provide the names of the customers who fund the Lek Holdings Note Program or any audited financials for Lek Holdings. In this respect, the Hearing Panel found a "stark difference" between the Lek Holdings Note Program and lines of credit from established financial institutions such as banks, which have "the reliable sources of capital to lend and the infrastructure to assure that lines of credit work effectively, reliably, and on short notice." Lek also does not dispute the Decision's finding that a security's value can change significantly in the two days between a trade and settlement and that the margin required to cover a potential failed trade would change significantly with it. Lek further does not dispute that there is no mechanism in the Lek Holdings Note Program to require customers to provide additional loans to cover changes in margin following the entry of their trades. At this stage of the proceeding, these undisputed findings appear to present a reasonable basis for the Decision's conclusion that the Lek Holdings Note Program is unreliable as a means for Lek to meet its margin requirements.

Lek attacks the Decision's conclusion that its liquidity is insufficient to meet its margin requirements on several bases, but Lek's arguments do not raise a serious legal question.

1. Lek has not shown that there is a serious legal question about the Clearing Agencies' concerns regarding the Lek Holdings Note Program.

First, Lek argues that the Hearing Panel did not accord sufficient weight to several factors it believes show the cease to act determinations are not necessary. Principally, Lek argues that because it has never missed a margin call, including during its reliance on the Lek Holdings Note Program, it is not likely to miss a future margin call, and so the Decision's concerns about the reliability of the Lek Holdings Note Program are not well founded. But the fact that Lek has thus far satisfied its margin obligations while utilizing the Lek Holdings Note Program does not mean it will continue to do so in the future. And NSCC's "risk-based margin system" is

---

[NSCC], adequate cause exists to do so"); *see also* DTC Rule 10, Sec. 1 (providing that "[b]ased on its judgment that adequate cause exists to do so, the Corporation may at any time . . . cease to act for a Participant" if the Participant "is in such financial or operating condition that reasonable grounds exist for a determination . . . that its continuation as a Participant or Settling Bank would jeopardize the interests of the [DTC], other Participants or Pledgees"). Lek does not challenge DTC's cease to act determination separately from its challenges to NSCC's determination.

designed "to cover its potential *future* exposure."[17] So the issue is whether the Lek Holdings Note Program is a reliable way for Lek to meet its ongoing margin obligations or whether there was adequate cause for the Clearing Agencies to view the program as inadequate. As discussed above, Lek has not established that the Clearing Agencies' concerns about the program are unfounded.

Lek also contends that, in finding its liquidity insufficient, the Decision ignored that it has a "significant built-in cash cushion to address any post-trade, pre-settlement price swings" because it must maintain a $27 million minimum Required Fund Deposit and because it requires investors participating in the Lek Holdings Note Program to make initial margin payments that include a "buffer."[18] But the Decision found that Lek could not meet even its minimum Required Fund Deposit without relying on the Lek Holdings Note Program. And Lek cannot demonstrate that the program is reliable by assuming that it will be a reliable source of funds. As for any "buffer" that Lek may require its customers to provide to cover expected margin, Lek offers no assurance that this will be sufficient to account for subsequent market movement. Indeed, Lek does not dispute the Hearing Panel's conclusion that, despite the availability of NSCC resources, even calculating the initial margin requirement at the time of the trade is not an exact science. Nor does it dispute that its margin requirements have at times exceeded $80 million.

Lek argues further that the Hearing Panel erred by rejecting Lek's assertion that it now has more available credit than it did before its margin requirements increased in 2021. According to Lek, as of January 2021, it had only an $8 million line of credit from one bank to use for posting margin at NSCC and after it lost that line of credit it established a $10 million unsecured line of credit at another bank. But, in their opposition to the stay request, the Clearing Agencies say Lek had $15.5 million in lines of credit available for posting margin in January 2021 compared to only $10 million now. Lek does not address this assertion in its reply. Regardless of whether Lek's available unsecured lines of credit increased by $2 million in 2021, it is undisputed that Lek's margin requirements also increased, that it adopted the Lek Holdings Note Program to meet those increased margin requirements, and that it lacks sufficient funds to meet its minimum Required Fund Deposit without using the Lek Holdings Note Program.

---

[17] Exchange Act Rule 17Ad-22(e)(6)(iii), 17 C.F.R. § 240.17Ad-22(e)(6)(iii) (emphasis added).

[18] In its reply brief, Lek claims that it will agree to place limitations on its customers' trades to keep its daily margin obligation at or below $27 million if the Commission grants a stay. But Lek has a history of exceeding previous trading caps, Lek's pledge still seemingly relies on the Lek Note Holdings Program, and Lek does not explain how it will ensure post-trade, pre-execution price swings will not cause Lek's margin obligations to exceed $27 million.

2. Lek has not shown that there is a serious legal question about the process it received.

Second, Lek argues that the Clearing Agencies failed to afford it the notice and process contemplated by Exchange Act Section 17A(b)(3)(H).[19] But the record shows that the Clearing Agencies notified Lek in writing of the basis for their action, provided an opportunity to be heard on the grounds stated therein, held a hearing and kept a record of proceedings, and, through the Decision, stated in writing the basis for the cease to act determinations from which Lek appeals.[20]

Lek nonetheless contends that the Clearing Agencies engaged in an "unfettered exercise of discretion" because their cease to act determinations were not based on any rule that specified the precise level and composition of available financial resources that a member must have.[21]

---

[19] 15 U.S.C. § 78q-1(b)(3)(H) (providing that a clearing agency shall not be registered unless the Commission determines that its rules "in general, provide a fair procedure with respect to . . . the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency"); *see also id.* § 78q-1(b)(5) (providing that "[i]n any proceeding by a registered clearing agency to determine whether a person shall be . . . prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial or prohibition or limitation under consideration and keep a record," and that a "determination by the clearing agency to . . . prohibit or limit a person with respect to access to services offered by the clearing agency shall be supported by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based").

[20] Lek claims in a footnote to its motion that the Clearing Agencies' determinations are facially invalid because the October 26, 2021 letters that first announced their actions did not indicate whether they were taken by the Clearing Agencies' Boards of Directors, which Lek says is required by NSCC Rule 46. But Lek fails to address that, regardless of who wrote the original letters, Lek is appealing from the decision of a hearing panel composed of members of DTCC's Board of Directors, which expressly affirmed the Clearing Agencies' actions. *See, e.g.*, *Robbi J. Jones*, Exchange Act Release No. 91045, 2021 WL 396767, at *3 (Feb. 2, 2021) (observing that "generalized claims of error are insufficient to establish that a stay is warranted").

[21] Lek contends that two regulations support its argument. It cites Exchange Act Rule 17Ad-22(e)(1), which provides that "[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to" "[p]rovide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions." 17 C.F.R. § 240.17Ad-22(e)(1). Lek has not shown that there is a serious question on the merits regarding the Clearing Agencies' compliance with this standard. It also cites Exchange Act Rule 17Ad-22(b)(5), which provides that NSCC, "shall establish, implement, maintain and enforce written policies and procedures reasonably designed to" "[p]rovide the opportunity for a person that does not perform any dealer or security-based swap

According to Lek, NSCC refused to provide an "amount of capital and level of credit facilities it would need to have" when Lek requested that it do so. But the Decision's affirmance of the Clearing Agencies' cease to act determinations was grounded in their rules. As stated above, NSCC Rule 46 authorizes a cease to act determination when "the participant is in such financial or operating difficulty, that [NSCC] determined, in its discretion, that such action is necessary for the protection of the Corporation, the participants, creditors, or investors"; or "in any circumstances in which, in the discretion of [NSCC], adequate cause exists to do so."[22] The Decision determined that Lek lacked sufficiently reliable sources of liquidity and explained the reasons that the cease to act determinations were warranted.

Moreover, the Decision was based on the quality of Lek's funding sources, not notional quantity. The Decision recognized that the Lek Holdings Note Program was initially set at $50 million and then increased to $100 million. But the Decision observed that Lek Holdings did not appear to have sufficient assets to fund the program on its own and that the ultimate source of the program's cash would come from Lek's customers or investors—none of whom were known to or vetted by NSCC. The Decision thus found that the Lek Holdings Note Program was an unreliable source of funding regardless of the amount of money Lek sought to obtain through it. The Decision determined that Lek needed to use the program to ensure it would be able to post even its minimum Required Fund Deposit. Yet the Decision concluded that, as Lek's "primary source" of liquidity, the program was "completely inadequate," and Lek does not explain why the Clearing Agencies' concerns about the program are unfounded.

3. Lek has not shown that there is a serious legal question about the Decision's conclusion that the cease to act determinations were necessary.

Third, Lek argues that the Decision did not explain why cease to act determinations were "necessary," as NSCC Rule 46 authorizes a cease to act determination when "necessary for the protection of" NSCC. Lek asserts that the Decision "hinge[s] on the hyperbolic statement that 'a failure by L[ek] would not be a failure for L[ek] alone'" but "'would cause harm to DTCC and potentially the entire financial system.'" But contrary to Lek's insinuation, the Decision did not base the cease to act determinations on a finding that Lek's failure would destroy the financial system. Rather, the Hearing Panel affirmed the Clearing Agencies' determinations that Lek's "liquidity position, including its capital position, was so weak as to present an unacceptable settlement risk to NSCC and NSCC's members other than L[ek]." Lek does not dispute that its failure to post the Required Fund Deposit would cause its own failure and harm the Clearing Agencies and their members or that it is necessary for NSCC to try to prevent such a failure.

Lek also argues that a cease to act determination is an unprecedented action and that the Decision had to show why a "less severe" action is not appropriate. But Lek cites to no statute, regulation, or NSCC or DTC rule to support this assertion. And the Clearing Agencies say in

---

dealer services to obtain membership on fair and reasonable terms at the clearing agency to clear securities for itself or on behalf of other persons." 17 C.F.R. § 240.17Ad-22(b)(5). Lek has not shown that it was denied the opportunity to obtain membership on fair and reasonable terms.

22 *See* NSCC Rule 46, Sec. 1; *see also* DTC Rule 10, Sec. 1 (providing similar standards).

their opposition to the stay that, in other cases where they have prepared to cease to act for firms in financial or operational difficulty, the firms either took steps to increase capital and liquidity to levels sufficient to meet their obligations, merged with entities that had additional financial resources, or decided to voluntarily wind down their activities. In any case, the Decision explained that the cease to act determinations were necessary because Lek lacked sufficiently reliable liquidity. The Decision also explained that, in addition to the substantial risks posed by Lek's lack of liquidity, there were concerns regarding Lek's candor and openness with respect to the Lek Holdings Note Program.[23] Lek does not identify any lesser action that it contends would adequately protect the Clearing Agencies and their members from the risk caused by its financial circumstances.[24]

B. The remaining factors weigh against a stay.

Lek argues that it will suffer irreparable harm without a stay because the cease to act determinations will force Lek to stop acting as a self-clearing broker. We do not dispute that the cease to act determinations will cause Lek to suffer irreparable harm. But Lek's failure to raise a serious legal question on the merits means Lek has not met its burden for seeking a stay.[25]

Additionally, in light of Lek's financial situation and the Clearing Agencies' concerns with Lek continuing to use the Lek Holdings Note Program to meet its margin requirements, a stay would pose a risk of substantial harm to the Clearing Agencies and their other members. Lek argues that NSCC already requires deposits from member firms that protect it. But because NSCC guarantees completion of every member's unsettled transactions in the event of a default, NSCC is still exposed to its members' credit risk. And because DTC is a central securities depository for U.S. transactions in equity and other securities, DTC is similarly exposed to the credit risks associated with each participant's end-of-day net funds settlement. The Clearing Agencies' rules thus reflect a risk-management framework designed to protect the Clearing Agencies and their members from another member's default or other financial and operational difficulties. Central to this framework is ensuring that individual members can meet their liquidity and margin requirements on an ongoing basis. Although Lek claims that its failure to meet its margin requirements would not cause a market-wide failure, each clearing member's

---

[23] Lek fails to address many of the bases on which the Decision reached this conclusion, including two specific findings that Lek made false or misleading statements.

[24] Lek also contends that the cease to act determinations were not necessary because it meets the minimum net capital requirements set forth in NSCC's rules. But the Hearing Panel determined that Lek's own "capital, while exceeding the regulatory minimum, is plainly inadequate to meet its liquidity needs," and "falls well short of its usual margin requirements."

[25] *See, e.g., In re Revel AC, Inc.*, 802 F.3d 558, 570 (3d Cir. 2015) (stating that "'even if a movant demonstrates irreparable harm . . . [it] is still required to show, at a minimum, serious questions going to the merits'") (alteration in original) (internal citation omitted).

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.

Here, the Decision determined that continuing to act for Lek poses an unacceptable settlement risk, because Lek cannot show that it has the necessary capital and liquidity to meet its margin requirements. And Lek, as described above, has not shown a serious legal question about that determination. Moreover, the Clearing Agencies' rules set forth a process for minimizing the impact on others when the Clearing Agencies cease to act for a member such as Lek. Among other things, NSCC's rules specify that it will promptly attempt to complete the open transactions of the member's customers, provide notice to the customer of the situation, and attempt to complete the transactions.[26] And NSCC will have ceased to accept trades from Lek before instituting this process. We thus conclude that, even assuming irreparable harm to Lek, it would not be in the public interest to stay the Clearing Agencies' actions.[27]

* * *

Accordingly, IT IS ORDERED that Lek Securities Corporation's motion for a stay pending Commission review of its appeal of the actions taken by the National Securities Clearing Corporation and the Depository Trust Company is denied; and it is further

ORDERED, pursuant to Rule 450(a) of the Rules of Practice,[28] that a brief in support of the application for review shall be filed by June 30, 2022. A brief in opposition shall be filed by August 1, 2022, and any reply brief shall be filed by August 15, 2022. Arguments not presented in an opening brief are subject to forfeiture.[29] Pursuant to Rule of Practice 180(c), failure to file a brief may result in dismissal of this review proceeding.[30]

By the Commission.

Vanessa A. Countryman
Secretary

---

26 *See* NSCC Rule 18.

27 *Se. Invs., N.C., Inc.*, Exchange Act Release No. 86097, 2019 WL 2448245, at *5 (June 12, 2019) (stating that to the extent movant's assertions would establish irreparable harm they were "outweighed by the other factors"); *Zipper*, 2017 WL 5712555, at *5 (stating that "we need not decide whether Zipper has satisfied his burden of establishing an irreparable injury because any harm to Zipper is outweighed by the other factors").

28 17 C.F.R. § 201.450(a).

29 *Robbi J. Jones*, Exchange Act Release No. 91045, 2021 WL 396767, at *3 n.17 (Feb. 2, 2021) (declining to consider arguments raised for the first time in reply brief).

30 17 C.F.R. § 201.180(c).

OS Received 06/30/2022

EXHIBIT C

Before a Hearing Panel of the Depository
Trust & Clearing Corporation

In the Matter of the Application of

LEK SECURITIES CORPORATION

AFFIRMATION OF CHARLES F. LEK

I, Charles F. Lek, pursuant to 28 U.S.C. §1746, hereby declare under penalty of perjury under the laws of the United States of America that the following is true and correct to the best of my knowledge, information and belief:

1. I am the Chief Executive Officer of Lek Securities Corporation ("LSC" or the "Firm") and have personal knowledge of the facts set forth herein, except as to matters that I believe to be true based on (a) information provided by FTI Consulting ("FTI"), (b) information about the positions of National Securities Clearing Corporation ("NSCC"), Depository Trust Company ("DTC") and The Depository Trust & Clearing Corporation ("DTCC") that I reviewed, or were reported to me by counsel, or learned during my participation in this proceeding, and (c) my review of business records of LSC and discussions with employees at LSC.

2. This Affirmation is submitted in support of LSC's request for review by DTCC of (a) NSCC's determination to cease to act for LSC and summary limitation of clearing activity, dated October 26, 2021 (the "October 26 NSCC Notice") (*see* Ex. 53[1]); (b) DTC's determination to cease to act for LSC, dated October 26, 2021 (the "October 26 DTC Notice,

[1] Exhibits referred to herein can be found in the LSC Compendium of Exhibits submitted contemporaneously with this Affirmation.

together with the October 26 NSCC Notice, the "October 26 DTCC Notices") (*see* Ex. 52); (c) NSCC's notice of modified activity cap and the imposition of censure and fines for violations of prior activity cap, dated November 5, 2021 (the "November 5 NSCC Notice") (*see* Ex. 55); and (d) NSCC's notice of violation of activity cap, imposition of censure and fine, and request for information, dated November 7, 2021 (the "November 7 NSCC Notice"). *See* Ex. 56.

3. I graduated with honors from Washington University in St. Louis with a Bachelor of Arts degree in economics. I began my career working on the floor of the New York Stock Exchange and have thirteen years of experience in the brokerage business. I have held my Series 24 license for eleven years and took over as Chief Executive Officer of LSC when my father, and founder of LSC, stepped away from LSC as part of a settlement with the SEC in October 2019.[2] I am very involved in the day-to-day management as well as an active leader and supervisor in all aspects of LSC's business.

Procedural History

4. On October 26, 2021, LSC received the October 26 NSCC Notice advising that NSCC had (i) determined to cease to act for LSC and (ii) summarily limited LSC's clearing activity by imposing a cap of $300 million of aggregate unsettled clearing activity as

[2] On March 10, 2017, the United States Securities and Exchange Commission (the "SEC") filed a Complaint in the U.S. District Court for the Southern District of New York alleging that LSC, and its then-principal, Samuel Lek, aided and abetted violations of the federal securities laws (the "SEC Complaint"). *SEC v. Lek Securities Corp., et al.*, 17-CV-1789 (DLC) (S.D.N.Y.). On October 1, 2019, the District Court entered a Consent Order (the "October 2019 Consent Order") adopting a settlement agreement between the SEC and LSC pursuant to which LSC, *inter alia*, agreed to a limited injunction on certain activities, paid monetary penalties and retained an independent compliance monitor for a period of three years. *Id.* at ECF 466. Samuel Lek also agreed to divest his ownership interest in LSC and accepted a permanent bar from the securities industry as part of the resolution of the SEC Complaint. *Id.* at ECF 467.

measured by the gross market value of its unsettled portfolio each business day coinciding with the approval of LSC's start-of-day margin call (the "Initial Activity Cap"). Ex. 53 (October 26 NSCC Notice). The October 26 NSCC Notice stated that LSC had the right to request a hearing to object to NSCC's cease to act determination and imposition of the Initial Activity Cap. *See id*.

5. On that same day, DTC provided the October 26 DTC Notice to LSC advising that DTC had determined to cease to act for LSC, subject to its right to a hearing. Ex. 52 (October 26 DTC Notice).

6. By letter, dated October 29, 2021, LSC wrote to DTCC timely objecting to NSCC's determination to cease to act for LSC and imposition of the Initial Activity Cap in the October 26 NSCC Notice, and requesting a hearing on those determinations. *See* Ex. 54 (October 29, 2021 Seward & Kissel LLP ("S&K") letter to DTCC (the "October 29 Letter")). In that letter, LSC also timely objected to DTC's determination to cease to act for LSC in the October 26 DTC Notice and requested a hearing on that determination. *See id.*

7. On November 5, 2021, NSCC provided the November 5 NSCC Notice to LSC, informing LSC that NSCC had determined to modify the Initial Activity Cap on LSC's unsettled clearing activity from $300 million to $400 million (the "Modified Activity Cap") and impose an aggregate fine of $100,000 on LSC and censure LSC via publication to the NSCC membership for LSC's alleged violation of the Initial Activity Cap. *See* Ex. 55. The November 5 NSCC Notice also advised LSC that NSCC would be increasing its minimum Required Fund Deposit from $20 million to $27 million, effective November 8, 2021, and that "if the calculated amount of its start-of-day Required Fund Deposit, exclusive of any Excess Net Capital Premium Charges, exceeds $27 million on any date after Monday, November 8, Lek's minimum

Required Clearing Fund will automatically be re-set to such greater amount as the new minimum." *See id*. The notice stated that LSC could request a hearing on the Modified Activity Cap and the related fines and sanctions, and that NSCC would deem LSC's request for a hearing in the October 29 Letter with respect to the Initial Activity Cap to be a request for a hearing with respect to the Modified Activity Cap. *See id.*

8. On November 7, 2021, NSCC provided the November 7 NSCC Notice to LSC notifying LSC that it had determined to impose a fine of $20,000 on LSC and censure LSC via publication to the NSCC membership for allegedly violating the Initial Activity Cap and Modified Activity Cap on November 8. Ex. 56 (November 7 NSCC Notice). The notice advised LSC of its right to request a hearing on the imposition of the fine and censure. *See id.* The notice also requested information with respect to the specific risk management controls and supervisory procedures LSC had implemented to comply with the Modified Activity Cap. *See id.*

9. On November 8, 2021, LSC timely responded to NSCC's request for information in the November 7 NSCC Notice with respect to certain risk management controls and supervision procedures. *See* Ex. 57 (November 8, 2021 LSC letter to DTCC).

10. Also on November 8, 2021, LSC timely objected to NSCC's determinations in the November 5 NSCC Notice and November 7 NSCC Notice and requested a hearing on NSCC's determinations to: (i) impose the Activity Cap (both the Initial Activity Cap and the Modified Activity Cap); (ii) impose fines and sanctions for LSC's violation of the Initial Activity Cap; and (iii) increase LSC's minimum Required Fund Deposit from $20 million to $27 million. *See id.*

11. Pursuant to NSCC and DTC rules, on November 9, 2021, LSC timely provided a written statement, setting forth in particularity its bases for objecting to determinations of NSCC and DTC in the (a) October 26 NSCC Notice; (b) October 26 DTC Notice; (c) November 5 NSCC Notice; and (d) November 7 NSCC Notice. *See* Ex. 58 (November 9, 2021 S&K letter to DTCC).[3]

12. The Hearing Panel ultimately scheduled a hearing on this matter for January 20, 2022 and this Affirmation serves as my direct testimony for that hearing.

LSC's Business

13. LSC is an agency-only, independent order-executing and self-clearing broker that is engaged in the business of executing and clearing orders in equity securities, options and fixed income instruments, as agent directly or indirectly for over one million clients worldwide with roughly $2.5 billion in client assets. Founded in 1990, LSC is a wholly owned subsidiary of Lek Securities Holdings Limited ("Lek Holdings"). Lek Securities UK Limited ("Lek UK"), also a wholly owned subsidiary of Lek Holdings, is a London-based broker offering the same services to customers in the United Kingdom and Europe that LSC offers in the United States.

[3] On November 30, 2021, the Hearing Panel asked for clarity on whether LSC was seeking to have the increased minimum Required Fund Deposit reviewed by DTCC. LSC confirmed that it was, and the Hearing Panel requested submissions from the parties with respect to whether the increased required Minimum Fund Deposit was subject to review. *See* Ex. 59 (December 1, 2021 Eric Heichel email to Mark Kotwick and others). Following submissions by LSC (*see* Ex. 61 (December 6, 2021 S&K letter to Eric Heichel and Eric Levine)) and NSCC (*see* Ex. 60 (December 6, 2021 DTCC's Memorandum Concerning Subject Matter of Hearing)), on December 8, 2021 the Hearing Panel ruled that the NSCC Rules do not provide LSC with a right to a hearing with respect to the increase of its required Minimum Fund Deposit. *See* Ex. 62 (December 8, 2021 Ruling).

14. LSC and Lek UK (the "Firms") currently employ approximately 40 people with offices in New York, Chicago and London.

15. Since it was founded some thirty years ago, LSC has been engaged in the business of executing, clearing and the safekeeping securities across a wide range of asset classes. It does not engage in market-making or proprietary trading, does not recommend investments to its customers and does not have any customers that are securities issuers, nor does LSC clear for broker-dealers that engage in underwriting or market-making. In that regard, it is one of the last remaining pure agency-based brokers that does not engage in proprietary trading.

16. As an agency broker, in fiscal year 2020, LSC derived approximately 65% of its revenue from clearing, execution and custody commissions and fees, and the balance of its revenue from interest income, including from securities lending transactions, margin financing and interest earned from cash deposits at banks.

17. LSC is registered with the SEC with regulatory oversight by the Financial Industry Regulatory Authority ("FINRA"), as its Self-Regulatory Organization.

18. The Firms are members of the following listed exchanges: (a) New York Stock Exchange; (b) London Stock Exchange; (c) Chicago Stock Exchange; (d) Philadelphia Exchange; (e) ARCA Exchange; (f) NASDAQ Stock Market; (g) International Securities Exchange; (h) Chicago Board Options Exchange; (i) BATS Exchange; (j) BOX Exchange; and (k) IEX.

19. The Firms conduct trading through various clearing organizations: (a) DTC; (b) NSCC; (c) The Option Clearing Corporation ("OCC"); (d) Canadian Depository Services, Inc.; and (e) Euroclear UK & Ireland (Crest).

20. Although the October 26 DTCC Notices reference that LSC can elect to voluntarily conduct an orderly wind down of its business, LSC has no intention of doing so. For some thirty years, LSC has provided a valuable service to its customers, providing them with direct access to U.S. securities markets. It has no intention of ceasing its operations based on what it believes is the arbitrary and unjustified determination of NSCC and DTC to cease to act for the Firm. Moreover, nothing has changed at LSC to warrant this determination. The Firm is not only profitable, but it is operating with the highest level of net capital in its 30 years of operations. LSC has never missed a margin call and has never failed to make a payment since joining DTC and NSCC in 1999. LSC maintains robust systems and controls, is solvent, and has failed on none of its financial obligations. LSC is responsible for the safekeeping of billions of dollars in client assets. NSCC and DTC ceasing to act for LSC would mark the first time a clearing firm was forced out of business, despite the firm being solvent and operating at multiple times its regulatory net capital.

LSC's Compliance Staff

21. LSC takes it compliance obligations very seriously and has five employees who have compliance responsibilities. While I am very involved in daily compliance-related matters, Jeffrey Tabak, an industry veteran and former co-CEO of Miller Tabak & Co., LLC was named Chief Compliance Officer of LSC in October 2019 and remains in that position today.

22. Mr. Tabak has more than forty years of industry experience. In addition to day-to-day compliance functions, Mr. Tabak has held his Series 24 and Series 4 licenses for more than 35 years and is ultimately responsible for the ongoing supervision and control of the Firm from a compliance perspective, reporting directly to me.

LSC's Capital

23. LSC had regulatory net capital of $14,529,108 at year end 2020 (Ex. 7 (December 31, 2020 LSC X-17A-5 filing) at 18), some four times the SEC's minimum net capital requirement of $3,678,770 (*see id.*). As per LSC's September 30, 2021 FOCUS Report, LSC had regulatory net capital of $15,217,160 (Ex. 33 (LSC Focus Report September 2021)), eight times higher than the SEC's required minimum net capital of $1,901,680 (*see id.)*.

24. As noted in the October 26 DTCC Notices, LSC's excess net capital (as of September 24, 2021) was $11.1 million (Ex. 52 (October 26 DTC Notice) at 2; Ex. 53 (October 26 NSCC Notice) at 3), far above the excess capital requirement at NSCC for correspondent brokers of $1 million.

LSC's Access to Credit

25. As a starting point, it is noteworthy that there is nothing in any rules or regulations of either DTC or NSCC that requires its members to maintain any specific level of liquidity, maintain any lines of credit with a bank or have external credit facilities. Moreover, LSC has never been asked to agree, nor has it agreed with DTC, NSCC, or any other clearing corporation, regulator or SRO, to maintain any particular line or source of credit. When considering LSC's liquidity needs, it is critical to keep in mind that LSC is an agency-based broker that does not engage in proprietary trading, and thus it does not have the liquidity needs or incur the market risk of a broker-dealer that has a proprietary book. And LSC does not rely on its own capital and liquidity sources to pay for security transactions of its customers.

26. LSC's customers pay for their own securities, and LSC ensures that its customers have sufficient equity on deposit to support their transactions. LSC uses its own capital and liquidity sources only when it agrees to provide financing to its customers, and when

it agrees to do so, the loans are fully secured according to strict margin rules set by the Federal Reserve, FINRA and LSC's internal, even more conservative, "house margin" requirements.

27. LSC's capital and liquidity sources serve solely as a backstop to the market and the Firm's counterparties that its clients will honor their commitments. When evaluating the Firm's capital and liquidity sources, it would therefore be a mistake to ignore the same $2.5 billion in equity that its customers have on deposit with LSC and conclude that LSC's market activity is solely supported by the Firm's own capital and liquidity sources, as if the Firm were trading for its own account, which, again, it does not.

28. To provide an additional backstop to the market and LSC's counterparties, LSC obtains liquidity from its capital and from borrowings. Credit obtained by borrowing funds falls into two categories: secured and unsecured. LSC has no proprietary inventory, so secured credit facilities are collateralized by customer securities.

29. A permissible method of financing customer debit balances is by lending securities in the stock loan market. Customer securities can be hypothecated with a value of up to 140% of each customer's debit balance. Moreover, if a security is needed to cover a short sale, the Firm might be able to borrow money at a negative interest rate, *i.e.,* it gets paid for borrowing money, and even if a security is not needed to cover a short sale, the Firm can still borrow money at favorable rates. LSC has approximately $1 billion in stock loan facilities available from approximately a dozen different counterparties.

30. In addition to its stock lending facilities, in June 2021, LSC increased its secured loan facility with Lakeside Bank ("Lakeside") to $20 million (the "Lakeside Secured LOC"), as well as an additional unsecured loan facility with Lakeside in the amount of $10 million (the "Lakeside Unsecured LOC," together with the Lakeside Secured LOC, the

"Lakeside LOC"). Prior to that, LSC had in place with Lakeside a $12.5 million line of credit, of which $7.5 million could be used as unsecured.

31. As of September 30, 2021, LSC only had $21.8 million in customer debit balances, so the Firm's secured lines of credit were much larger than required. *See* Ex 33 (LSC Focus Report September 2021). In fact, LSC's capital and credit facilities could support significantly more customer debits, but the Firm's conservative credit standards limit the customers to which it is willing to lend money.

32. When possible, brokers avoid using proceeds from borrowings collateralized by customer securities because such borrowings will become a credit item in the reserve formula. This means that money borrowed this way must be deposited in the Special Reserve Account. If a firm does this, it would be borrowing money, at a cost, only to deposit the money in the Reserve Account and earn little or nothing.[4]

33. Secured bank lines of credit are, therefore, not an optimal means for a source of liquidity, other than to fund customer debit balances. Accordingly, a bank credit facility, which is collateralized by customer securities, is not useful to finance NSCC margin calls.

34. There is always enough collateral to secure loans to fund customer debit balances. This is because when a customer does not pay for his "buys," LSC can utilize the

[4] Credit items add to the money that must be deposited in the Special Reserve Account. Debit items reduce the deposit requirement. When brokers use customer securities as collateral for a loan, the proceeds constitute a credit item. However, the debit balance is itself a debit item, so borrowings to fund debit balances have little effect on the lockup requirements. Unlike debit balances and margin deposited with OCC, NSCC's clearing fund requirement is not a debit in the formula. This means that brokers must obtain funds from sources where customer securities are not used as collateral, even if the trading is done for the account customer.

customer's securities to secure a loan, up to 140% of the debit balance. Banks will typically lend up to 80% (or more when needed) of the collateral, so the Firm only needs (Loan Amount) / .80 = 125% of the debit balance to finance the loan. This leaves 140% - 125% = 15% of the debit balance as excess collateral. If the Firm uses a stock loan, in which the borrower may provide collateral equal to 102% of the value of the securities loaned, it can monetize 102% * 140% = 142.8% of the debit balance, which would provide 42.8% of the financing need in excess collateral.

35. LSC has no proprietary positions, so unexpected liquidity drains would come from unexpected large customer withdrawals and spikes in the margin requirements at NSCC and at OCC. Customer credit balances are generally kept in cash in a Special Reserve Account, so sufficient cash is always available to meet customer withdrawals. Margin required by OCC is a debit item in the reserve formula, so for OCC the Firm can use the customers' money to pay for the customers' margin requirement.

36. NSCC, however, is different than OCC. Here a broker-dealer must have a sufficient amount of its own money and credit facilities not secured by customer securities to meet NSCC's margin requirements, even when the trading is done for the account of customers. In order to fund its NSCC margin requirements, as of September 30, 2021, LSC has access to the following sources of funding:

Main sources			
LSC capital and subordinated debt		$ 15MM	
Accrued liabilities		$ 4MM	September FOCUS Line 1600
Accumulated profits		$ 14MM	September FOCUS Line 1670
Bank loans not collateralized by customer securities		$ 10MM	(Lakeside Bank)
Borrowing under our unsecured note program		$100MM	
	Total	$143MM	
Additional sources (See footnote)			
Excess collateral on bank loans (15% of 30MM available)		$ 3MM	
Two percent excess cash on stock lent out (2% of $500MM)		$ 5MM	September FOCUS Line 1520
	Total	$ 8MM	
	Grand Total	$151MM	

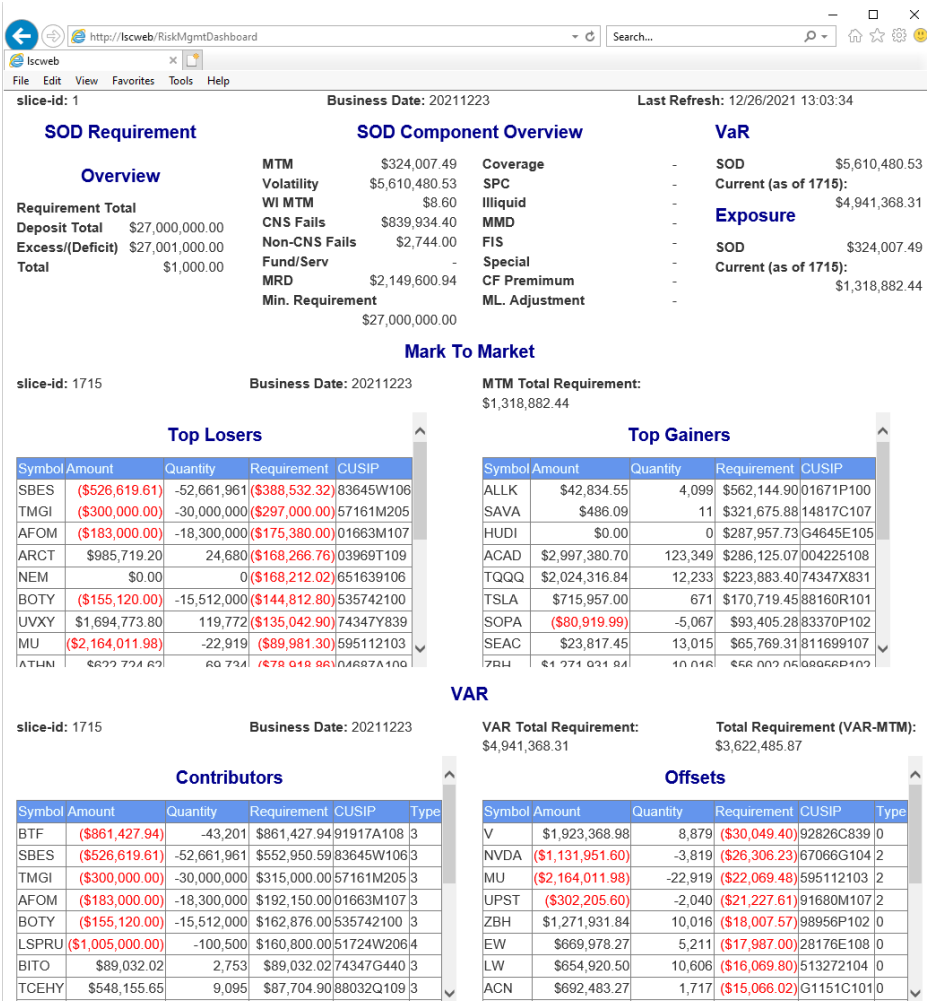
Note: LSC needs to be careful with this, because as of the following week, the loan will create a credit item in the Reserve Formula

37. LSC has developed operational controls, that are designed to ensure that client trading is limited so that NSCC margin calls do not exhaust available liquidity. By default, any order over $500,000 is rejected by the Firm. In addition, selling OTC stocks can create large margin calls due to their high volatility. Therefore, by default any trade that would result in an aggregate position in OTC securities over $500 is also rejected by the Firm. LSC uses its Q6 risk control system to ensure that trades that the Firm wants to reject are identified and blocked. Q6 has a track record of over a decade and has proven to be reliable. The Q6 risk control system and LSC's risk control system and liquidity management are described in "Lek Securities Risk Control System" (*see* Ex. 64) and "Q6 Trading Limits Explained." *See* Ex. 65.

38. An important Q6 feature is that it serves as a credit monitor to block trades that if executed would violate a margin rule or LSC's more sophisticated "House Margin" requirements. This way LSC's customers' credit risk is carefully controlled. In addition, a trade will also be blocked if the security that a customer wants to buy cannot be easily monetized unless the customer has sufficient cash in the account to fully pay for the security. Securities that can be difficult to monetize include stocks priced under $5, corporate bonds and foreign securities.

39. LSC takes liquidity management seriously and it is a continuous process at the Firm. LSC subscribes to NSCC's webservice that calculates the mark-to-market (MTM) and the Value-at-Risk (VaR) of LSC's unsettled position at NSCC and monitors liquidity risk closely and in real time. LSC's technology provider has developed a webpage on the Firm's intranet that reflects the most recent state of NSCC's mark-to-market and VaR calculations. The data is obtained from NSCC's webservice. By viewing this webpage, LSC is aware of

NSCC's most recent calculation. Also, the securities that contribute to the calculations are also listed in order of significance.



http://lscweb/RiskMgmtDashboard — Search... — lscweb

File Edit View Favorites Tools Help

slice-id: 1 **Business Date:** 20211223 **Last Refresh:** 12/26/2021 13:03:34

SOD Requirement

Overview

Requirement Total	
Deposit Total	$27,000,000.00
Excess/(Deficit)	$27,001,000.00
Total	$1,000.00

SOD Component Overview

MTM	$324,007.49	Coverage	-
Volatility	$5,610,480.53	SPC	-
WI MTM	$8.60	Illiquid	-
CNS Fails	$839,934.40	MMD	-
Non-CNS Fails	$2,744.00	FIS	-
Fund/Serv	-	Special	-
MRD	$2,149,600.94	CF Premimum	-
Min. Requirement	$27,000,000.00	ML. Adjustment	-

VaR

SOD	$5,610,480.53
Current (as of 1715):	$4,941,368.31

Exposure

SOD	$324,007.49
Current (as of 1715):	$1,318,882.44

Mark To Market

slice-id: 1715 **Business Date:** 20211223 **MTM Total Requirement:** $1,318,882.44

Top Losers

Symbol	Amount	Quantity	Requirement	CUSIP
SBES	($526,619.61)	-52,661,961	($388,532.32)	83645W106
TMGI	($300,000.00)	-30,000,000	($297,000.00)	57161M205
AFOM	($183,000.00)	-18,300,000	($175,380.00)	01663M107
ARCT	$985,719.20	24,680	($168,266.76)	03969T109
NEM	$0.00	0	($168,212.02)	651639106
BOTY	($155,120.00)	-15,512,000	($144,812.80)	535742100
UVXY	$1,694,773.80	119,772	($135,042.90)	74347Y839
MU	($2,164,011.98)	-22,919	($89,981.30)	595112103
ATHN	$622,724.62	69,734	($78,918.86)	04687A109

Top Gainers

Symbol	Amount	Quantity	Requirement	CUSIP
ALLK	$42,834.55	4,099	$562,144.90	01671P100
SAVA	$486.09	11	$321,675.88	14817C107
HUDI	$0.00	0	$287,957.73	G4645E105
ACAD	$2,997,380.70	123,349	$286,125.07	004225108
TQQQ	$2,024,316.84	12,233	$223,883.40	74347X831
TSLA	$715,957.00	671	$170,719.45	88160R101
SOPA	($80,919.99)	-5,067	$93,405.28	83370P102
SEAC	$23,817.45	13,015	$65,769.31	811699107
ZBH	$1,271,931.84	10,016	$66,002.05	98956P102

VAR

slice-id: 1715 **Business Date:** 20211223 **VAR Total Requirement:** $4,941,368.31 **Total Requirement (VAR-MTM):** $3,622,485.87

Contributors

Symbol	Amount	Quantity	Requirement	CUSIP	Type
BTF	($861,427.94)	-43,201	$861,427.94	91917A108	3
SBES	($526,619.61)	-52,661,961	$552,950.59	83645W106	3
TMGI	($300,000.00)	-30,000,000	$315,000.00	57161M205	3
AFOM	($183,000.00)	-18,300,000	$192,150.00	01663M107	3
BOTY	($155,120.00)	-15,512,000	$162,876.00	535742100	3
LSPRU	($1,005,000.00)	-100,500	$160,800.00	51724W206	4
BITO	$89,032.02	2,753	$89,032.02	74347G440	3
TCEHY	$548,155.65	9,095	$87,704.90	88032Q109	3

Offsets

Symbol	Amount	Quantity	Requirement	CUSIP	Type
V	$1,923,368.98	8,879	($30,049.40)	92826C839	0
NVDA	($1,131,951.60)	-3,819	($26,306.23)	67066G104	2
MU	($2,164,011.98)	-22,919	($22,069.48)	595112103	2
UPST	($302,205.60)	-2,040	($21,227.61)	91680M107	2
ZBH	$1,271,931.84	10,016	($18,007.57)	98956P102	0
EW	$669,978.27	5,211	($17,987.00)	28176E108	0
LW	$654,920.50	10,606	($16,069.80)	513272104	0
ACN	$692,483.27	1,717	($15,066.02)	G1151C101	0

40. When a customer proposes a trade which exceeds the Q6 limits discussed above, the proposed trade is entered into an NSCC simulation tool, and the impact of the trade is analyzed. If the impact is small, the trade is allowed and an adjustment is made in the Credit Limit Manager application to allow the trade to go through. If the impact of the proposed trade is large, however, the trade is blocked.

41. In order to be able to trade, LSC's customers have been willing to provide the necessary cash to meet anticipated NSCC margin calls. Normally, when a customer

leaves money at a broker-dealer, the broker is required to put the money in the Reserve Account. Customers must therefore find an alternative way to transfer funds to a firm if the money is intended by the customer to be used to finance an NSCC margin call. To accomplish this, LSC has implemented an unsecured note program with its parent, Lek Holdings (the "Lek Holdings Note Program").

42. In February 2021, NSCC published a rule change (the "NSCC Rule Change"). The rule change effectively moved the illiquid charge into the volatility bucket. Since volatility is one of "core components" in calculating the Excess Capital Premium charge ("ECP"), LSC knew it would need more unsecured lines of credit to continue its current operations.

43. In response to the anticipated NSCC Rule Change, LSC implemented the Lek Holdings Note Program. The program works as follows: A customer lends money to Lek Holdings, the parent of LSC. Because Lek Holdings is not a broker-dealer, there is no requirement to place the money in a Reserve Account. Lek Holdings then is able to lend the money to LSC so that LSC can meet the NSCC margin call, although there is no requirement for Lek Holdings to use the money that way. In return, Lek Holdings signs a note to evidence the loan. The note has specific wording making important disclosures required by the SEC (*see, e.g.*, Ex. 67 (Adar Alef, LLC April 19, 2021 Note with Lek Holdings)):

- The loan is unsecured. *Id.* at § 6.
- The loan is not protected by SIPC. *Id.* at § 10.
- The note has not been registered with the SEC. *Id.* at § 9.
- The lender is a Qualified Institutional Buyer. *Id.* at § 9.
- The loan is payable on demand, upon three business days' notice. *Id.* at § 2.
- There are no restrictions on how Lek Holdings can use the money. *Id.* at § 10.

44. The disclosures ensure that investors understand that making the loan is riskier than depositing funds with a broker-dealer. Moreover, there are no restrictions on the

use of the funds. The program is designed to ensure maximum flexibility so that LSC will have enough money to meet any NSCC margin call.

45. Specifically, anyone can lend money to Lek Holdings as long as Lek Holdings wants the money. Typically, the lender/investor will also be a customer of LSC, but it is not a requirement. For instance, a hedge fund that wants to earn interest on a short-term investment could be a lender to Lek Holdings.

46. The Lek Holdings Note Program is designed so that if a customer wants to engage in a trade that will create a margin call at NSCC, the customer will lend Lek Holdings the money to fund the margin call. When the Firm gets the money back from NSCC, it repays Lek Holdings, and the client gets its money back from Lek Holdings. All of the participants are wealthy, sophisticated investors and understand the benefits and detriments of participating in the program.

47. The Firm had assumed that NSCC would be satisfied with the Lek Holdings Note Program, because it was specifically designed to ensure that LSC would have enough money to meet its NSCC margin calls. Moreover, the Firm is conservative when estimating the NSCC margin call, so it typically borrows more money than it anticipates needing. Also, because there are no restrictions on the use of the money borrowed, the Firm has significant flexibility. This arrangement is much better than borrowing secured funds from a bank, most significantly because the proceeds from the Lek Holdings Note Program are not a credit item in the reserve formula.

48. The use of a holding company to raise money for a regulated financial institution is common, so the concept should be familiar to persons with experience in the industry, and programs like this have existed for years. The SEC staff had issued interpretations

addressing this type of borrowing. *See* SEC Division of Trading & Markets, SEA Rule 15c3-1(c)(2)/08 Interpretation, "Capital Contributions from Parent, Using Borrowed Funds" at 207, available at: https://www.finra.org/sites/default/files/sea-rule-15c3-1-interpretations.pdf.

Texas Capital LOC

49. Until or about late March 2021, LSC had a $25 million secured line of credit with Texas Capital Bank ("Texas Capital" and the "Texas Capital LOC").

50. In May 2020, an anticipated merger between Texas Capital and Independent Bank collapsed and Texas Capital subsequently significantly downsized. Consequently, on or about October 19, 2020, Bart McCain, Senior Vice President of Texas Capital and LSC's relationship manager called me and Shaniqua Jones, LSC's then-Chief Financial Officer. Mr. McCain explained that as part of the downsizing, Texas Capital was exiting its broker-dealer financing business, and that he would be leaving the bank. As a result, the bank intended to terminate the Texas Capital LOC, which it subsequently did in March 2021.

51. LSC did not view the loss of the Texas Capital LOC as material, and its loss did not compromise LSC's operations or create any significant or additional liquidity risk for LSC. In fact, because the availability to LSC of other sources of liquidity, LSC had rarely utilized the Texas Capital LOC; the last loan under the Texas Capital LOC facility was paid off in June 2020.

52. Because the Texas Capital LOC was a secured line of credit, LSC could not use it to fund its NSCC's clearing fund requirements, which requires an unsecured line, and Texas Capital LOC's primary purpose was to be available to finance customer debit balances for which it, again, was seldom utilized.

BMOH LOC

53. In addition to the Texas Capital LOC terminating in March 2021, LSC's line of credit with Bank of Montreal Harris Bank ("BMOH" and "BMOH LOC") was wound down and ultimately terminated on or about October 6, 2021. While the termination of the BMOH LOC was potentially more significant than the termination of the Texas Capital LOC, in response to the pending termination of the BMOH, LSC was able to replace the BMOH LOC with sources of liquidity from the Lakeside LOC and the existing Lek Holdings Note Program that exceed the BMOH LOC. As a result, the Firm did not consider the termination of the BMOH LOC to be material to its liquidity or operations. Dealing with BMOH was convenient for LSC's staff because BMOH supported a wide range of SWIFT messages and SWIFT is LSC's preferred way to communicate with financial institutions.

54. Notably, the origin of DTC and NSCC's concerns with respect to LSC can be traced back to their misunderstanding of the circumstances surrounding the wind down of LSC's relationship with BMOH and their misplaced concerns about the effect of that wind down on LSC's liquidity.

55. Prior to the winding down of the relationship, BMOH was LSC's clearing bank for both DTC and NSCC. In addition, LSC was required under OCC's rules to maintain a settlement account at an OCC-approved settlement bank, and BMOH was LSC's OCC settlement bank. Except for a brief period during the 2008 financial crisis, when BMOH was experiencing its own problems, for some twenty-five years, BMOH was LSC's clearing bank for DTC and NSCC, as well as its OCC settlement bank, without incident or issue.

56. Prior to October 2021, in addition to BMOH and its parent, Bank of Montreal, there were only six other OCC-approved settlement banks: Bank of America, Citibank, BNY Mellon, JPMorgan Chase, U.S. Bank and Brown Brothers Harriman. For

different reasons, those other six OCC-approved settlement banks were not viable options to settle trades for LSC.[5] Accordingly, LSC's relationship with BMOH was, in part, one of both convenience and necessity for LSC because of LSC's need for an OCC-approved settlement bank.

57. In addition to acting as LSC's OCC-approved settlement bank and its clearing bank for DTC and NSCC, LSC had a line of credit with BMOH. The BMOH LOC initially included a $60 million secured lending facility (the "BMOH Secured LOC") with a $15 million carve-out that could be used without the need to pledge customer securities (the "BMOH Unsecured LOC").

58. In or about 2016, BMOH assigned a new relationship manager to the LSC account and, on its own initiative, increased the BMOH Secured LOC to $75 million. LSC did not ask for the additional credit -- and did not need it -- however LSC was aware that BMOH did not believe that the LSC relationship was particularly profitable, and it hoped that the additional fees generated by the increased line of credit would help the overall relationship since LSC at the time did not have a viable alternative OCC-approved settlement back.

59. LSC used the BMOH Secured LOC primarily to finance customer margin loans. It would have been more economical for LSC to finance these loans in the stock loan market, but the BMOH Secured LOC was used to make the BMOH relationship more profitable to the bank. For the period February 1, 2021 through July 20, 2021 (i.e., the last day the line

[5] Settlement services are not particularly remunerative, and the other OCC-approved settlement banks either do not provide settlement services to independent self-clearing brokers, like LSC, or, if they do, do so only as an accommodation to brokers that otherwise have substantial relationships with the bank.

was drawn), the daily average balance of the BMOH Secured LOC was only approximately $22.6 million.

60. On the other hand, the BMOH Unsecured LOC, which was further reduced to $8 million, *infra* at ¶ 63, was used by LSC for its NSCC funding requirements. The average draw on that unsecured line was $7,338,983 during the period February 1 – July 20, 2021.

61. Following the filing of the SEC Complaint in March 2017, BMOH indicated to the Firm that it had various concerns about its relationship with LSC, although, it was not apparent that BMOH was actually intending to terminate its long-standing relationship with LSC. My belief was based both on discussions with BMOH, in which I was advised that the bank did not consider LSC to be a credit risk, and on BMOH's failure to take steps to cut its ties with LSC while discussing doing so in the abstract.

62. For example, BMOH advised LSC on or about October 2019 that it was contemplating reducing the $15 million NSCC sublimit in the BMOH Unsecured LOC. However, it was not until more than a year later, in November 2020, that it reduced the NSCC sublimit from $15 million to $12 million, while otherwise taking no further steps to wind down its relationship with LSC.

63. On or about January 2021, BMOH further reduced the NSCC sublimit in the BMOH Unsecured LOC from $12 million to $8 million. I still did not consider it likely that BMOH would terminate its relationship with LSC, and in particular, its settlement services, which was what I considered the most important part of the relationship. My understanding was based, in part, on my discussions with Eric Bellendir, Vice President of the Financial Institution Group at BMOH, who assured me in early November 2020 that while BMOH was looking to

reduce its presence as a clearing and settlement bank for the clearing corporations, hence its reduction of the BMOH Unsecured LOC, BMOH did not consider LSC as a credit risk and that the Firm should not be concerned about losing BMOH as it clearing and settlement bank.

64. Consistent with my understanding that BMOH did not intend to cut its ties with LSC, on February 2, 2021, LSC and BMOH entered into an NSCC Renewal Letter Agreement (the "NSCC Letter Agreement") that would allow BMOH to renew up to $75 million of secured loans to LSC on a revolving, uncommitted basis, of which $8 million would be available to cover margin requirements at NSCC. *See* Ex. 16 (February 2, 2021 Email from Eric Bellendir to LSC); Ex.17 (NSCC Letter Agreement). In the Letter Agreement, BMOH also stated that the "facility is subject to your continued acceptable financial condition," *see* Ex. 17 (NSCC Letter Agreement), which again, did not seem problematic given Mr. Bellendir's assurance that BMOH did not consider the Firm to be a credit risk.

65. In April 2021, I retained S&K to advise me of my rights with respect to the possible termination of LSC's settlement bank relationship with BMOH and the lack of settlement banks approved by OCC. To be clear, my concerns at the time related solely to BMOH acting as LSC's settlement bank, and not to the BMOH LOC, and I did not ask S&K advice on any aspect of the BMOH LOC. Similarly, I was not concerned about BMOH's role as LSC's settlement bank at DTCC as Lakeside is an approved settlement bank at DTCC and Lakeside had agreed to provide settlement services there to LSC.

66. On May 14, 2021, LSC wrote to Linda Haven, Managing Director of Financial Institutions at BMOH, inquiring about BMOH's intentions concerning the LSC relationship and its rationale for possibly terminating its settlement bank relationships with LSC. Ex. 23 (May 14, 2021 S&K letter to Linda Haven) (the "May 14 Letter"). That letter

refers only to the settlement bank relationship and does not mention the BMOH LOC. *See id.* BMOH did not respond to that letter.

67. On May 28, 2021, S&K spoke with Joe Kamnik, Chief Regulatory Counsel of OCC, concerning BMOH and OCC's obligation to promote competition by maintaining an adequate number of approved settlement banks. During that call, Mr. Kamnik stated that BMOH had an obligation to inform OCC of its intention to terminate its relationship with LSC and that BMOH had not provided such notice. He volunteered to assist LSC in determining BMOH's intentions. That gave me further assurance that the BMOH relationship was not in serious jeopardy.

68. S&K spoke to Mr. Kamnik again on June 12, 2021. During that call, Mr. Kamnik stated that BMOH had informed OCC that it did intend to terminate the settlement banking relationship with LSC, but it intended to work with LSC to transition the settlement bank responsibilities to another OCC-approved bank.

69. On June 15, 2021, LSC wrote to Ms. Haven seeking a response to its May 14 Letter and noting S&K's conversations with Mr. Kamnik. Ex. 26 (June 15, 2021 S&K letter to Linda Haven) (the "June 15 Letter"). Again, that letter solely referenced BMOH's settlement banking services. *See id.*

70. On June 16, 2021, Ms. Haven responded to the June 15 Letter via e-mail stating that BMOH had not agreed with OCC to indefinitely delay the termination of its settlement bank relationship with LSC, but Ms. Haven indicated BMOH was willing to work with LSC on an orderly transition. Ex. 66 (June 16, 2021 Linda Haven Email to LSC).

71. In response, on June 23, 2021, S&K sent a letter to David Casper, CEO of BMOH, asserting that as one of only eight approved settlement banks at OCC, BMOH could

not, as a matter of law, arbitrarily terminate its relationship with LSC. Ex. 28 (June 23, 2021 S&K letter to David Casper). Again, this letter does not mention the BMOH LOC. *See id.*

72. Until the Firm got clarity about BMOH's actual intentions and timetable, and LSC had the opportunity to consider an appropriate transition plan, I did not believe there was a reason to alert other parties and cause any undue and premature alarm. To be clear, however, LSC's concern with BMOH was the potential termination of its services as LSC's OCC-approved settlement bank, and not the BMOH LOC.

73. It was not until July 8, 2021 that I came to believe that BMOH would actually terminate its relationship with LSC and was informed of the timing of the wind down of the relationship. On that date, counsel for BMOH wrote to S&K in response to its June 23, 2021 letter to Mr. Casper to advise that BMOH intended to orderly wind down its relationship with LSC, including discontinuing OCC settlement services, by early October 2021. *See* Ex. 36 (July 8, 2021 McGuire Woods letter to S&K) (the "July 8 BMOH Letter"). Prior to that correspondence, and for the reasons described above, I did not believe that LSC's relationship with BMOH was in true jeopardy.

74. In the July 8 BMOH Letter, BMOH also advised that it was reducing the BMOH LOC from $75 million to $50 million effective immediately and, in addition, would reduce the BMOH Unsecured LOC to $4 million on August 9, 2021 and reduce the unsecured LOC further to $0 on September 6, 2021. *See id* at 3. As stated above, LSC had not inquired about the BMOH LOC in its previous letters because it was not a significant concern.

75. LSC was able to address the need for an OCC-approved settlement bank when OCC approved Lakeside as OCC's ninth settlement bank, after which LSC immediately established a settlement bank relationship with Lakeside. As mentioned above, *supra* at ¶ 53,

and in more detail below, *infra* at ¶¶ 79, 80, 108-110, 113, 115, LSC replaced the liquidity of the BMOH LOC with an increased $30 million line of credit from Lakeside on June 28, 2021 and further supplemented its liquidity with the Lek Holdings Note Program that was implemented in February 2021.

76. On July 20, 2021, there was a call between LSC and DTCC regarding the wind down of the BMOH relationship, on which Ms. Jones, LSC's former CFO, provided an explanation about the BMOH and Lakeside lines of credit and the distinction of usage between the secured and unsecured lines. Ms. Jones explained why the loss of the BMOH LOC would not have a material impact on LSC: the BMOH Secured LOC could not be used to meet its margin calls at NSCC and satisfy NSCC's deposit requirements. On that call, Larry Pellecchio of DTCC acknowledged and appeared to understand that the Lek Holdings Note Program would be the primary source of liquidity to meet NSCC funding needs.

77. On July 21, 2021, DTCC advised LSC ("July 21 DTCC Letter") that it was aware that BMOH planned to reduce the BMOH LOC and that, eventually, BMOH planned to cease providing its services to LSC generally. *See* Ex. 37. In addition, the DTCC requested that LSC provide responses to a set of questions and information requests.

78. Importantly, the July 21 DTCC Letter evidences DTCC's misreading of the July 8 BMOH Letter and misinterpretation of the actions being taken with respect to the winding down of BMOH's relationship with LSC. Among other evidence of DTCC's confusion was the statement that:

> We note that, unless Lakeside Bank increases the amount available to Lek under its line of credit, or Lek obtains another facility from Investor Bank or another bank, as far as we are aware, Lek would have only $7.5MM of external bank borrowing availability after the termination of the BMO Harris Bank line of credit in September 2021.

Id. at 1.

79. As I explained in a July 26, 2021 letter to Michael Liebrock, DTCC Managing Director, in response to the July 21 DTCC Letter ("July 26 Letter"), while BMOH was reducing the BMOH Secured LOC from $75 million to $50 million as of August 4, 2021, DTCC incorrectly understood that the total line of credit (rather than simply the BMOH unsecured LOC/NSCC sublimit) was being further reduced to $4 million before October 6, 2021:

> BMOH will not reduce our line of credit to $4MM as of August 4, 2021. The line will stand at $50MM until October 6, 2021. Moreover, Lakeside Bank has already increased its line of credit from $12.5MM to $30MM. Therefore, as of August 6, the firm will have $80MM in credit available to it, making the statement that we will have only $7.5MM available to us materially inaccurate.

Ex. 39 (July 26 Letter) at 2.

80. I explained also in the July 26 Letter that the reduction of the BMOH LOC did not have a significant impact on LSC's liquidity and that LSC had alternative sources of liquidity, specifically, an increased line of credit from Lakeside and the existing Lek Holdings Note Program, and that these sources were more diverse and reliable than the BMOH LOC and would more than offset the $25 million reduction in BMOH's Secured LOC and further reduction in the BMOH Unsecured LOC. I also stated that Lakeside was in the process of taking over BMOH's role as LSC's OCC settlement bank. *Id.* In addition, I provided information and documentation that was responsive to the questions posed in the July 21 DTCC Letter.

81. Notwithstanding LSC's clarifications in the July 26 Letter, on July 28, 2021, DTCC informed LSC ("July 28 Letter") that it intended to impose protective measures (*see* Ex. 40), and on August 2, 2021, the DTCC informed LSC ("August 2 Email") that it was, (1) increasing LSC's minimum Required Fund Deposit at the NSCC to $20 million and (2)

reducing LSC's Net Debit Cap at the DTC to $50 million. *See* Ex. 42. In doing so, the Staff ignored information that LSC provided about the DTCC's inaccurate interpretation of the July 8 BMOH Letter. Additionally, despite LSC's responses in the July 26 Letter to the questions that DTCC posed in the July 21 Letter, the Staff inaccurately claimed in the July 28 Letter and August 2 Email that LSC had been unresponsive to their questions. Upon my review of what was requested and what LSC produced, I am only aware of a single omission: The Staff's August 3 letter requested audited financials of our sister company Lek UK. Limited. *See* Ex. 14 (DTCC August 3, 2021 Letter) at 2. This was initially overlooked, but the financials were produced in response the Staff's letter dated September 13.[6] *See* Ex. 51 (September 23, 2021 LSC Letter); Ex. 2 (Lek UK Financial Statements).

Optima and the SEC Monitorship

82. Prior to my becoming CEO of LSC and assuming control over the business, the SEC filed the SEC Complaint in New York federal court in March 2017. The SEC Complaint alleged that LSC aided and abetted Avalon FA Ltd. ("Avalon"), a foreign trading firm, in engaging in schemes to manipulate the securities market by providing Avalon, a customer of LSC, with access to the U.S. securities market.

83. LSC resolved the allegations in the SEC Complaint by agreeing to the October 2019 Consent Order. Pursuant to the October 2019 Consent Order, LSC, *inter alia*, agreed to retain an independent compliance monitor (the "Independent Monitor") for a period of at least three years. The terms of the retention of the Independent Monitor and scope of the

[6] DTCC ultimately denied LSC's request to review the protective measures imposed in the August 2 email, finding that the measures were not subject to review. *See* Ex. 45 (August 6, 2021 DTCC Letter to LSC).

provided an item-by-item response for each of the outstanding requests. *See* Ex. 51 (September 23, 2021 LSC Letter). There were no subsequent follow-up requests from DTCC.

Dated this 27th day of December 2021

_/s/ Charles F. Lek_____
Charles F. Lek

SK 07392 0001 9083855

EXHIBIT D

McGuireWoods LLP
1251 Avenue of the Americas
20th Floor
New York, NY 10020-1104
Phone: 212.548.2100
Fax: 212.548.2150
www.mcguirewoods.com

Jeffrey J. Chapman
212.548.7060

McGUIREWOODS

jchapman@mcguirewoods.com
Fax: 212.715.6277

July 8, 2021

Via E-Mail and Federal Express

Mr. Paul T. Clark
Mr. Anthony C.J. Nuland
Seward & Kissel LLP
One Battery Park Plaza
New York, New York 10004

Re: Lek Securities Corporation

Dear Messrs. Clark and Nuland:

I write on behalf of BMO Harris Bank, N.A. ("BMOH") in response to your letters of May 14, 2021, June 15, 2021, and June 23, 2021 concerning Lek Securities Corporation ("LSC"). BMOH provides settlement services to LSC pursuant to a Clearinghouse Settlement Instructions Authentication Agreement (the "Agreement") entered into by the parties on September 12, 2011.[1] Your most recent correspondence asserts "BMOH has an obligation to provide LSC with bona fide reasons for its proposed termination" of these settlement services and that BMOH is further obligated to "permit LSC to address any deficiencies in the relationship."

Respectfully, BMOH has no such obligations. The Agreement provides, in relevant part: "Customer agrees that Bank may ***in its sole good faith discretion discontinue the services contemplated by this letter without prior notice at any time.***" (Emphasis supplied.) By the plain terms of the Agreement, BMOH is under no obligation to provide LSC with "bona fide reasons" for discontinuing provision of settlement services, much less to "permit LSC to address any deficiencies." To the contrary, BMOH may discontinue provision of settlement services upon its "sole good faith discretion" and "without prior notice at any time." BMOH is acting within its sole good faith discretion so long as it is acting reasonably and not arbitrarily. *See, e.g.*, *Cont'l Mobile Tel. Co. v. Chicago SMSA Ltd. P'ship*, 587 N.E.2d 1169, 1174 (Ill. App. 1992) (good faith requires a party to act "reasonably, not arbitrarily").

While BMOH has no obligation to provide LSC with its reasons for terminating the Agreement, I nevertheless note the following facts and chronology that demonstrate BMOH is exercising its contractual right to terminate in good faith. On March 10, 2017, the Securities and Exchange Commission filed a complaint in the U.S. District Court for the Southern District of New York alleging that LSC and its principal Samuel Lek aided and abetted violations of the federal securities laws. On October 1, 2019, final judgment in the action was entered against LSC

[1] A copy of the Agreement is enclosed for reference.

and Mr. Lek pursuant to which they admitted to the conduct alleged in the complaint and agreed to pay substantial monetary penalties. Mr. Lek was also permanently barred from the industry by the SEC and FINRA.

During this time period, BMOH held frequent discussions with LSC regarding its concerns about LSC's business, including collateral deficiencies, intraday overdrafts, and net capital. On October 22, 2019, following the entry of final judgment against LSC and Mr. Lek, BMOH communicated to LSC that it would reduce its National Securities Clearing Corporation ("NSCC") sublimit and advised LSC to find another bank for NSCC financing. BMOH further informed LSC that it intended eventually to reduce LSC's sublimit to $0.

While BMOH initially held off reducing LSC's NSCC sublimit due to the impact of COVID-19, BMOH reduced the sublimit on September 8, 2020. On October 19, 2020, BMOH proposed further reductions and explicitly informed LSC that it needed to find another banking relationship for settlements. On November 9, 2020, BMOH further reduced the sublimit and established with LSC that the timeframe for complete termination of the parties' relationship would be the first or second quarter of 2021. Since that time, BMOH has held multiple meetings with LSC where it has consistently expressed its concerns, its intent to terminate the parties' relationship, and that LSC should find an alternative bank for settlement services.

In sum, BMOH has the contractual right to terminate its settlement relationship with LSC at its own good faith discretion and without prior notice pursuant to the Agreement. Your letters provide no authority to the contrary – indeed they cite not a single case, rule or law for the numerous duties you seek to create. Moreover, BMOH's decision to terminate the relationship is grounded in numerous valid concerns, including but not limited to: loss of confidence in LSC and its current management; regulatory concerns prompted by the SEC and FINRA actions; financial and reputational risk; and concerns about LSC's financial status. While BMOH is not required to provide any form of notice to terminate the Agreement, it nevertheless provided ample notice and in fact continued to provide settlement services to LSC for months while it sought an alternative settlement bank. These facts demonstrate BMOH's good faith here. *See, e.g.*, *Nat'l Westminster Bank, U.S.A. v. Ross*, 130 B.R. 656, 679–80 (S.D.N.Y. 1991) (where lending agreement could be terminated "at any time without notice," Bank exercised good faith by providing "reasonable notice" to counterparty "of the Bank's desire to have [counterparty] obtain alternate financing, as well as the Bank's accommodation of [counterparty's] request that it be given a reasonable time to do so"), *aff'd sub nom. Yaeger v. Nat'l Westminster*, 962 F.2d 1 (2d Cir. 1992). To the extent your letters argue BMOH owes extra-contractual obligations to LSC because LSC cannot secure a settlement arrangement with another bank, this argument is without legal basis. *See, e.g.*, *Mid-W. Energy Consultants, Inc. v. Covenant Home, Inc.*, 815 N.E.2d 911, 915-16 (Ill. App. 2004) (good faith "does not require a party with discretion to forbear from exercising its right to terminate a contract for the benefit of the other party to the agreement"); *Manufacturers Hanover Tr. Co. v. Yanakas*, 7 F.3d 310, 318 (2d Cir. 1993) (rejecting attempt to apply extra-contractual duties to bank based on allegation that borrower "was unable to find financing elsewhere").

* * *

OS Received 06/30/2022

As noted, BMOH provided LSC with advance notice of its intent to terminate the parties' contractual relationship and has in fact provided LSC with months to find an alternative settlement bank. I am now formally notifying you that BMOH will discontinue the settlement services it provides pursuant to the Agreement **ninety days** from the date of this letter, on **October 6, 2021.** In the interim, BMOH is reducing LSC's uncommitted broker line of credit down from $75,000,000 to $50,000,000, effective immediately. Additionally, BMOH will reduce LSC's NSCC sublimit to $4,000,000 on August 9, 2021, and will reduce the sublimit to $0 on September 6, 2021. BMOH will not extend any of these deadlines.

To be clear, and for the avoidance of doubt, it remains BMOH's position that LSC must transition all of its business (including, but not limited to, its settlement business with BMOH) away from BMOH and Bank of Montreal. Should you have any questions regarding the foregoing, please contact me directly.

Very truly yours,
/s/ Jeffrey J. Chapman
Jeffrey J. Chapman
Counsel to BMO Harris Bank. N.A.

Enclosure

Cc: John P. Davidson, OCC Chief Executive Officer (jdavidson@theocc.com)
Joseph Kamnik, Esq., OCC Chief Regulatory Officer (jkamnik@theocc.com)
Linda Haven (linda.haven@bmo.com)
Christina Kiel, Esq. (christina.kiel@bmo.com)
Mark D. Kotwick, Esq. (kotwick@sewkis.com)
William E. Goydan, Esq. (wgoydan@mcguirewoods.com)
Alex Madrid, Esq. (amadrid@mcguirewoods.com)

BMO Harris Bank N.A.
111 West Monroe Street
Chicago, Illinois 60690

Attention: Futures and Securities Division

Re: Clearinghouse Settlement Instructions Authentication Agreement

The undersigned Customer does now and/or may from time to time hereafter participate in settlement programs established and operated by one or more clearinghouses, and the Customer has authorized such clearinghouses to issue settlement instructions to BMO Harris Bank N.A. (*"BMO Harris"*) from time to time to charge or credit, as the case may be, the Customer's deposit account or accounts opened and established by Customer with BMO Harris from time to time (the "*Accounts*"). The terms of the BMO Harris Commercial Account Agreement (*"Account Agreement"*) apply to and govern are the Accounts and this letter of authorization and are hereby incorporated into this letter as through fully set forth herein. In the event a conflict between the terms of this authorization letter and terms of the Account Agreement, the terms of this authorization letter shall control.

The Customer hereby authorizes BMO Harris to charge or credit, as the case may be, any of the Accounts in accordance with the settlement instructions received by BMO Harris from any recognized clearinghouse. In making such charges and credits in accordance with settlement instructions, BMO Harris shall be entitled to (a) assume without further inquiry that the Customer is participating in a given settlement program for which BMO Harris receives settlement instructions from any recognized clearinghouse to charge or credit any Account, and (b) rely and act upon all information appearing in such settlement instructions as being correct, complete and authorized by Customer provided that such settlement instructions were received by BMO Harris in compliance with the security procedures agreed upon by BMO Harris and the applicable clearinghouse from time to time or was otherwise actually sent by such clearinghouse whether or not such security procedures were followed. The authority herein to charge the Customer's Accounts shall be unlimited as to amount.

All such settlement instructions shall be effective and binding upon the Customer, whether or not such settlement instructions were authorized and correct instructions of such clearinghouse. In the event that any settlement instruction contains an error or is unauthorized, the Customer agrees to resolve the related funds transfers directly with the applicable clearinghouse, and BMO Harris shall have no liability for such unauthorized or erroneous settlement instructions if BMO Harris acted in good faith and in compliance with the applicable security procedures.

The Customer will maintain at all times balances of available funds in the Accounts which are sufficient to satisfy all charges resulting from clearinghouse settlement instructions. In the event that the balance of available funds in any Account is insufficient to satisfy any such charges, BMO Harris may at its sole discretion, but without any obligation to do so, honor such charges which will result in a

deficiency or overdraft in such Account. Any such deficiency shall be immediately repaid to BMO Harris by the Customer upon your demand at the BMO Harris principal office in Chicago, Illinois, together with interest until paid at the rate then established by BMO Harris for such deficiencies, and all costs and expenses, including attorneys' fees and court costs, paid or incurred by BMO Harris in order to collect the same.

The authorization and agreements contained in this letter shall become effective upon the execution and delivery of this letter to BMO Harris by the Customer and it shall not be necessary for BMO Harris to execute any acceptance or acknowledgement hereof. This authorization shall supersede any previous authorization given by the Customer to BMO Harris with respect to clearinghouse settlement instructions. Notwithstanding the terms of the Account Agreement or any other agreement between Customer and Bank, Customer agrees that Bank may in its sole good faith discretion discontinue the services contemplated by this letter without prior notice at any time. This authorization shall remain in full force and effect until BMO Harris actually receives at the BMO Harris principal office in Chicago, Illinois, written notice addressed to BMO Harris, to the attention of the BMO Harris Futures and Securities Division, and signed by an officer of the Customer revoking or modifying this authorization. No such revocation or modification shall impair the authority contained herein with respect to any actions taken by BMO Harris prior to the actual receipt of such written notice, and thereafter for such period of time as may be reasonably required by BMO Harris to act upon such revocation or modification.

The foregoing authorization to change any and all Accounts applies to Accounts currently maintained with BMO Harris by the Customer which will be charged and/or credited pursuant to clearinghouse settlement instructions and any new Accounts established after the date hereof to be maintained with BMO Harris by the Customer which shall be charged and/or credited pursuant to clearinghouse settlement instructions.

The undersigned Customer hereby agrees to the terms of this authorization agreement as of the date set forth below.

Dated, 9/12/4, ____.

CUSTOMER NAME

LeK Securities Corp.

By: _____

Name: Daniel M Hawke

Its: Chief Financial officer

EXHIBIT E

Before a Hearing Panel of the Depository
Trust & Clearing Corporation

In the Matter of the Application of

LEK SECURITIES CORPORATION

REPLY AFFIRMATION OF CHARLES F. LEK

I, Charles F. Lek, pursuant to 28 U.S.C. §1746, hereby declare under penalty of perjury under the laws of the United States of America that the following is true and correct to the best of my knowledge, information and belief:

1. This Reply Affirmation is submitted in reply to the Affidavit of Timothy J. Cuddihy, sworn to on December 23, 2021 (the "Cuddihy Affidavit" or "Cuddihy Aff."), the Affidavit of Michael Leibrock, sworn to on December 23, 2021 (the "Leibrock Affidavit" or "Leibrock Aff."), and the Pre-Hearing Memorandum of NSCC and DTC, dated December 27, 2021 (the "DTCC Memorandum" or "DTCC Mem."), and in further support of LSC's request for review by DTCC of the October 26 DTCC Notices, the November 5 NSCC Notice and the November 7 NSCC Notice.[1]

2. I have personal knowledge of the facts set forth herein, except as to matters that I believe to be true based on (a) information provided by FTI, (b) information about the positions of NSCC, DTC and DTCC that I reviewed, or were reported to me by counsel, or

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in my December 27, 2021 Affirmation (the "Lek Affirmation" or "Lek Aff."). Reference is also made to the Affidavit of Emre Carr, Ph.D., sworn to December 27, 2021 (the "Carr Affidavit" or the "Carr Aff.").

regulatory capital multiplied by the Member's ratio of the Required [Fund] Deposit to excess regulatory capital." Carr Aff. ¶ 46. Accordingly, as a Member's excess net capital decreases relative to its settlement activity, the Required Fund Deposit increases, thus providing NSCC with increased protection for the level of settlement activity above excess net capital. It makes little sense to say a Member's excess net capital is too low if it is able to meet its Required Fund Deposit (including the ECP). And for more than thirty years, LSC has never failed to meet its NSCC funding requirements. *See also* Carr Aff. ¶ 57 (noting that even when the NSCC Required Fund Deposit reached a max of $84.8 million, LSC has met this requirement).

12. DTCC's reference to LSC's cash balance being consistently below its NSCC funding requirement (*see* Leibrock Aff. ¶ 16) similarly misses the mark and is similarly misleading. The apparent suggestion that LSC does not have the cash to satisfy its NSCC funding requirement, thus its ability to meet that funding requirement is impaired, cannot be correct because LSC has always met its NSCC funding requirement. DTCC seems to be suggesting that LSC needs to have a cash level equal to its NSCC funding requirement remaining even after LSC has paid that NSCC requirement. This is incorrect and DTCC offers no rationale for why it would be good policy or make economic sense to require a broker to hold such significant levels of idle cash.

13. With regard to managing its customer's trading, LSC has operational controls that are designed to ensure that client trading is limited so that NSCC margin calls do not exhaust available liquidity. LSC uses its Q6 risk control system, designed specifically for LSC, to ensure that trades that the Firm wants to reject are identified and blocked. For instance, any order over $500,000 is rejected by LSC. In addition, selling OTC stocks can create large margin calls due to their high volatility, thus, by default, any trade that would result in an

OS Received 06/30/2022

aggregate position in OTC securities over $500 is also, in the first instance, rejected by LSC, subject to further review by LSC's risk team. Q6 has a track record of over a decade and has proven to be reliable. The Q6 risk control system and LSC's risk control system and liquidity management are described in "Lek Securities Risk Control System" (*see* Ex. 64) and "Q6 Trading Limits Explained." *See* Ex. 65.

14. An important Q6 feature is that it serves as a credit monitor to block trades that if executed would violate a margin rule or LSC's more sophisticated "House Margin" requirements. This way LSC's customers' credit risk is carefully controlled. In addition, a trade will also be blocked if the security that a customer wants to buy cannot be easily monetized, unless the customer has sufficient cash in the account to fully pay for the security.

15. Mr. Cuddihy conflates LSC's ability to manage its customers' trading, and thus its liquidity needs, with the distinct issue of its ability to monitor and limit the Firm's aggregate unsettled clearing activity as measured by the gross market value ("GMV") of its unsettled portfolio each day, upon which the Activity Cap is based. *See* Cuddihy Aff. ¶¶ 34-36.

16. While, as described above, *supra* at ¶ 13-14, LSC has robust systems to manage its customers' trading, it did not have systems in place to control GMV prior to November 2021 because there was no need for it to limit GMV. LSC did not, and does not, consider the level of GMV as a measure of risk incurred by LSC, and thus does not believe it is useful to monitor it in the ordinary course (prior to the imposition of the Activity Cap). *See* Ex. 75 (November 8 2021 LSC Letter to DTCC). Following the imposition of the Activity Cap, which is based on LSC's daily GMV, LSC took reasonable steps to implement systems to measure GMV, the result of which is that it is now able to successfully control its GMV. *See* Cuddihy Aff. ¶ 36. Contrary to DTCC's suggestion that LSC simply disregarded the Activity

increased NSCC's Required Fund Deposit. Lek Aff. ¶ 42; Carr Aff. ¶¶ 48-49. The Note Program is described in detail in my December Affirmation (Lek Aff. ¶¶ 41-48, 115) and I will not go into great detail again here. *See also* Carr Aff. ¶¶ 71-79. Suffice to say that the Lek Holdings Note Program matches LSC's liquidity sources to LSC's fluctuating daily liquidity needs that result from certain customers' trading activity. Lek Aff. ¶¶ 115, 125; *see* Carr Aff. ¶ 71 ("the Lek Holdings Note Program has effectively provided substantial financing for LSC in the past several months … and significantly augments LSC's unsecured bank LOC, both of which it uses to meet the NSCC Required Fund Deposit."). The amount funded through the Note Program fluctuates from day to day, and there is no fundamental economic reason that would require permanent capital to support fluctuating clearing fund requirements and such a requirement may have unintentional, adverse consequences. Carr Aff. ¶ 85.

26. Under the Lek Holdings Note Program, a customer, or any other party looking to earn interest on a short-term investment, lends money to Lek Holdings, the parent of LSC. Lek Holdings, in turn, is able to lend the money to LSC so that LSC can meet its NSCC margin call. The program is designed to ensure maximum flexibility so that LSC will have enough money to meet any NSCC margin call. Lek Aff. ¶¶ 43-44; Carr Aff. ¶ 72.

27. DTCC states that it is concerned about LSC's ability to meet its obligations in the event of a "sudden increase in liquidity needs" (Leibrock Aff. ¶ 19) and that the Lek Holdings Note Program creates "increased risk" because it is less secure (Leibrock Aff. ¶ 31). Both concerns are misplaced. The Lek Holdings Note Program is designed so that if a customer wants to engage in a trade that will create a margin call at NSCC, the customer will lend Lek Holdings the money to fund any resulting margin call. Lek Aff. ¶ 46; Carr Aff. ¶ 76 ("it seems reasonable for clients to fund margin calls that they themselves create"). In that way,

the Note Program is designed to ensure that LSC will have enough money to meet its NSCC margin calls. When LSC gets the money back from NSCC, it repays Lek Holdings, and the client gets its money back from Lek Holdings. Through this system, LSC does not create risk in advance of getting the funding to cover it so, in fact, there is minimal risk to either LSC or the clearing corporations because the securities are held long and the funding is already available. This also eliminates instances of "sudden increase[s] in liquidity needs" (*see* Leibrock Aff. ¶ 19) because the transaction that gives rise to the need for liquidity is not made unless the liquidity is first provided. Lek Aff. ¶ 46; Carr Aff. ¶ 78 ("This is an effective and economically efficient solution that obtains the liquidity from the investors who drove the large settlement activity on those dates on an unsecured basis through LSC's parent. In fact, it is economically similar to how the NSCC pushes down its settlement risk to its member firms.").

28. The use of a holding company to raise money for a regulated financial institution is common, and programs like the Lek Holdings Note Program have existed for years. Lek Aff. ¶ 48; Carr Aff. ¶ 71. In fact, on a November 2, 2021 call, Tim Cuddihy explained to me that he understands the "mechanics of the program." Although Mr. Cuddihy stated that LSC still needed to better explain the Lek Holdings Note Program to DTCC, he did not provide concrete requests for LSC or detail the type of information that LSC still needed to provide, and moreover, suggested that he not reviewed the materials provided in any detail.

29. DTCC's allegation that the structure of the Lek Holdings Note Program "has raised regulatory and financial concerns with FINRA" (*see* Leibrock Aff. ¶ 28) is misleading. While FINRA initially raised questions about how the Note Program worked, LSC has answered FINRA's questions and, based on the information provided to FINRA by LSC -- which LSC has provided to DTCC -- the staff person overseeing the review has stated that

56. I did speak with BMOH from time to time over the years about various concerns it had with LSC and received mixed signals about it modifying its relationship with LSC. Lek Aff. ¶¶ 61-64. BMOH's purported concerns with respect to LSC stated in the July 8, 2021 BMOH Letter, however, including a "loss of confidence" in LSC's management, "regulatory concerns," and concerns about "LSC's financial condition" (*see* Leibrock Aff. ¶ 47; Ex. 36 (July 8, 2021 BMOH Letter)) came as a complete shock to me. This is particularly true since, just several months earlier, in February 2021, BMOH had agreed to renew the BMOH LOC. *See supra* at ¶ 55.

57. In that regard, when BMOH reduced the BMOH LOC unsecured carveout in November 2020, I was told that it was because BMOH was looking to reduce its footprint in the settlement services space, and not because of any particular concern about LSC. Lek Aff. ¶ 63. The $75 million BMOH LOC, however, was firmly in place.

58. The impact of the termination of the BMOH LOC on LSC's liquidity and financial condition was immaterial. The termination of the $8 million BMOH LOC unsecured carveout was offset by the $100 million Lek Holdings Note Program, which had been implemented in February 2021, and was LSC's preferred source of financing the Firm's NSCC funding requirements, and also by the Lakeside Unsecured LOC, which had been increased from $7.5 million to $10 million in June 2021. Thus, contrary to the allegations of DTCC (*see* Cuddihy Aff. ¶ 18; Leibrock Aff. ¶ 43), the termination of the BMOH LOC unsecured carveout did not materially impact LSC's ability to satisfy its NSCC funding requirements.

59. Like the Texas Capital LOC, the significant portion of the $75 million BMOH LOC -- all but $8 million as of January 2021 -- was a secured credit line and not used to finance NSCC's funding requirements. Also, like the Texas Capital LOC, the BMOH Secured

LOC was used primarily as a supplement to securities lending arrangements for LSC to fund customer debit balances. Lek Aff. ¶ 59. Moreover, the BMOH Secured LOC was drawn on, not out of necessity, but rather largely as an accommodation to BMOH to generate income for BMOH and assuage the bank's concern that the LSC relationship was not profitable to the bank. Lek Aff. ¶ 59. Because of LSC's preference to use securities lending arrangements to finance customer debit balances, the termination of the BMOH Secured LOC did not compromise LSC's liquidity or materially impact its financial condition. Lek Aff. ¶ 132; Carr Aff. ¶ 65.

60. As with the erroneous allegation concerning the importance of the Texas Capital LOC as a backup source of liquidity (*see supra* at ¶ 45), DTCC's allegation that the BMOH LOC was nonetheless a "reliable source of liquidity to assure [LSC] could meet its volatile and outsized margin requirement" (*see* Leibrock Aff. ¶ 21) ignores the fact that the larger BMOH Secured LOC was not used by LSC to finance NSCC's margin requirements.

C. The Allegation That LSC Has Management and Internal Control Deficiencies Is Not Well Founded.

61. DTCC's reliance on the BRG Final Report for its determination that LSC has management and internal control deficiencies (DTCC Mem. at 2, 13-15; Cuddihy Aff. ¶¶ 21-25; Leibrock Aff. ¶¶ 33-38) is not well founded for a number of reasons. And, as described below, *infra* at ¶ 70, any purported issues concerning LSC responses to DTCC's requests for information are likewise not the basis for that determination.

62. As an initial matter, DTCC does not suggest that it has made any separate inquiries or made any independent determinations with respect to LSC's internal controls. DTCC has not reviewed LSC's Q6 risk monitoring program (*see supra* at ¶ 13), its margining systems or its reconciliation systems. Instead, DTCC uncritically and solely relies on the BRG

regard to the BMOH and Texas Capital relationships (*see* Leibrock Aff. ¶ 70) are addressed above. *Supra* at ¶ 74-84.

Dated this 19th day of January 2022

/s/ Charles F. Lek
Charles F. Lek

SK 07392 0001 9128013

EXHIBIT F

Clearing Member	Lek Securities Corporation
Date Completed	April 7th, 2021
Person Completed By Email Phone Number	Jessie Quintana Jessie.Quintana@leksecurities.com 212-509-2300
Risk Officer Name Email Phone Number	David Weiniger David.Weiniger@LekSecurities.com 212-509-2300
CCO Name Email Phone Number	Jeffrey Tabak jtabak.millertabak@leksecurities.com 212-509-2300
Location/Office of Risk Management Operations	4 World Trade Center, Floor 44, (or 150 Greenwich) New York, NY 10007

Documents Request

Please provide the following documents. If not applicable, please explain why the item is not applicable.

1. Organizational charts identifying:
    - Ownership structure, including affiliates.
    - Firm reporting structure and identification of key principals, including Board, C-level executives, vice presidents, directors, etc., and a brief description of their roles/responsibilities. Please also include backgrounds of any new key management personnel.

    Please refer to the following attachments that are enclosed.
    UploadedToCaseNumber__2860__LSC Organizational Chart Dtd CURRENT VERSION 03.10.2021.pptx
    Lek Securities Holdings Limited.pdf

    - Risk Management organization including Market, Credit, Operations, Treasury, and Stock Loan.
2. Written Policies and Procedures covering:
    - Liquidity Monitoring
    - Contingency Funding

    Please refer to the following attachments that are enclosed.
    Lek Securities Written Supervisory Procedures

        - Please also provide a schedule of the firm's sources of funding liquidity
            - Bank lines/limits and the terms of these lines
            - Securities lending funding activities

OS Received 06/30/2022

- Lender/guarantor and amount available from each source, amount outstanding and current allocation, maximum and average utilization, maturity date and characteristics (i.e., committed/uncommitted, secured/unsecured), as well as legal documentation including loan covenants.

Please find an excerpt from the 2020 audited financial statements. The lines listed below are with BMO Harris Bank, Texas Capital Bank, and Lakeside Bank. It should be noted that in 2021, Texas Capital has made substantial changes in its lending division, and has exited the relationships with many broker dealers in the industry.

The Company has available lines of credit agreements with financial institutions to borrow up to $107,500,000, as shown in the table below. The credit line facilities expire on the dates indicated below. Borrowings are due on demand and bear interest at a rate agreed upon between the financial institution and the Company. At December 31, 2020, the Company has borrowed $38,500,000 under two of the credit facilities, of which a portion is secured by customer pledged securities.

Security	Renewal/ Expiration Date	Total Commitment	Amounts Outstanding
Line of credit	11/30/2021	$ 75,000,000	$ 31,000,000
Line of credit	3/31/2021	25,000,000	-
Line of credit	5/30/2021	7,500,000	7,500,000
		$ 107,500,000	$ 38,500,000

The Company has an agreement with Bank United for a standby letter of credit in an amount not to exceed $665,555 with Brookfield Properties OPP Co. LLC. The standby letter of credit is fully collateralized by cash, which is held in a restricted account with Bank United. The standby letter of credit shall be extended automatically without amendment for additional one-year periods from the present or any future expiration date, unless notified in writing not to renew. The standby letter of credit is set to expire no later than December 16, 2021.

- Settlement Bank Failure. Reference: OCC Memo #35187
- *The Company's back up settlement bank is Lakeside Bank. Lakeside Bank is a DTC Member settlement bank. As a backup to Lakeside Bank, the Company will wire funds to and from Texas Capital Bank*
- Proprietary Trading risk monitoring, including details regarding stop/loss limits, concentration monitoring, and any other controls or alerts
    - Stock Loan Buy In/Sell Out Procedure

      Please refer to the following attachments that are enclosed. Lek Securities Written Supervisory Procedures

3. Credit quality requirements for excess margin investments

All Cash

4. Market Access Procedures per SEC Rule 15c3-5

See "Lek Securities Risk Control System Updated February 2019"

5. Business Continuity Plan and most recent test results

Please refer to the Lek Securities Business Continuity plan attached

6. Extended Trading Hours, including staffing, escalation procedures, and any tolerances/heightened risk limits set on a product or customer level. If no policy or procedure exists, please describe this activity.

There is no option trading during extended trading hours. Our risk parameters remain in effect for extended hours trading in equities.

7. Top 10 options and futures client lists:
   In accordance with SEC Rule 17Ad-22(e)(19), OCC is required to identify, monitor, and manage the material risks to OCC arising from arrangements in which firms that are indirect participants in OCC rely on the services provided by direct participants ("Clearing Member") in OCC to access OCC's payment, clearing, or settlement facilities. OCC identifies indirect participants as those parties who clear through a Clearing Member's securities customer, segregated futures customer, or non-proprietary market maker account.

   OCC maintains its authority to request information about tiered participation arrangements through Article V, Section 3(g) of the By-Laws and Rule 311.

OCC Memo 41611.pdf

Questions

1. Describe the firm's business and any anticipated changes to the firm's clients, strategic plans, or lines of business.

Lek Securities acts as executing broker, clearing agent and custodian. Our customers are generally institutional or they are professional traders. We anticipate no significant changes.

2. Provide details of the products and services offered by the firm and describe the firm's customer base, including commentary on the market shares of the products and services, and the positioning any specialty or niche businesses. Also describe customer count/type/size, growth/attrition over the past 12 months, range of customer size, and the amount of customers that fall into each range.

As noted above, Lek Securities provides execution, clearing and custody services. Some customer avail themselves of all of these services, while others may elect to use only a sub-set. The majority of Lek Securities customer base our made up of United States customers.

3. Describe the firm's strategic plans related to its business, including any significant changes in management over the next 12 months?

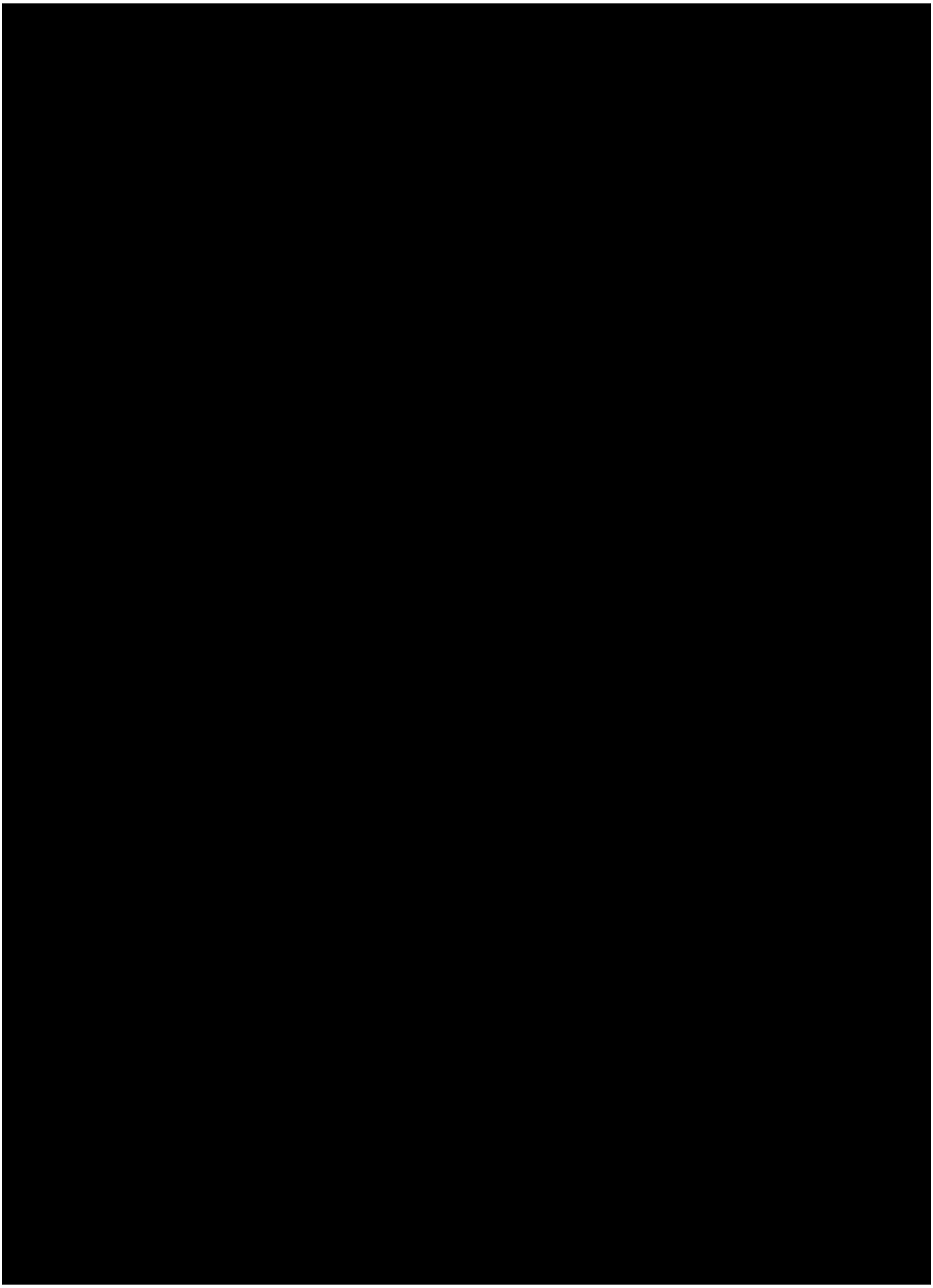
There have been no changes in the terms of the Company's credit facilities. Please refer above for breakdowns, and prior year for any additional information.

4. Please comment on the firms' business standing, financial condition and outlook, including key business concerns and financial risks currently facing the firm.
    a. *The company has made no material changes to its operations in the last several years. It continues to seek profits by attracting customers with its services and by securing beneficial lending arrangements with banks.*
    b. *The company has achieve robust performance in the opening quarter of FY21, and has no foreseeable impediments to continued success.*
5. Please review and discuss the firm's profit performance over the most recent year-to-date period and over the past fiscal year compared to prior periods, including the main drivers of changes in revenues, expenses and net income. Also, discuss expectations for the next year.
    a. *The firm has achieved a profit in each FY19, FY20, and year to date FY21. The following chart shows historical performance for the 2019 & 2020 audit periods, as well as, performance for Q1 – 2021, and the annualized figures for a full year in 2021.*

	Jan - Dec 19	Jan - Dec 20	Jan - Mar 21	Annualized 2021
Revenue	$ 40,542,841.27	$ 41,241,955.33	$ 24,049,632.35	$ 96,198,529.40
Expense	(39,887,882.41)	(32,952,591.60)	(23,976,105.38)	(95,904,421.52)
Net Income	$ 654,958.86	$ 8,289,363.73	$ 73,526.97	$ 294,107.88

    b.
    c. *We cannot a make a prediction of future performance, but continued revenue strength is foreseen in the duration of 2021.*
    d. *For our business, trading volume is the biggest driver both revenue and certain expense categories. For other expense categories, headcount is the driver.*
6. Please provide a description of the firm's capital management framework, including target leverage and other capital management parameters. Please explain whether any capital distributions, or other changes to the capital base are expected over the planning horizon.
    a. *Capital management - The company maintains several sources of funding through lines of credit with several banks. The company does not have target leverage amounts, but rather will utilize leverage as*

EXHIBIT G



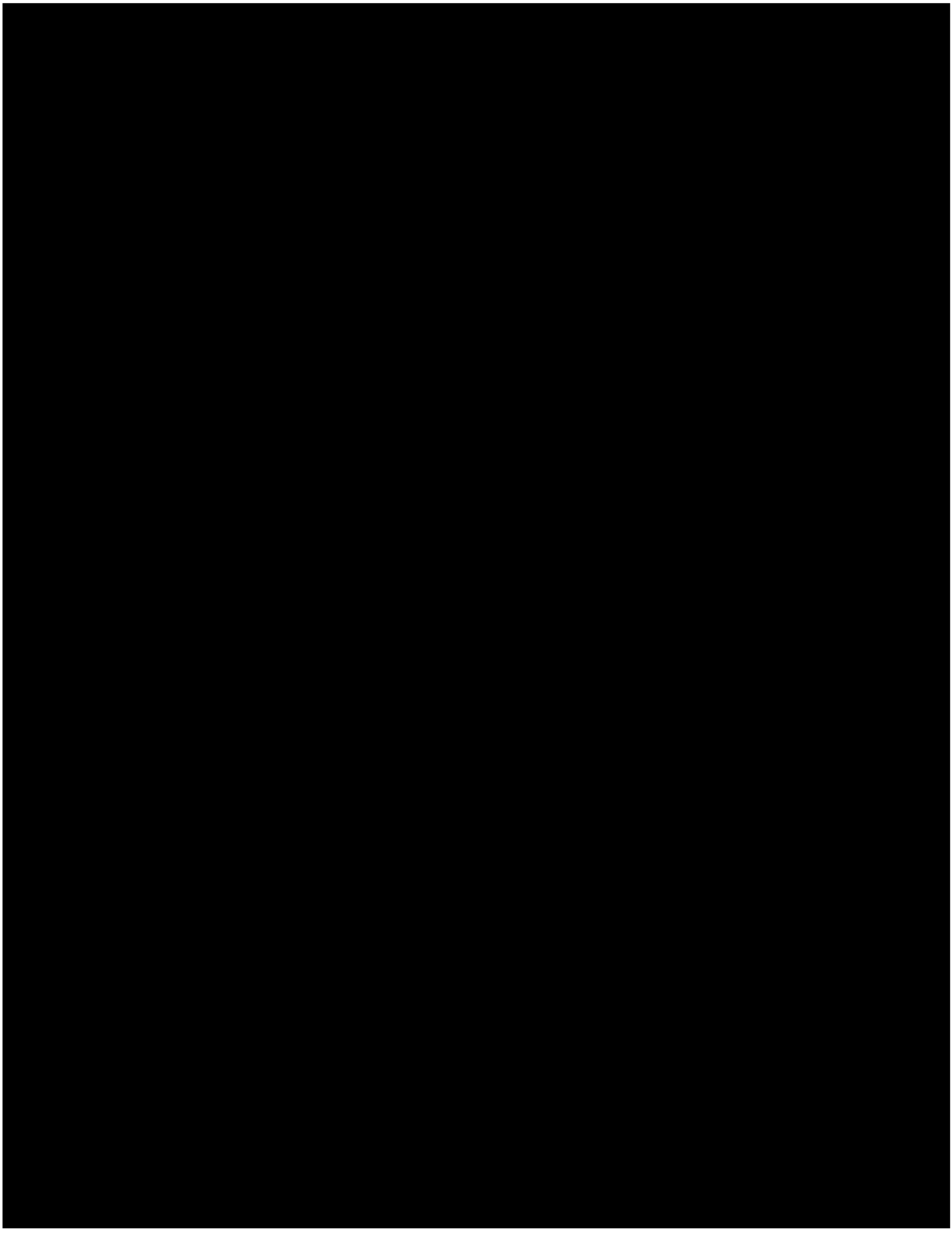


EXHIBIT H

LEKSECURITIES

July 26, 2021

Michael Leibrock
Managing Director
Depository Trust & Clearing Corporation
55 Water Street
New York, NY 10041

By Email:
mleibrock@dtcc.com; dmcelligott@dtcc.com; thulse@dtcc.com; srosales@dtcc.com; lpellecchio@dtcc.com.

Dear Mr. Leibrock:

This letter is in response to your letter dated July 21, 2021, which was emailed to us yesterday evening. We are surprised that DTCC has taken action against our firm that could have a serious impact on our business based on unsubstantiated, and as it happens, inaccurate information. A simple phone call would have enabled you to avoid making decisions based on materially inaccurate information.

We regret that Bank of Montreal Harris ("BMOH") has decided to end its almost 30-year relationship with us at a time when our liquidity and capital are at its strongest. However, as explained below, we do not believe that this will have a significant impact on our liquidity. In fact, BMOH's action has forced us to look for other sources of liquidity and this has resulted in the establishment of more diverse and reliable sources of funding for our firm. We note that our capital is strong and easily meets our regulatory requirements as set forth in the table below:

Equity	13,670,010
Subordinated Debt	4,985,143
Total	18,655,153
Non-Allowable	3,978,871
Net Capital	14,676,282
Requirement	3,531,972
Excess Net Capital	11,144,310
Net Capital as a function of Requirement	4.16

Rather than attempt to correct each inaccuracy recited in you letter, I will limit my response to pointing out the most material ones and providing you with an overview of our firm's sources of liquidity:

Material inaccuracies:

- BMOH will not reduce our line of credit to $4MM as of August 4, 2021. The line will stand at $50MM until October 6, 2021. Moreover, Lakeside Bank has already increased its line of credit from $12.5MM to $30MM. Therefore, as of August 6, the firm will have $80MM in credit available to it, making the statement that we will have only $7.5MM available to us materially inaccurate.

- Although BMO Harris Bank has informed us that it will no longer operate as Lek's Settling Bank as of October 6, 2021, Lakeside is already in the process of taking over this role and will step in as settlement bank months before BMOH's intended withdrawal date. Accordingly, there should be no reason for concern. An email from Lakeside confirming this is attached for your review.

- The firm has entered into a borrowing program with Lek Securities Holdings Limited. This program allows the firm to issue unsecured notes and has allowed us to raise almost $100MM. The program has proven to be successful and provided us with significant liquidity. We find it difficult to image how this lending program could affect the firm's Customer Reserve Requirement under SEC Rule 15(c)3-3.

Lek Securities Corporation has access to the following sources of funds:

	Previous	Future	Change
BMO	75,000,000	50,000,000	(25,000,000)
Lakeside	12,500,000	30,000,000	17,500,000
Unsecured Notes	-	96,000,000	96,000,000
			88,500,000

As you can see from the above table, we now have access to more liquidity, not less. Moreover, in addition to the above, we are informed by Investor's Bank that they intend to provide us with a $20MM line of credit, and that Lakeside Bank is working with a number of other banks to create a large, syndicated loan facility for our benefit.

Given the success that we have had in securing funding that is both larger and more diverse than our existing credit facilities, your statement that we [have] "already failed to provide NSCC and DTC with timely notification of [.....] changes to [our] financial condition, as required by [our] ongoing membership requirements set forth in NSCC Rule 2B and DTC Rule 2", is inaccurate. Moreover, your intention to impose a fine based of materially false information without an opportunity to be heard seems improper.

We agree that it is important to keep DTCC apprised of all developments that could impact our ability to remain a member in good standing at NSCC and DTC. However, the issues surrounding our sources of funding is not such a development. The firm is committed to keep DTCC and NSCC appraised of all material changes in condition and other developments. As an example, you mentioned our borrowing

capacity under our stock loan/ borrowing arrangements. These limits have been significantly increased over the last several months. We did not inform you of this, because these are positive developments and we did not think this to be of concern to you, but we will make a point of informing you of these types of developments in the future.

Request for Information

All recent correspondence with BMO Harris Bank relevant to both its line of credit and its Settling Bank relationship with Lek.

Please refer to the attached letter dated July 8, 2021, from Jeffrey J. Chapman to Mr. Paul T. Clark and Mr. Anthony C.J. Nuland.

A written plan on how Lek will address the reduction and ultimate termination of the BMO Harris line of credit and termination of its Settling Bank relationship with BMO Harris.

We anticipate that Lakeside Bank will assume the role of Lek Securities' settlement bank. We have enclosed a letter from Lakeside Bank evidencing their willingness to assume this role. Our sources of funds have been outlined above.

Should the outcome of FINRA's inquiries into the structure of Lek's Promissory Note from its parent company lead to a full or partial negative impact on Lek's reserve requirements, how Lek intends to offset this impact to its liquidity.

We do not believe that there should be any concerns with respect to this program and we do not want to speculate on possible future FINRA actions and our possible responses. We will however keep you informed of any developments.

Information regarding Lek's parent company's financial standing and its funding/borrowing that supports the promissory notes it has extended to Lek, including all written materials and information provided to FINRA regarding these matters.

FINRA has already sought detailed information in an 8210 request with respect to the borrowing program involving our parent company. In our response, we outlined the exact workings of the program. Therefore, in response to this question, we are making reference to FINRA's request and our response with documents attached.

Ongoing Adequate Assurances Risk Controls

In your letter you are proposing significant restrictions to our business effective July 28. We believe that these restrictions are not warranted, and we urgently request that no such action is taken until DTCC and NSCC have conducted a full investigation and our firm has had an opportunity to be heard. In particular, demanding $31MM in collateral from us, even if our firm were to have no open positions at NSCC, is punitive and undermines our liquidity program.

I trust that this satisfies your request for information. Nevertheless, we would welcome the opportunity to discuss these matters with you on the phone. We very much regret that DTCC and NSCC have been so badly misinformed, and we think it to be of the greatest importance that we maintain open lines of communication and that no one acts on false rumors and misinformation.

Also to ensure that all relevant regulators are in the loop, we are sending a copy of this letter to the following staff members at FINRA: David Aman, Ornella Bergeron, Melanie Chan, Joseph DiPaolo, Bari Havlik, Michael MacPherson, John Martino, Emily Noelker and Isabel Patel.

Respectfully submitted,

Charles F. Lek
Chief Executive Officer

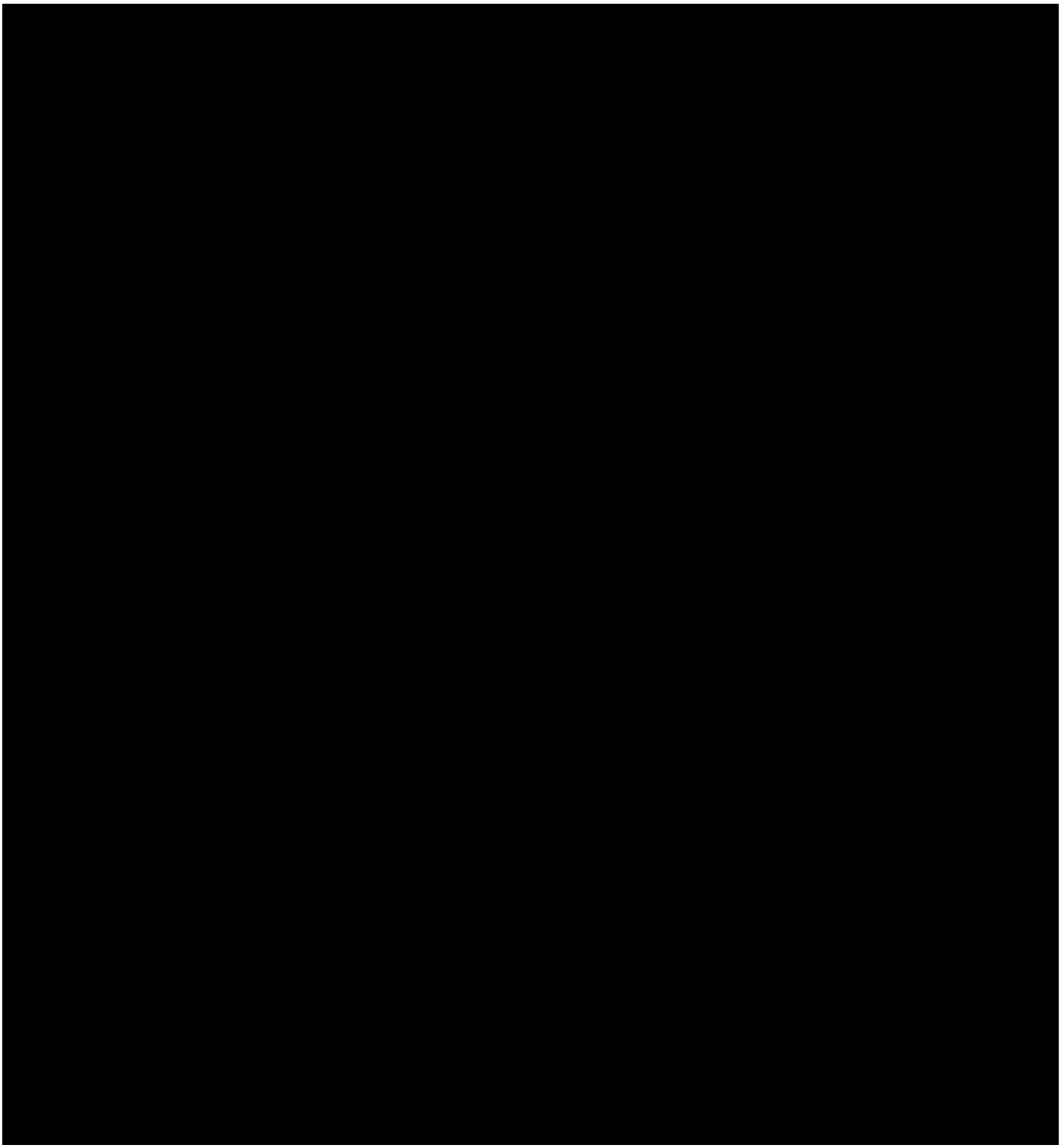
EXHIBIT I

DTCC
ADVANCING FINANCIAL MARKETS. TOGETHER.™

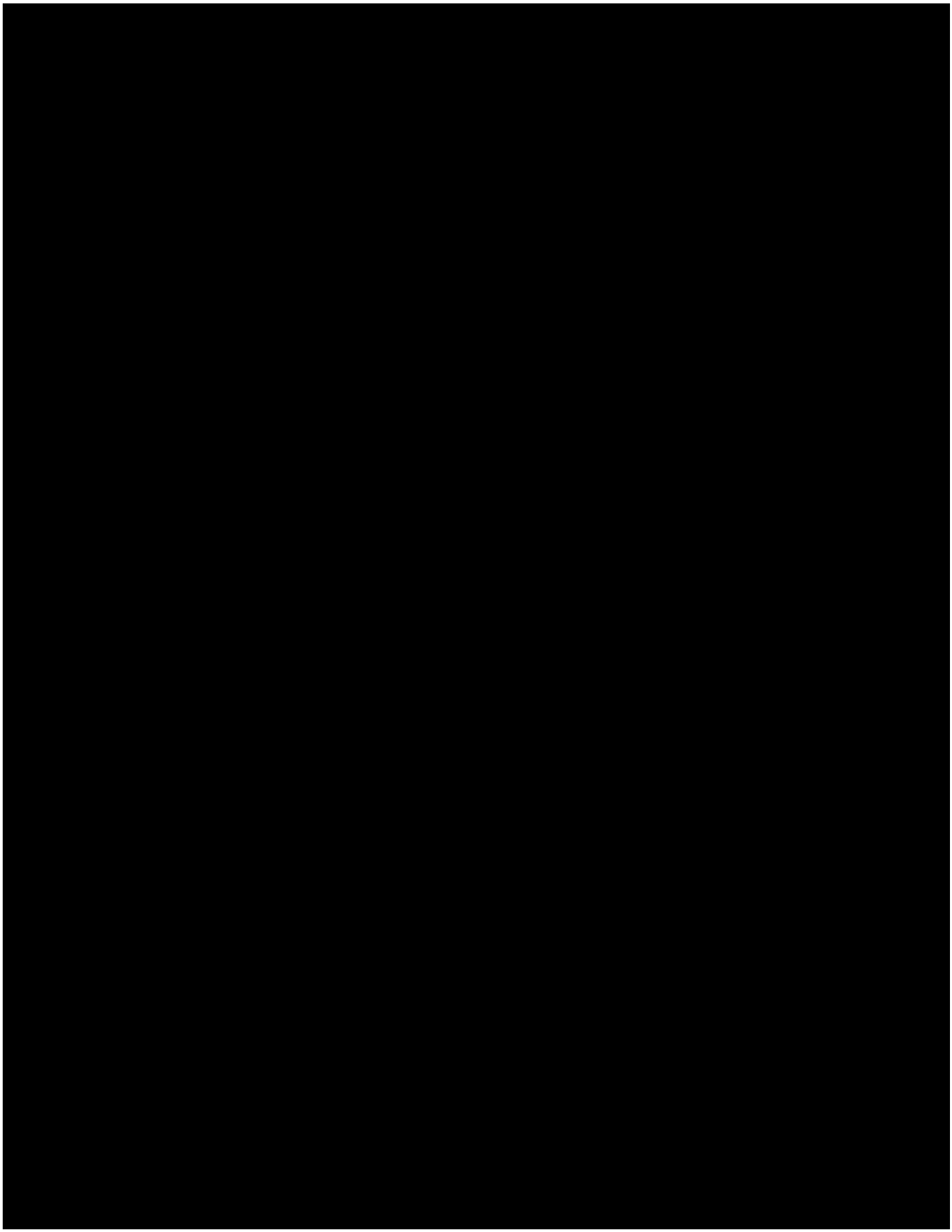
Andrew I. Gray
Managing Director, Group Chief Risk Officer

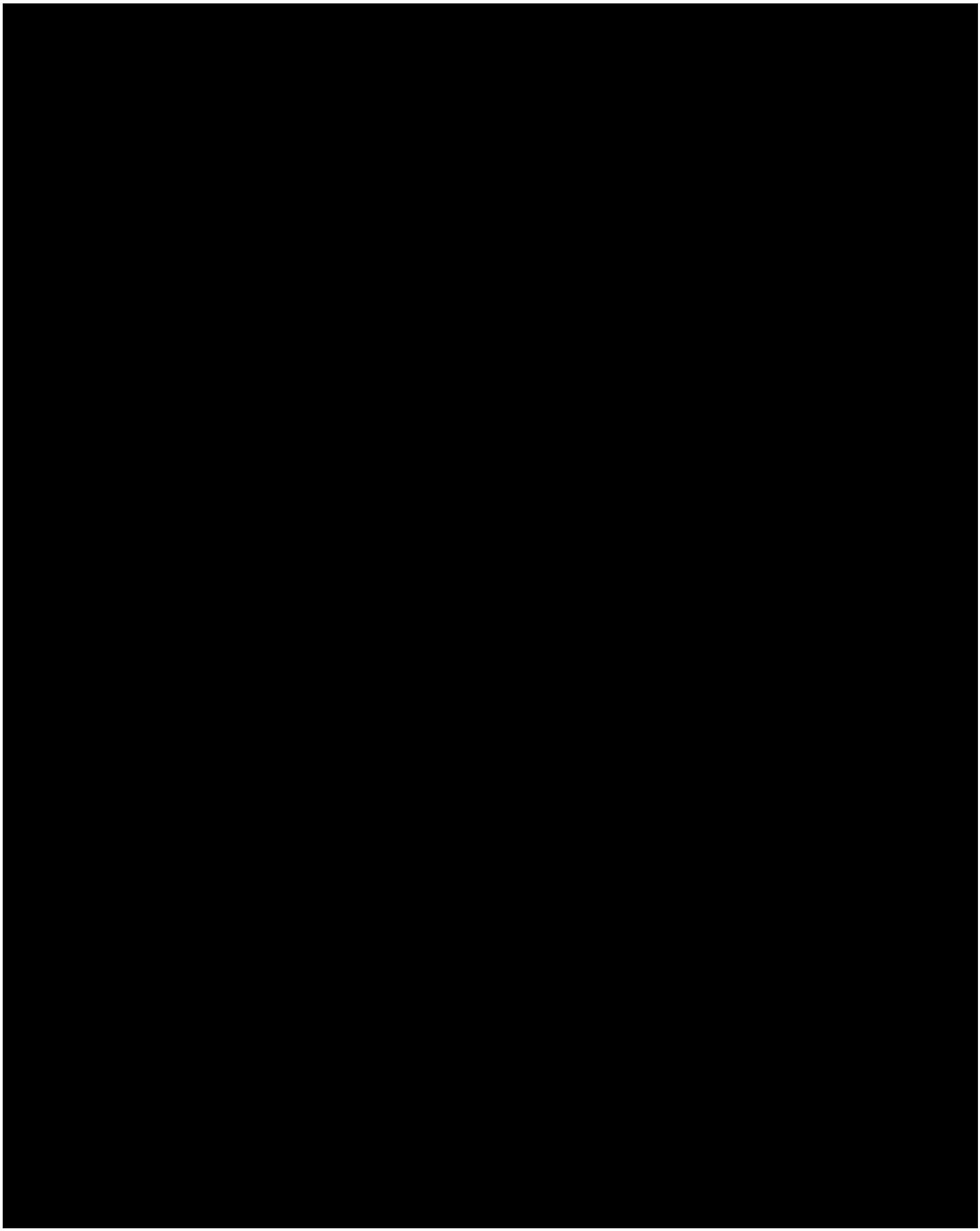
55 Water Street
New York, NY 10041

Tel: 212.855.1100
agray@dtcc.com



[redacted]





OS Received 06/30/2022

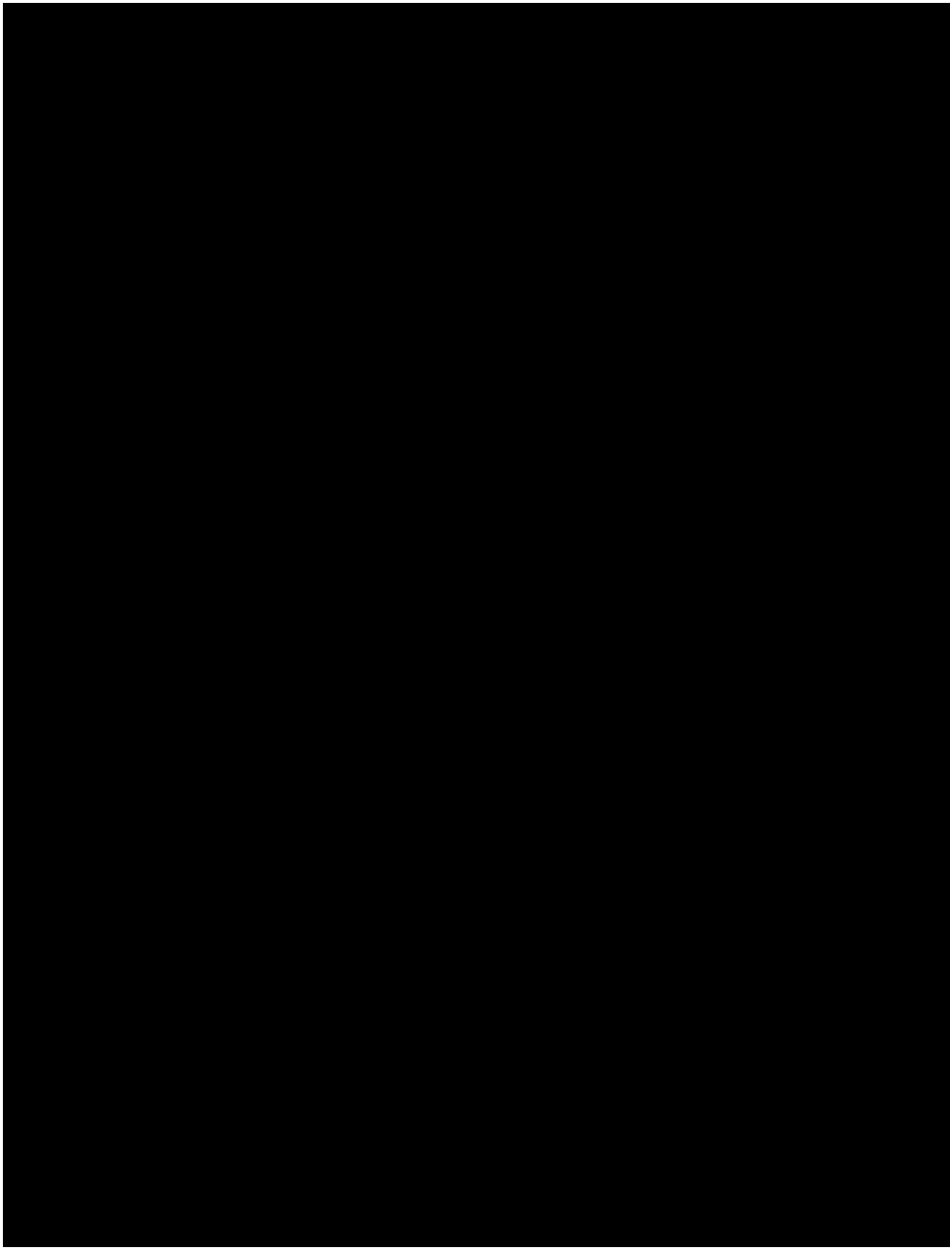


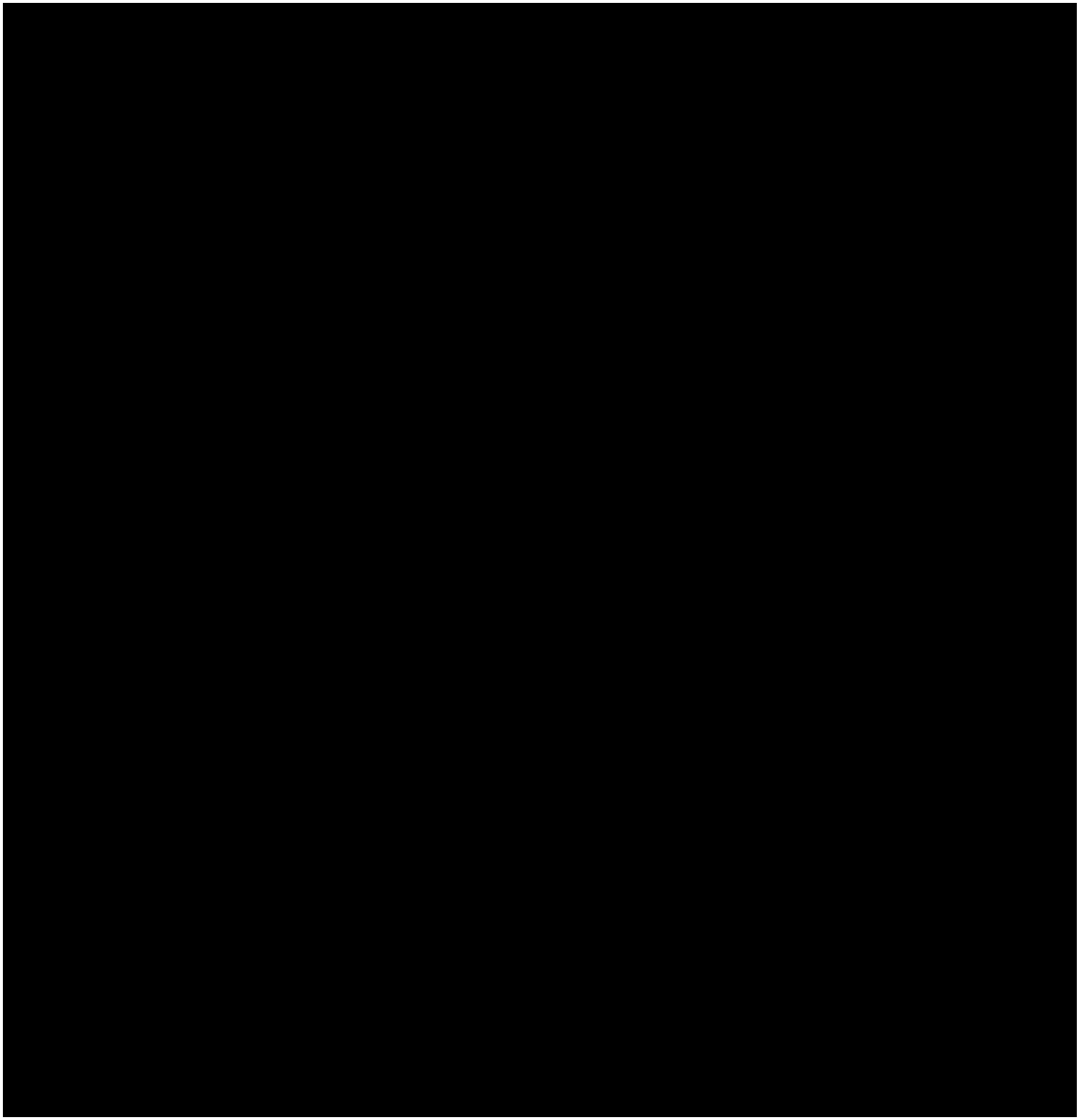
EXHIBIT J

DTCC
ADVANCING FINANCIAL MARKETS. TOGETHER.™

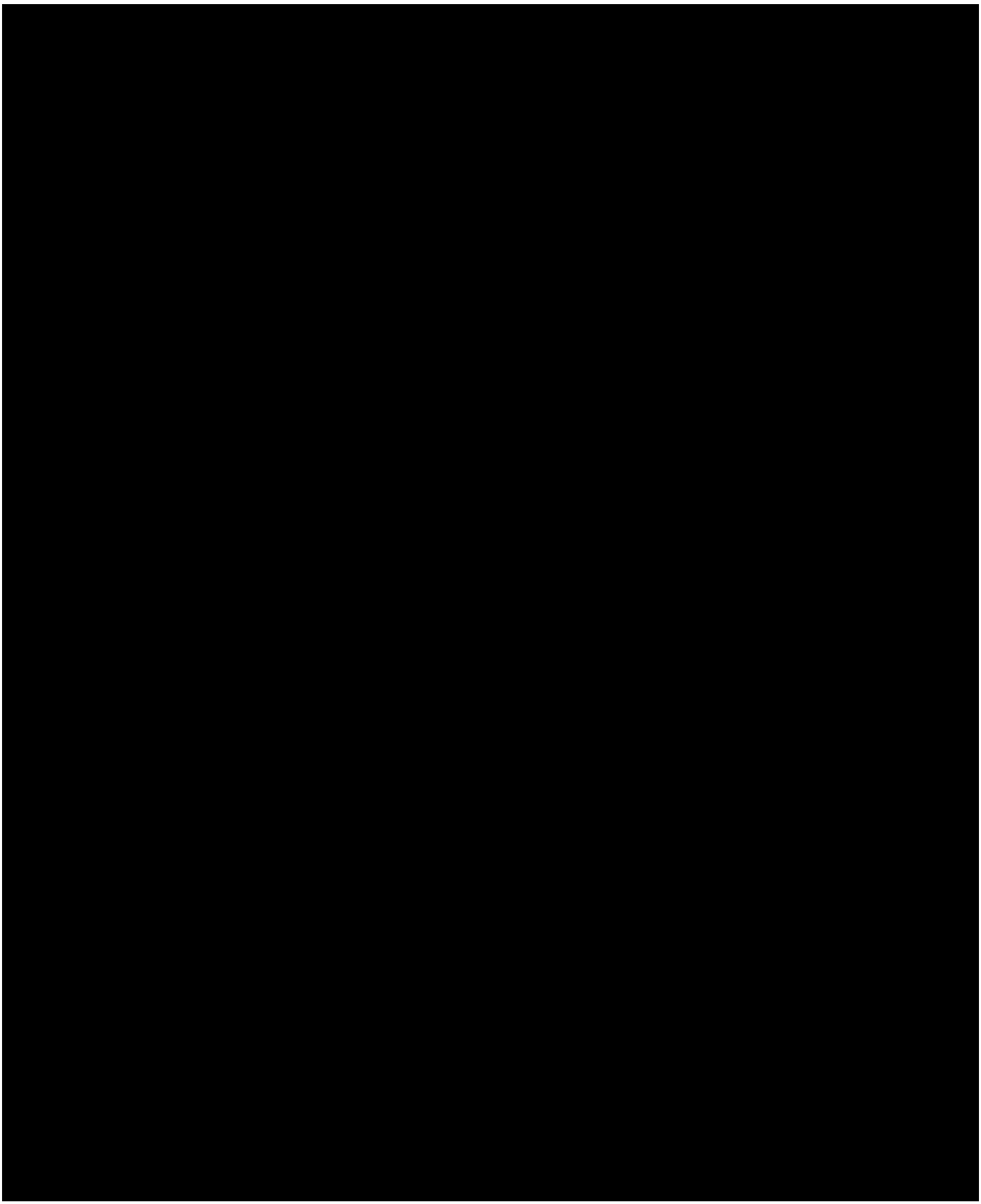
Andrew I. Gray
Managing Director, Group Chief Risk Officer

55 Water Street
New York, NY 10041

Tel: 212.855.1100
agray@dtcc.com



[redacted]



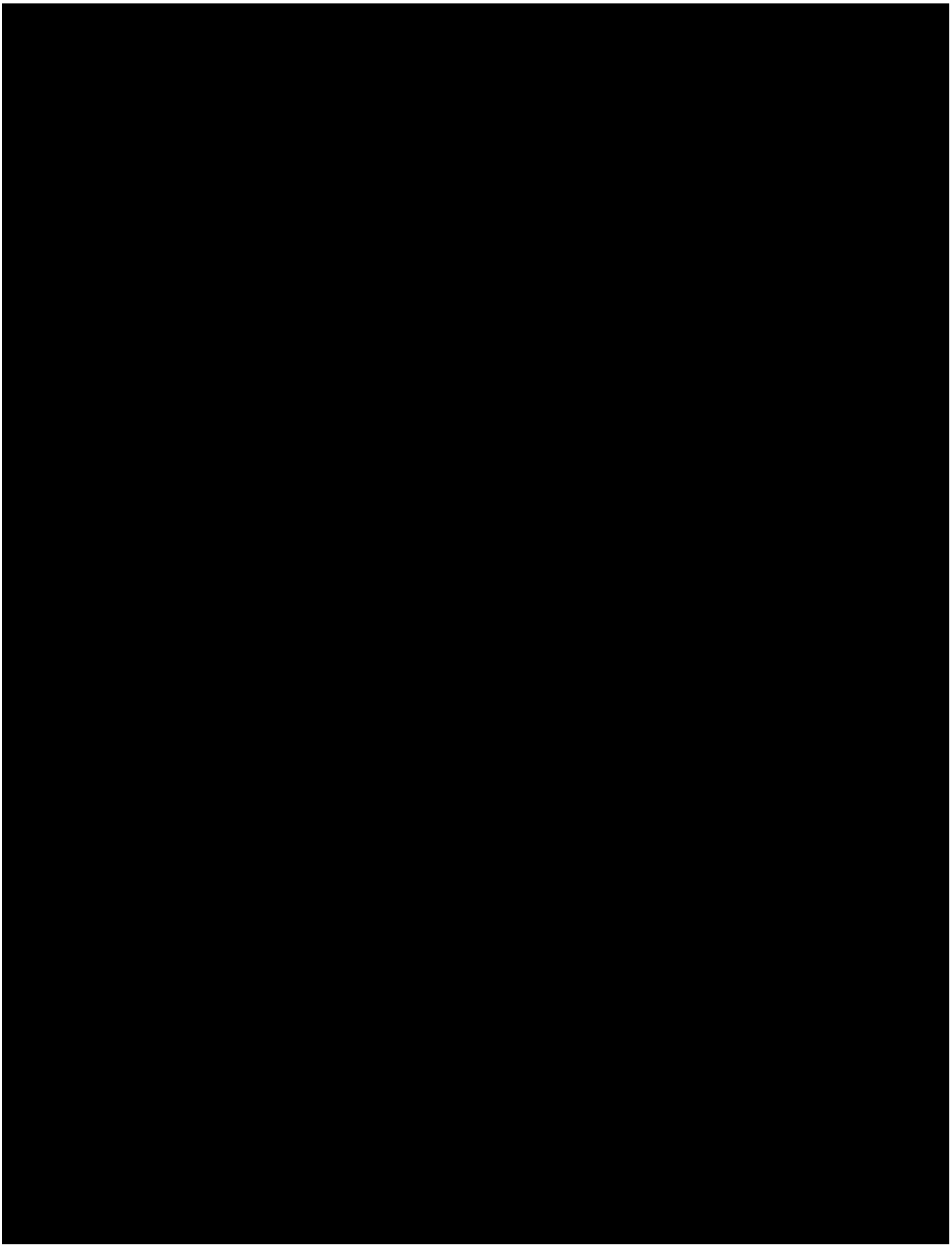


EXHIBIT K

DTCC
ADVANCING FINANCIAL MARKETS. TOGETHER.™

Andrew I. Gray
Managing Director, Group Chief Risk Officer

55 Water Street
New York, NY 10041

Tel: 212.855.1100
agray@dtcc.com

November 5, 2021

VIA EMAIL
Lek Securities Corp.
4 World Trade Center, 44th Floor
New York, NY 10007
Attn: Charles Lek

Re: Notice of Modified Activity Cap and the Imposition of Censure and Fines for Violations of Prior Activity Cap

Dear Mr. Lek,

The National Securities Clearing Corporation ("NSCC") is providing this notice ("Notice") to inform Lek Securities Corp. ("Lek") that NSCC has determined (i) pursuant to NSCC Rule 46, to modify its existing Activity Cap (as defined below) on Lek's unsettled clearing activity, and (ii) pursuant to NSCC Rule 48, to censure and fine Lek for each instance on which it has violated the existing Activity Cap. In addition, NSCC is advising Lek that, pursuant to Rule 15, NSCC is increasing Lek's minimum Required Fund Deposit from $20 million to $27 million, effective November 8, 2021, with such amount subject to upward adjustments as described below.

Activity Cap Modification

On October 26, 2021, NSCC provided Lek notice that NSCC imposed a $300 million cap on Lek's aggregate unsettled clearing activity as measured by the gross market value (GMV) of unsettled activity in Lek's portfolio each business day that coincides with the approval of Lek's start-of-day margin call ("Activity Cap"). NSCC has determined, pursuant to NSCC Rule 46, to modify the cap by increasing it to $400 million. The increased Activity Cap will be effective for unsettled activity in Lek's portfolio following the close of business today, as measured by the portfolio used to calculate Lek's start-of-day margin call for Monday, November 8, 2021.

This modification responds to Lek's insistence, as expressed by telephone to Tim Cuddihy, Managing Director, Financial Risk Management, that Lek believed that it could not limit its clients within the $300 million Activity Cap, and that it was concerned about limiting clients' ability to sell securities. Lek made these representations after being informed by NSCC that Lek had already breached the Activity Cap twice.

As an accommodation to Lek's representations to NSCC about its clients and in conjunction with NSCC's decision to increase Lek's minimum Required Fund Deposit (as described below), NSCC has determined to increase the Activity Cap to $400 million GMV. NSCC has observed that the GMV of unsettled activity in Lek's portfolio has only exceeded $400 million (calculated using Lek's unsettled portfolio each business day coinciding with the approval of Lek's start-of-day margin call) on two prior occasions in the past year.

We remind you that Lek is expected to have appropriate controls in place to manage the risks presented to it, and by extension to NSCC, from its clients' activity. FINRA has recently reiterated that "[m]ember firms are not obligated to receive or accept orders from customers where the firms believe that the associated compliance or legal risks are unacceptable, and there may be situations where firms determine that they must change their order handling procedures to restrict the entry or acceptance of customer orders to limit the firm's exposure to extraordinary market risk."[1] Additionally, SEC Rule 15c3-5 requires Lek to "maintain a system of risk management controls and supervisory procedures" that is "reasonably designed to: (1) systematically limit the financial exposure of [Lek] that could arise as a result of [providing] market access, and (2) ensure compliance with all regulatory requirements that are applicable in connection with [providing] market access."[2] Lek has previously represented to NSCC in connection with formal due diligence that Lek has "automated controls" on which it may rely "to ensure that [customers] stay within acceptable trading limits … Our customers do not have 'unfiltered' access. All their orders are routed through our systems and undergo all required checks before being forwarded to the market."[3]

In view of NSCC's pending decision to cease to act for Lek, and the underlying reasons for that decision, continued growth in the amount of Lek's clearing activity presents unreasonable risk to NSCC. Accordingly, NSCC wishes to reiterate that NSCC expects that Lek will employ whatever risk management tools are necessary to limit the GMV of its unsettled portfolio at NSCC, with an appropriate buffer to protect against the impact of post-trade price changes, to ensure that Lek does not exceed the $400 million Activity Cap. If Lek exceeds the revised cap, NSCC will immediately pursue the required procedures for imposing further summary restrictions on Lek, up to and including a potential summary cease to act.

Adequate Assurances: Increased Minimum Required Fund Deposit

In the context of Lek's continued use of NSCC's services, NSCC has also determined to increase the minimum Required Fund Deposit that it imposed on Lek as of August 2, 2021, pursuant to NSCC Rule 15. NSCC is increasing Lek's minimum Required Fund Deposit from

---

1 *See* FINRA Regulatory Notice 21-12, issued March 18, 2021, available at https://www.finra.org/rules-guidance/notices/21-12.

2 *See* SEC Guidance available at: https://www.sec.gov/rules/final/2010/34-63241-secg.htm.

3 Lek Securities Corporation Automated Risk Controls, dated February 2019, at p.2 (provided to NSCC on June 17, 2021).

$20 million to $27 million beginning with the start-of-day clearing fund requirement for Monday, November 8, 2021.

Additionally, Lek is informed that if the calculated amount of its start-of-day Required Fund Deposit, exclusive of any Excess Net Capital Premium Charges, exceeds $27 million on any date after Monday, November 8, Lek's minimum Required Clearing Fund will automatically be re-set to such greater amount as the new minimum. NSCC reminds Lek that it can monitor its estimated clearing fund requirements in the NSCC risk portal.

The foregoing shall not be construed as a waiver of any Excess Net Capital Premium Charges that Lek incurs.

Sanction and Fines

Lek violated the existing $300 million Activity Cap on multiple occasions since it was imposed, including yesterday:

November 1, 2021 – GMV of $302.9 million
November 2, 2021 – GMV of $373.1 million
November 3, 2021 – GMV of $358.7 million
November 4, 2021 – GMV of $314.8 million
November 5, 2021 – GMV of $347.1 million

Notwithstanding NSCC's decision to increase the cap as an accommodation, Lek has repeatedly and materially violated a limitation on Lek's clearing activity that was properly imposed by NSCC and clearly communicated to Lek in writing. Accordingly, NSCC has determined to impose an aggregate fine of $100,000 on Lek, assessing the maximum $20,000 penalty permitted for each violation under NSCC Rule 48. NSCC has also determined to censure Lek via publication to the NSCC membership, citing in general terms the above-referenced violations and NSCC's determination to impose the maximum fine permitted for each violation.

Right to a Hearing

Pursuant to NSCC Rules 37 and 46, Lek may request a hearing on the revised Activity Cap. Because Lek has already requested a hearing on the original Activity Cap, NSCC will deem such request as already made.

Under Rules 37 and 48, Lek may also request a hearing concerning NSCC's decision to impose the fines and censure set forth above. If Lek wants to request a hearing with respect to the fine and censure, Lek's request must be in writing and filed with the Secretary of NSCC within five (5) business days from the date of this letter. Within seven (7) business days after the filing of such written request, or such later date as NSCC may specify in writing to Lek following the review of disputed fines required under Section 2 of Rule 37 (unless, with respect to any disputed fines, NSCC determines to waive such fines upon review), Lek must then submit to NSCC a clear and concise written statement setting forth the basis for its objection to the fines and/or censure, whether Lek intends to attend the hearing and whether Lek chooses to be represented by counsel at the hearing. If Lek fails to file the written request and/or written statement within the time periods specified above, Lek will be deemed to have waived its right to

a hearing concerning the fines and the censure, and NSCC will promptly bill Lek for the fines in accordance with NSCC procedures.

Nothing in the foregoing is intended to modify or otherwise impact NSCC's determination to cease-to-act for Lek nor the timeline for the pending hearing process with respect to the cease-to-act or the Activity Cap.

This letter is without waiver of any of NSCC's, DTC's, and DTCC's legal or equitable rights, all of which are hereby expressly reserved.

Sincerely,

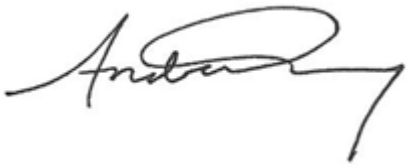


EXHIBIT L

DTCC
ADVANCING FINANCIAL MARKETS. TOGETHER.™

Andrew I. Gray
Managing Director, Group Chief Risk Officer

55 Water Street
New York, NY 10041

Tel: 212.855.1100
agray@dtcc.com

November 7, 2021

VIA EMAIL
Lek Securities Corp.
4 World Trade Center, 44th Floor
New York, NY 10007
Attn: Charles Lek

Re: Notice of Violation of Activity Cap, Imposition of Censure and Fine, and Request for Information

Dear Mr. Lek,

On October 26, 2021, NSCC provided Lek Securities Corp. ("Lek") notice that NSCC imposed a $300 million cap on Lek's aggregate unsettled clearing activity as measured by the gross market value (GMV) of unsettled activity in Lek's portfolio each business day that coincides with the approval of Lek's start-of-day margin call ("Activity Cap"). In response to a request by Lek, and based upon its representations to NSCC, on November 5, 2021, NSCC increased the Activity Cap to $400 million ("Increased Activity Cap") effective for Lek's start-of-day margin call for Monday, November 8, 2021. Lek's GMV for start-of-day Monday November 8, 2021 is **$418.3 million**, exceeding the Activity Cap by $118.3 million, and exceeding the Increased Activity Cap by $18.3 million.

Fine and Censure

Pursuant to Rule 48, NSCC has determined to impose a fine of $20,000 on Lek for this violation of a limitation on Lek's clearing activity that was properly imposed by NSCC and clearly communicated to Lek in writing. NSCC has also determined to censure Lek via publication to the NSCC membership, citing in general terms the above-referenced violation and NSCC's determination to impose the maximum fine permitted for this violation.

Right to a Hearing

Under Rules 37 and 48, Lek may request a hearing concerning NSCC's decision to impose the fine and censure set forth above. In view of the fines for prior violations that were communicated to Lek on Friday, for administrative convenience NSCC will consolidate any appeal of this additional fine and censure and extend by one business day the deadline for Lek to object. Lek's request for a hearing with respect to all fines and censure assessed up to and

including the above must therefore be filed with the Secretary of NSCC no later than the close of business on Monday, November 15.

Request for Information

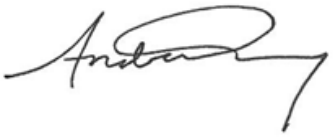
SEC Rule 15c3-5 requires Lek to "maintain a system of risk management controls and supervisory procedures" that is "reasonably designed to: (1) systematically limit the financial exposure of [Lek] that could arise as a result of [providing] market access, and (2) ensure compliance with all regulatory requirements that are applicable in connection with [providing] market access."[1] Lek has previously represented to NSCC in connection with formal due diligence that Lek has "automated controls" on which it may rely "to ensure that [customers] stay within acceptable trading limits … Our customers do not have 'unfiltered' access. All their orders are routed through our systems and undergo all required checks before being forwarded to the market."[2]

We are instructing Lek to advise NSCC, in writing (which may be by email), **no later than the close of business Monday, November 8, 2021**, what specific risk management controls and supervisory procedures Lek has implemented to comply with the Increased Activity Cap. Lek's response should detail the dates any such controls were implemented and identify the names and positions of the individuals responsible for monitoring the effectiveness of the identified controls.

Nothing in the foregoing is intended to modify or otherwise impact NSCC's determination to cease-to-act for Lek nor the timeline for the pending hearing process with respect to the cease-to-act or the Activity Cap.

This letter is without waiver of any of NSCC's, DTC's, and DTCC's legal or equitable rights, all of which are hereby expressly reserved.

Sincerely,



cc: Jeffrey Tabak, Lek Securities Corp.

---

[1] *See* SEC Guidance available at: https://www.sec.gov/rules/final/2010/34-63241-secg.htm.

[2] Lek Securities Corporation Automated Risk Controls, dated February 2019, at p.2 (provided to NSCC on June 17, 2021).

EXHIBIT M

SEWARD & KISSEL LLP

901 K STREET, NW
WASHINGTON, DC 20001

TELEPHONE: (202) 737-8833
FACSIMILE: (202) 737-5184
WWW.SEWKIS.COM

ONE BATTERY PARK PLAZA
NEW YORK, NEW YORK 10004
TELEPHONE: (212) 574-1200
FACSIMILE: (212) 480-8421

November 9, 2021

BY EMAIL

Secretary of the Corporation
DTCC
55 Water Street
New York, NY 10041
corporatesecretary@dtcc.com

Lek Securities Corporation ("LSC") (Member #0512): NSCC's Determination to Cease to Act for LSC and Summary Limitation of Clearing Activity and DTC's Determination to Cease to Act for LSC

Dear Secretary of the Corporation:

We represent Lek Securities Corporation ("LSC") in the above referenced proceedings in which LSC has objected to, and requested a hearing with respect to, the determination by the National Securities Clearing Corporation ("NSCC") to cease to act for LSC and to summarily limit LSC's clearing activities by imposing a cap of $300 million of aggregate unsecured clearing activity (subsequently increased to $400 million on November 5, 2021) as measured by the gross value of its unsecured portfolio each business day coinciding with the approval of LSC's start-of-day margin call (the "Activity Cap"). LSC has also objected to and requested a hearing with respect to the determination by the Depository Trust Corporation ("DTC") to cease to act for LSC.

This letter is the written statement, setting forth with particularity the actions or proposed actions of NSCC and DTC contained in their October 26, 2021 letters to LSC notifying it of NSCC's and DTC's determinations to cease acting, for which LSC is requesting a hearing, and LSC's basis for objecting to the actions. LSC is also advising NSCC and DTC that LSC intends to attend the hearing and be represented by counsel and requests that the hearing apply to both of the determinations to cease to act and to the Activity Cap and any associated summary actions and any related fines and censures.

The actions to which LSC objects are the (i) determinations to cease to act for LSC, (ii) the summarily imposed Activity Cap, (iii) the increase in LSC's Required Fund Deposit and plan to increase the Required Fund Deposit amount to the level of any required deposit over an existing required deposit that may occur, and (iv) any fines imposed on LSC or censures of LSC to be communicated to NSCC or DTC members.

OS Received 06/30/2022

The bases for LSC's objections are that, contrary to the allegations made by NSCC and DTC, LSC does not have a weak capital and liquidity position or deficient internal controls, LSC has not been non-transparent or unresponsive to NSCC requests, and LSC has not provided misleading or inaccurate information.

There follows a point-by-point response to the allegations, statements, and observations made in the NSCC and DTC letters of October 26, 2021 based on conversations with the principals and staff of LSC. To the extent that LSC has documents to support its assertions, they will be provided in conjunction with the hearings LSC has requested.

Stated basis for DTCC action	**Basis for LSC's objection**
Weak Capital and Liquidity Position	
Lek has ENC of $11.1MM (as of September 24, 2021), which, although sufficient to meet the minimum capital requirement at NSCC, NSCC believes is inadequate to support the level of risk activity conducted by Lek.	According to its December 31, 2020 X-17A-5 filing with the SEC, LSC had $14,529,108 of regulatory net capital, or 395% of its regulatory minimum requirement of $3,678,770. The $11.1MM ENC level as of September 24, 2021 exceeds LSC's ENC of $10,850,338 at December 31, 2020 (which varied between $10,501,575 and 13,315,480 over the nine-month period through 9/30/2021) and demonstrates the financial stability of LSC.
Lek has minimal cash on its balance sheet - non-segregated cash typically represents only a low percentage of assets, which increases its dependance on external credit for liquidity.	LSC's cash and cash equivalents on its balance sheet as of September 30, 2021 in the amount of $24,292,207 exceeded 5% of its total assets and December 31, 2020 cash and cash equivalents exceeded 1% of total assets both within the cash assets range of many other broker dealers. As stated above, LSC's regulatory capital far exceeds requirements, LSC is profitable, and LSC's dependance on external credit is also in line with regulatory standards and industry practices.
Lek's liquidity position has been compromised by Bank of Montreal Harris N.A.'s ("BMOH") termination of Lek's $75 million line	While it is accurate that the BMOH lines of credit totaling $75 million have been terminated, LSC respectfully disagrees that LSC's liquidity has been compromised by the termination of the lines. In particular:

Stated basis for DTCC action	**Basis for LSC's objection**
of credit ("BMOH LOC") as of October 6, 2021, and the termination of Lek's $25 million line of credit ("Texas Capital LOC") with Texas Capital Bank ("Texas Capital") on March 31, 2021.	(i) LSC has replaced the BMOH relationship with the Lakeside Bank relationship, including the provision of clearing bank services at The Options Clearing Corporation ("OCC"). (ii) BMOH had increased the size of the facility to a level exceeding what LSC saw necessary. Until the reduction and eventual termination of the facility effective September 6, 2021, LSC's average daily outstanding balance drawn under secured and unsecured BMOH lines were in line with what is available under the current Lakeside lines of $20 million and $10 million respectively. (iii) The $45 million additional cushion available in the BMOH lines was not generally relied upon by LSC and was not necessary to finance customer debit balances. Rather, the focus of LSC's relationship with BMOH was its provision of clearing bank services at OCC. Also, stock loan facilities are economically more attractive in financing customer debit balances and readily available to LSC for secured borrowing. (iv) LSC has initiated a note program with Lek Holdings LLC ("Holdings" and "Holdings note program") that supplies unsecured financing capacity that exceeds LSC's actual liquidity needs and the previous BMOH lines that it replaced. (v) LSC has designed the Holdings note program to have the desirable property of aligning liquidity needs with the supply of liquidity. Unlike a typical unsecured line of credit that may not be available when a firm actually needs it, Holdings' financing originates from capital providers who employ LSC as their broker and drive a significant portion of LSC's daily liquidity requirements at the NSCC. This aligns LSC's liquidity needs to LSC's liquidity sources, unlike a traditional unsecured line of credit which are likely to be shut off at times of distress. The contractual redemption schedule of the Holdings note program provides ample time for LSC to restrict trading activities of its

Stated basis for DTCC action	Basis for LSC's objection
	customers if daily customer trading activity strains liquidity.
Lek has a credit facility with Lakeside Bank ("Lakeside"), consisting of a $20 million line of credit and a $10 million line of credit (collectively, the "Lakeside LOC"). In violation of the NSCC Rules, Lek has not fully responded to NSCC's inquiries in respect of the Lakeside LOC, and has not been forthcoming about what collateral it would use to support each part of the line of credit and whether that same collateral is also being pledged to support any other liquidity sources. Accordingly, NSCC believes that there is a high probability that Lek does not have enough collateral to utilize the full Lakeside LOC.	LSC has sufficient assets to collateralize the $20 million secured portion of the LOC for the purpose of financing customer debit balances. SEC rules permit rehypothecation of customer "margin securities"[1] with a value of up to 140% of the customer's debit balance. Therefore, collateral is virtually guaranteed in a sufficient amount to finance debit balances because haircuts are rarely, if ever, as high as 28.5% (1 minus 100/140). The typical haircut for bank secured lending is 20%, and it could be negative in securities lending. However, spikes in LSC's liquidity needs result from NSCC clearing fund requirements that cannot be financed on a secured basis. LSC's liquidity requirements have recently been sharply increased by the NSCC to a minimum amount of $20 million. Thus, LSC has been operating under a liquidity stress over the last several months. LSC has successfully met the increased NSCC requirements. The $10 million unsecured portion of the Lakeside LOC and the Holdings note program have been tested under such liquidity stress and proven to be satisfactory. LSC's potential liquidity stress directly results from NSCC's increased requirements. On the days that the NSCC requirement exceeds the $20 million floor amount imposed on LSC, it is primarily due to settlement of transactions in the microcap category, and this trading activity is under LSC's control through pre-trade controls. This is different from potential stresses facing many broker dealers that engage in principal and proprietary trading. As an agency broker, LSC does not have other large risk exposures because LSC does not engage in principal and proprietary trading and finances its customer debit balances through securities lending. LSC has addressed the potential NSCC liquidity need by implementing pre-trade controls over the placement of customer orders that would create large NSCC margin requirements. NSCC makes available an online tool that enables LSC to find out

[1] Securities carried for the account of a customer in a margin account other than "fully paid securities" as defined in Rule 15c3-3 adopted by the SEC under the Securities Exchange Act of 1934, as amended ("SEA").

Stated basis for DTCC action	**Basis for LSC's objection**
	NSCC's deposit requirement prior to placing a large trade. Further, LSC has arranged for the Lakeside unsecured line of credit as well as the unsecured Holdings note program to finance the liquidity needs from those customer orders that drive the deposit requirement. Aside from NSCC requirements, LSC's other major financing need comes from customer margin accounts and it is obtained through LSC's securities lending operations that (i) exceed one billion dollars in total capacity from multiple counterparties, and (ii) provide sufficient collateral for securities lending under SEC rules. Customer debit balances are supported by more than sufficient collateral in customer margin accounts because broker dealers are allowed to lend securities with a value of up to 140% of the amount that the broker dealer lends to customers as discussed above.
Lek has informed NSCC that it has a $100 million promissory note from its parent, Lek Securities Holdings Limited ("Lek Holdings"). However, Lek has repeatedly failed to provide NSCC with requested information, including, but not limited to, audited financials of Lek Holdings and details about its financial relationship with Lek. Accordingly, NSCC does not have enough information to assess the reliability and sufficiency of the $100 million promissory note, and therefore NSCC cannot responsibly consider the promissory	Parent financing arrangements are common among brokers and dealers and have been approved by the SEC, when properly structured. As mentioned above, (i) the $100 million Holdings promissory note was established at an amount that exceeds foreseeable liquidity needs, (ii) the promissory note was established in order to finance NSCC clearing fund requirements that are in effect qualitatively determined by the NSCC and exceed levels implied by statistical models, and (iii) LSC's promissory note program from its parent aligns LSC's liquidity needs with LSC's liquidity sources. LSC believes that it is reasonable and in fact desirable to make appropriate arrangements such that clients fund the margin calls that they create. It is not economically necessary or desirable for a clearing firm to use its own capital to fund its customers' trading. Firms earn only a small commission, while customers trade as principal and stand to earn significant amounts. Investors that provide notes to Holdings are large, sophisticated investors that understand and accept the risk of providing unsecured financing to a non-broker dealer (Holdings) without SIPC protection. Customer financing of margin requirements is not uncommon. At OCC and the commodity exchanges, firms can use customer money to finance customer margin requirements. In fact, a firm could use money belonging to "Customer A" to finance a margin call created by "Customer B". Under the Holdings note program,

Stated basis for DTCC action	**Basis for LSC's objection**
note as a reliable source of liquidity for Lek.	each lender to Holdings roughly funds its own future margin requirements.
Lek has told NSCC that it has access to certain uncommitted stock loan/borrowing arrangements, however, NSCC has not been able to ascertain whether these provide significant incremental liquidity to Lek.	As mentioned above, LSC finances significant customer debit balances through securities lending. SEC rules that permit securities with a value of up to 140% of customer debit balances to be rehypothecated in securities lending provide sufficient collateral. This virtually guarantees availability of sufficient collateral for customer debit financing. Small debit balances are financed with excess free credit balances and therefore do not require external financing. LSC's securities lending operations have established over a billion dollars in stock loan facilities from multiple counterparties. Securities lending counterparties have access to large pools of liquidity and will take almost any collateral to place in overnight investment funds and earn a spread. Moreover, LSC earns additional revenue when it lends hard to borrow securities.

Stated basis for DTCC action	**Basis for LSC's objection**
Deficient Internal Controls	
Pursuant to a December 2019 FINRA order of settlement with Lek ("FINRA Order"), Lek was suspended from selling or accepting for deposit any microcap security until it certified to FINRA that it had implemented the recommendations of an independent consultant ("Consultant"), who was required to conduct a comprehensive review of Lek's supervisory system and its compliance with anti-money laundering and Section 5 of the Securities Act of 1933 obligations in connection with microcap stock trading.	The consultant whose report was critical of LSC, Berkeley Research Group, LLC ("Berkeley") and whose retention by LSC was deemed acceptable to FINRA, is now the subject of a FINRA review of its performance. In contrast, a monitor whose retention by LSC was deemed acceptable to the SEC, Optima Partners ("Optima") has been providing favorable reports of LSC's operations. Optima's performance is not under review by any party.
Although Lek submitted an implementation report and certified that it had remediated all ninety-eight of the Consultant's findings, a final report by the Consultant (the "Consultant Final Report") indicated that Lek had not remediated the identified deficiencies and that the actions taken by Lek were not sufficiently compliant with the FINRA Order. The Consultant also recommended that Lek voluntarily reimpose and maintain indefinitely the suspension of its microcap business that was set forth in the FINRA Order. Lek's failure to remediate wide-spread internal control deficiencies, as reported in the Consultant Final Report, undermines DTC's confidence in Lek's ability to comply with their financial and clearance and settlement obligations and to satisfy all the qualifications of DTC membership.	Berkeley's conclusions, which are under review by FINRA, are at variance with the generally favorable reports of Optima. Accordingly, LSC does not believe NSCC can fairly choose to ignore the favorable Optima reports while basing its conclusions on Berkeley's critical report.

Stated basis for DTCC action	**Basis for LSC's objection**
Inadequate Responses, Failures to Respond, and Inaccurate and Misleading Representations	LSC believes it has complied in all material respects with DTCC's information requests. To the extent any further information is required, LSC is ready to provide it immediately in response to identified inadequate responses, failures to respond, and inaccurate or misleading responses.
Lek had been on notice from BMOH that it intended to terminate its relationship with Lek since at least October 2019. Lek never informed DTC about the discussions, BMOH's interim reduction of the BMOH LOC, or BMOH's decision to fully terminate the BMOH LOC. DTC eventually learned about the pending BMOH LOC termination from FINRA and OCC on or around July 16, 2021.	LSC did not believe that the matter was material in view of its minimal use of the line and, then, only to generate revenue for BMOH to support it in acting as LSC's settlement bank. This was LSC's error and LSC accepted and paid a fine to NSCC for it.
Similarly, Lek failed to notify DTC of the March 31, 2021 termination of the Texas Capital LOC, both before and after it occurred. Lek did not disclose the Texas Capital LOC until a due diligence discussion with DTC in mid-to-late May 2021.	TCB discontinued providing the LOC service generally, and LSC never used it while it was available. Accordingly, LSC did not believe the existence of the LOC was material. Again, this was LSC's error.
Not only did Lek fail to affirmatively inform DTC of the terminations of these lines of credit, Lek provided inadequate and/or misleading responses to DTC over the course of several due diligence questions sent by DTC between February and May 2021 relating to Lek's liquidity and financial condition, thereby avoiding disclosure of the situation with the lines of credit.	LSC has provided responses to all questions it received from DTCC entities over the period February to May 2021.
Lek failed to send DTC a copy of the Consultant Final Report when it was issued on April 19, 2021, and only provided it to DTC in June 2021 after numerous follow-up requests by DTC.	LSC was not subject to any affirmative requirement to provide the Consultant Final Report to DTCC and was unaware that either DTCC entity sought a copy when it was issued. LSC first received a request from DTCC for the Consultant Final Report on

Stated basis for DTCC action	Basis for LSC's objection
	June 2, 2021 and sent the report as a response on June 10, 2021.
As required by DTC, on July 30, 2021, Lek began submitting daily liquidity reports. However, the reports did not include all of the required information, including, without limitation, total funding available, and failed to respond to questions about a liquidity stress test and presentation of a contingency. In addition, the information that Lek did provide in the reports was internally inconsistent, for example, by alternating between referring to the promissory note as both secured and unsecured, and did not identify the different sources of collateral that the different liquidity sources depend on. The reports, on an ongoing basis, have been deficient and fail to provide DTC with an accurate picture of Lek's liquidity.	For avoidance of doubt, the promissory note in question is unsecured. LSC first informed DTCC that the promissory note was unsecured in response to DTCC's letter of July 28, 2021. LSC believes that its daily liquidity reports were materially accurate and contained all required information, when requested information was applicable. In the case of sources of liquidity other than the promissory note, when such sources were backed by collateral, the collateral was identified in the daily liquidity reports.
Provided information that showed $50 million of the BMOH LOC as a source of "future" liquidity. Lek later acknowledged that the BMH LOC was terminating in full on October 6, 2021.	The BMOH line of credit was a source of liquidity available to LSC as long as the line of credit was in force. LSC made good faith efforts to negotiate with BMOH to maintain its existing and long-standing relationship with BMOH. DTCC was made aware of BMOH's intention to end its relationship with LSC, including terminating its line of credit, when LSC submitted to DTCC a copy of the letter from BMOH's counsel, McGuire Woods, that set out BMOH's position. Once it became clear that BMOH had decided to terminate the relationship, LSC informed DTCC that the line of credit would be terminated on October 6, 2021.
Indicated to DTC that Investors Bank intended to provide Lek with a $20 million line of credit. In response to follow-up from DTC, Lek acknowledged that Investors Bank	LSC communicated to DTC in response to the DTCC request following the McGuire Woods letter that it was exploring options for new lines of credit, including its understanding at

Stated basis for DTCC action	**Basis for LSC's objection**
had only expressed an "interest" in providing Lek with a line of credit. To date, to DTC's knowledge, there is no $20 million line of credit from Investors Bank.	the time that Investors Bank was considering providing LSC a $20 million line of credit. However, DTCC is correct that LSC currently does not have a line of credit with Investors Bank.
Indicated to DTC that Lakeside was working with a number of banks to create a large syndicated loan facility for Lek's benefit. In response to follow-up by DTC, Lek acknowledged that "none of this is certain to transpire." To date, to DTC's knowledge, there is no large syndicated loan facility for Lek's benefit.	This is correct and was communicated to DTCC for transparency. As yet, Lakeside has not completed work to establish the syndicated loan facility.
Failed to fully respond to DTC requests relating to the Lakeside LOC, particularly in connection with collateral that would support Lek's borrowings.	LSC believes that it has fully responded to all questions and information requests from the DTCC entities and is ready to respond to further requests if necessary. LSC has used customer margin securities for its borrowings to facilitate customer trading, as is customary for broker-dealers.
Failed to substantively respond to DTC's most recent letter to Lek on September 13, 2021, which followed up on DTC's previous unanswered and partially answered requests, including requests with respect to information about the promissory note, Lek Holdings, as well as a potential Investors Bank line of credit and syndicated loan that was referenced by Lek in several of its responses. The letter also identified and requested remediation of the deficiencies in Lek's daily liquidity reports.	LSC responded to DTCC's September 13, 2021 letter on September 23, 2021, by means of a portal provided to LSC staff by DTCC.

Respectfully submitted,

Anthony C.J. Nuland

Paul T. Clark

Attachments

cc: Michael Leibrock, DTCC (mleibrock@dtcc.com)
Isaac Montal, DTCC (imontal@dtcc.com)
Aimee Bandler, DTCC (abandler@dtcc.com)
Jeffrey Mooney, SEC (mooneyj@sec.gov)
Michael Macchiaroli, SEC (macchiarolim@sec.gov)
Tom McGowan, SEC (mcgowant@sec.gov)

SK 07392 0001 9014021 v3

EXHIBIT N

BEFORE THE DTCC HEARING PANEL

- -x

In the Matter of

LEK SECURITIES CORPORATION

- -x

STATE OF NEW JERSEY

COUNTY OF MONMOUTH

VIRTUAL ZOOM DEPOSITION

BEFORE:

TONY MILLER

SHAWN FEENEY

PINAR KIP

February 17, 2022

9:00 a.m.

TRANSCRIPT OF PROCEEDINGS

* * *

OS Received 06/30/2022

PROCEEDINGS

director's transactions. 10:05:36
No, this is 2018. I 10:05:40
apologize. You've got to go deep 10:05:42
into this exhibit, to the back. At 10:05:44
the top it will say "for the 10:05:47
year-ended 31 December 2020." 10:05:48
Keep going. Yes. And then 10:06:06
in the back of this exhibit, at 10:06:06
page 20, we're in the note to the 10:06:08
financial statement. And it's note 10:06:11
number -- I'm sorry, page 80 of the 10:06:15
PDF, note 7. Apologies. 10:06:22
Page 80 of -- okay, there, 10:06:30
director's remuneration. 10:06:30
Q. There's "remuneration 10:06:33
disclosed above, including the amount 10:06:35
paid to the highest paid director was 10:06:37
4,856,216 pound sterling." Do you see 10:06:40
that, Mr. Lek? 10:06:45
A. I do, yes. 10:06:46
Q. And was that your 10:06:47
compensation from Lek UK in 2020? 10:06:50
A. I believe so, yes. So this 10:06:53
would include both my base salary and 10:06:58

PROCEEDINGS

the bonus that I received. 10:07:00
Q. Thank you. And you can put 10:07:03
that exhibit down. 10:07:05
So let's talk a little bit 10:07:09
about liquidity. Lek obtains liquidity 10:07:11
from two sources; from its capital and 10:07:16
from its borrowings, correct? 10:07:19
A. Lek Securities obtains 10:07:28
liquidity from its borrowings, which 10:07:32
can be broken down into two pieces; the 10:07:35
first is loan proceeds collateralized 10:07:38
by customer securities. Oftentimes the 10:07:43
Securities and Exchange Commission will 10:07:45
refer to that as a secured line of 10:07:47
credit. In addition to that, Lek 10:07:50
Securities also has a diverse unsecured 10:07:54
lines of credit, the first being our 10:07:58
$10 million line of credit with 10:08:04
Lakeside. And then we also have the 10:08:07
$100 million master note from the 10:08:10
parent company. This master note 10:08:13
allows us to dis -- 10:08:16
Q. Mr. Lek, I'm sorry. Your 10:08:17
counsel's going to have an opportunity 10:08:22

PROCEEDINGS

to ask you questions. I was just 10:08:23
focusing on something that you said, 10:08:25
where you said you obtained liquidity 10:08:27
from capital and from borrowings. So 10:08:29
there's two sources of liquidity, 10:08:33
right; the capital on Lek's balance 10:08:35
sheets and borrowings? Those are the 10:08:37
two sources of liquidity, right? 10:08:40
A. Well, I think it's important 10:08:42
to understand that Lek Securities is an 10:08:44
agency-based broker, right -- 10:08:47
Q. I'm happy to go into that 10:08:48
with you, but I just -- I want to focus 10:08:50
on, I think, what's important here, 10:08:53
which is the sources of liquidity. 10:08:55
And if you look at paragraph 10:08:57
28 of your affirmation, you said, "To 10:08:59
provide an additional backstop to the 10:09:03
market and LSC's counterparties, LSC 10:09:06
obtains liquidity from its capital and 10:09:09
from borrowings." 10:09:11
So I was just trying to set 10:09:16
the level set for everyone that there 10:09:18
are two sources of liquidity, its own 10:09:20

PROCEEDINGS

capital and borrowings. Is that fair? 10:09:22
A. To the extent that we're not 10:09:25
talking about meeting our obligations, 10:09:27
then yes, I would agree with you, those 10:09:31
are our liquidity. 10:09:34
Q. Okay. And then you said in 10:09:35
another aspect of your affirmation that 10:09:40
there really are two major funding 10:09:43
needs; one is the NSCC funding 10:09:46
requirements and the other is your 10:09:49
customer margin accounts. Is that 10:09:51
fair, that those are the two major 10:09:53
financing needs for Lek? 10:09:55
A. Correct, yes. We need to, we 10:10:00
have two lines of -- in general there 10:10:03
are loan proceeds collateralized by 10:10:06
customer securities, referred to as a 10:10:08
secured line of credit. And we also 10:10:11
have unsecured lines of credit as well. 10:10:12
Unsecured lines of credit, of course, 10:10:14
are the ones that you use to meet your 10:10:17
NSCC margin call; whereas, your secured 10:10:20
lines of credit would not be a prudent 10:10:22
means to do so, as it becomes a lockup 10:10:25

PROCEEDINGS

supplies up to a $100 million in liquidity, right? 10:15:35 10:15:37

A. It's cash on the barrel head. 10:15:40

So it's a master note that allows investors to fund that note up to that point. 10:15:42 10:15:45 10:15:48

Q. Lek Holding itself has approximately $5 million on its balance sheet, or had approximately $5 million of cash on its balance sheet in cash, in cash equivalents as of June 30, 2021, right? 10:15:55 10:15:56 10:15:59 10:16:02 10:16:04 10:16:09

A. Possibly. 10:16:10

Q. You're the CEO of Lek Holdings, right? 10:16:10 10:16:12

A. I don't remember exactly every number on every date. 10:16:14 10:16:17

Q. I understand. It's at DTCC Exhibit 36, on page 2 is a balance sheet. It reflects -- I'll just represent for the record that it represents Lek Holdings Limited balance sheet as of June 30, 2021, of $5,091,785.19. 10:16:18 10:16:23 10:16:25 10:16:27 10:16:29 10:16:33 10:16:41

PROCEEDINGS

Do you want to take a look at that, Mr. Lek? 10:16:52 10:16:54

A. This looks like it was prepared by our CFO. I have no reason to believe it would be inaccurate; so, yes, it's possible that the monies amounted to 5 million, yes. 10:16:59 10:17:00 10:17:04 10:17:07 10:17:10

Q. So Lek Holdings, therefore, doesn't have enough money on its balance sheet to fund the $100 million note program and lend $100 million at a time to Lek Securities, correct? 10:17:13 10:17:16 10:17:18 10:17:21 10:17:25

A. No. The program is designed -- and I use the terminology "cash on the barrel head." So I think maybe this would be a good time to explain what I mean by that and to give some color to that. 10:17:29 10:17:31 10:17:34 10:17:37 10:17:39 10:17:42

Q. Actually, that's actually not how we do this. Really, I'm supposed to ask questions and you're supposed to answer them. I think the panel also may have questions for you that they would be interested in asking. 10:17:44 10:17:45 10:17:47 10:17:49 10:17:52 10:17:55

PROCEEDINGS

I'm just wondering if in me asking questions you might be able to explain what you mean, but you had said in your -- one -- both of your affirmations, I think, that it's really Lek's customers that lend the money to Lek Holdings, correct? 10:17:56 10:18:00 10:18:03 10:18:06 10:18:09 10:18:11 10:18:15

A. Well, there are Lek Securities Corporation customers. That said, when the money is lent to the holding company, they're wearing their investor hat. And the reason -- 10:18:16 10:18:21 10:18:22 10:18:24 10:18:26

Q. Right, so -- sorry. Go ahead. 10:18:28 10:18:32

A. I was going to go on and just explain why that's important, and why when you wear your investor's hat and you lend money to the holding company, you're lending money as an investor. 10:18:32 10:18:34 10:18:38 10:18:41 10:18:44

See, normally, the customer wires in money to the broker/dealer, then we need to segregate that money in our weekly reserve computation under 15C3-3. However, under the note 10:18:48 10:18:50 10:18:52 10:18:57 10:19:02

PROCEEDINGS

program, which allows us to diversify our unsecured funds and disintermediate the bank, it allows for the investor to make a loan to the holding company and then the holding company can make an unsecured loan to the broker/dealer -- 10:19:04 10:19:06 10:19:11 10:19:13 10:19:17 10:19:22

Q. I understand. 10:19:24

A. -- and therefore, that is not a lockup requirement and serves as -- 10:19:26 10:19:28

Q. Right. So -- yes, you essentially -- you essentially evaded that lockup requirement by doing it through Lek Holdings, correct? 10:19:30 10:19:31 10:19:34 10:19:37

MR. KOTWICK: Objection to the form. 10:19:42 10:19:43

Q. You bypassed? 10:19:44

MR. KOTWICK: Same objection. 10:19:49

A. We are doing what a holding company very commonly does. If you're a bank holding company, you would do this the same way. You would lend money on an unsecured basis to a broker/dealer. It's just -- 10:19:54 10:19:58 10:20:00 10:20:02 10:20:05 10:20:08

Q. But the difference here, 10:20:11

PROCEEDINGS

Mr. Lek, is that in order to get the money to lend, Lek Holdings is getting that money from the investors, which are Lek's customers. And the whole purpose of it, you say, is that Lek's customers are prefunding their margin requirement in this way, and they're calling it an investment into Lek Holdings, so that Lek Holdings then can do what it wants with that money, correct? There's no obligation that Lek Holdings actually lend the money to Lek Securities, correct? 10:20:12 10:20:15 10:20:18 10:20:19 10:20:24 10:20:26 10:20:29 10:20:31 10:20:35 10:20:37 10:20:39 10:20:41 10:20:45

A. Well, the note is six pages or so. It's plain vanilla. And it allows -- its unsecured. It's between the investor and the holding company. And then there's another note between the holding company -- 10:20:46 10:20:52 10:20:58 10:21:02 10:21:05 10:21:08

Q. Right. I want to do -- I was going to ask you, you just were referring to the note between the customer and Lek Holdings, correct? That's a note that you were just 10:21:09 10:21:12 10:21:14 10:21:15 10:21:17

PROCEEDINGS

referring to just now? 10:21:19

A. Well, I refer to them as the investor. And I think that's an important distinction, because on the note itself it says things like "this is not specific insured." 10:21:20 10:21:23 10:21:24 10:21:26 10:21:30

And we want to be very cognizant when we're dealing with an investor, right, that they're wearing their investor's hat, and we never confuse them with a customer, although they may be the same person. 10:21:36 10:21:38 10:21:40 10:21:41 10:21:43 10:21:46

Q. So the first step in the process is that Lek Holdings draws on a customer note, right? 10:21:52 10:21:54 10:21:58

A. Well, the first step in the process, and I think -- let me step back and, if you would allow me, maybe I can explain a little bit more about the provenance of why this note exists. I think it maybe helpful, but -- 10:22:00 10:22:05 10:22:09 10:22:13 10:22:15 10:22:18

Q. I actually think that's going to be a place where your lawyer is going to be able to ask you questions. 10:22:20 10:22:23 10:22:24

PROCEEDINGS

I'm focused on the steps in the note program here that you've identified, and I believe that you've said several times that the note -- the money that is loaned to Lek Holdings comes from customers -- you called them customers as investors -- but they come from customers who want to utilize the services of Lek Securities, correct? 10:22:26 10:22:29 10:22:31 10:22:33 10:22:38 10:22:42 10:22:45 10:22:48 10:22:49

A. Well, there's certain customers that we know are going to spike the margin call. And because Lek Securities has robust systems and controls, we're able to monitor our volatility, which is one of the core components in computing the daily margin requirement at NSCC. 10:22:53 10:22:55 10:22:57 10:23:00 10:23:03 10:23:06 10:23:09 10:23:11

And so prior to a customer putting on a trade that we know is going to spike the NSCC margin call, the conversation is then held between myself, acting as chief executive officer of the holding company, and the investor, and I tell the investor that 10:23:12 10:23:14 10:23:16 10:23:18 10:23:23 10:23:26 10:23:29

PROCEEDINGS

if they want to put on the trade, they need to have the money with the holding company. That's why the creditworthiness of the investor is not something we look to, because the old expression, trust but verify, we don't trust. We want to make sure the money is with the holding company. 10:23:32 10:23:34 10:23:38 10:23:42 10:23:44 10:23:46 10:23:49 10:23:51

And so only once the money is lent to the holding company, then we will allow the client to put on the trade. We know what the VAR is going to be, or the value at risk or volatility, because we do an analysis prior to the customer putting on the transaction. And so the client has money, the money allows the client to do the trade, once the trade is put on, (inaudible) spike in the volatility, which we know in advance, because we are connected to DTCC's web portal, as well as the new API, and we're able to monitor this. 10:23:53 10:23:55 10:23:58 10:24:02 10:24:04 10:24:06 10:24:09 10:24:11 10:24:15 10:24:17 10:24:28 10:24:32 10:24:33 10:24:36 10:24:40

So it's a program by which 10:24:42

PROCEEDINGS

you have to have the money up first, then you can do the trade, and that will allow for the spike to happen. And then once the spike comes back down, the money is returned; the money is then returned back to the holding company and then it goes back to the investor. 10:24:43 10:24:46 10:24:48 10:24:50 10:24:52 10:24:54 10:24:56 10:24:58

Q. And in connection with this conversation that you're having with your various different hats on, one as the CEO of Lek Holdings and then as CEO of Lek Securities, and talking with the customers/investors and you figure out in advance when they say they want to put on a trade, what the margin is going to be. 10:24:59 10:25:03 10:25:04 10:25:06 10:25:11 10:25:14 10:25:18 10:25:21 10:25:23

Is there any requirement that that customer then submit additional monies to support the margin as the -- as it may change, because there's time between the trade and the settlement; so what controls are in place to allow or provide for the customer to put on 10:25:24 10:25:28 10:25:31 10:25:35 10:25:38 10:25:41 10:25:44

PROCEEDINGS

additional funds should the margin change during the T+2 time frame, anything? 10:25:47 10:25:50 10:25:53

A. Well, we always ask for an additional buffer. I want to have sufficient cash on hand, because I know that low priced securities can be somewhat volatile. And that's why Lek Securities is very conservative when it looks to raise money from investors. And if it turns out -- 10:25:53 10:25:55 10:25:58 10:26:00 10:26:05 10:26:07 10:26:10 10:26:15

Q. But -- 10:26:16

A. And so this is -- 10:26:18

Q. Where is the documentation concerning the additional buffer that you are obtaining from the customer/investor that's lending the money to Lek Holdings? 10:26:20 10:26:22 10:26:25 10:26:28 10:26:29

A. Well, I would say it's -- we can -- we look at the VAR computation. I actually have dedicated staff who actually look at the VAR on the DTCC.com, and also on the API. This is something that forms a critical part of 10:26:31 10:26:34 10:26:39 10:26:42 10:26:46 10:26:49

PROCEEDINGS

our risk controls. So this is something that -- 10:26:52 10:26:54

Q. Okay. So you're relying on your staff and there is no documentation that you can cite to for me that identifies that these customers are going to be on -- responsible for the margin plus some buffer; is that right? Is this just a conversation that you're having with them; is that the basis of it? 10:26:56 10:26:59 10:27:04 10:27:07 10:27:11 10:27:15 10:27:18 10:27:20 10:27:21

A. Well, it's much more than a conversation. I'm making sure they give us the money. No money, no trade, no spike. 10:27:22 10:27:24 10:27:26 10:27:32

Q. And the money goes from the customer who wants to put the trade on, that you evaluate and you see that it's going to require a certain amount of margin; the customer then lends that money to or -- lends money to Lek Holdings, right? That's the first step; the money goes from the customer to Lek Holdings, right? 10:27:33 10:27:36 10:27:39 10:27:42 10:27:43 10:27:46 10:27:51 10:27:53 10:27:55

PROCEEDINGS

A. I want to be careful using the word "customer." You have to use the word "investor." The investor gives money to the holding company and that's a -- 10:27:58 10:28:01 10:28:03 10:28:07 10:28:09

Q. Right. 10:28:10

A. I don't want to seem pedantic, but in the securities business, right, it's very important, because the word "customer" has a very, very special meaning. 10:28:11 10:28:14 10:28:16 10:28:18 10:28:21

Q. But you just told us that you have a conversation or there is a customer that wants to put a trade on. So it is a customer at that point to -- it's a customer for purposes of Lek Securities, right, that wants to put the trade on, it's a customer? 10:28:23 10:28:26 10:28:29 10:28:31 10:28:35 10:28:37 10:28:40

A. Well, it's an individual. He is a customer that wants to put on the transaction, because you can't trade securities through the holding company. It's not a regulated broker/dealer, right. So if you want to think about 10:28:41 10:28:50 10:28:52 10:28:54 10:28:56 10:28:58

PROCEEDINGS

it from, you know, how does this practically work -- and I've spoken to DTC and the staff about how this practically worked. 10:29:01 10:29:04 10:29:07 10:29:11

The customer wants to put on the transaction, any low-priced securities over $500 immediately gets blocked by the CUSIP system. So now he wants to put on the transaction. So the customer is the one that wants the trade. Now, what happens next? The customer then puts on his investor hat, and then the investor and I speak and we provide the investor with a note. This note has very special clauses on it. For example, it's unsecured. It's not a security. You don't get civic protection. These are things that -- 10:29:13 10:29:14 10:29:18 10:29:23 10:29:27 10:29:29 10:29:31 10:29:34 10:29:38 10:29:42 10:29:46 10:29:50 10:29:54 10:30:00

Q. I understand. Mr. Lek, your lawyer is going to have an opportunity to ask you questions about how it works. I would appreciate if you could try to just follow my questions and answer them. My question was: The 10:30:02 10:30:05 10:30:07 10:30:09 10:30:11 10:30:12

PROCEEDINGS

customer is having a conversation or wants to put on -- wants to put on a trade, and that is what starts the process where Lek evaluates what the margin requirement will be for that trade, correct? 10:30:17 10:30:20 10:30:22 10:30:25 10:30:31 10:30:34

A. Correct. We don't do any proprietary trading, so -- 10:30:34 10:30:36

Q. I understand you don't do any proprietary trading. 10:30:37 10:30:39

And then in your hat as CEO of Lek Holdings, you have a conversation with a customer who is now an investor, that's what you're saying, right? There's the change, there's -- there's where the nuance is in this arrangement. I get it. 10:30:40 10:30:48 10:30:49 10:30:50 10:30:52 10:30:54 10:31:01

A. Correct. 10:31:01

Q. I apologize. 10:31:03

Once the investor lends money to Lek Holdings, and it lends -- it's lent, the end of the -- the reasoning for the lend is essentially because they want to put the trade on, but now 10:31:04 10:31:06 10:31:11 10:31:14 10:31:17

PROCEEDINGS

they're being an investor, and they're lending money to Lek Holdings, right? 10:31:19 10:31:21

A. Well, the investor can't put the trade on the customer. So still the broker/dealer can block a transaction from happening. 10:31:24 10:31:26 10:31:29 10:31:31

Q. Right. So once the investor lends money to Lek Holdings, there's no restrictions on what Lek Holdings does with that money, right? It's not obligated to lend that money to Lek Securities, the U.S. broker, is it? 10:31:32 10:31:35 10:31:39 10:31:44 10:31:48 10:31:54

A. That's somewhat a compound question. So, I guess, the first is -- 10:31:56 10:32:01

Q. I just direct you to your affirmation, at paragraph 44, where you're discussing this action. It's at page 14 of your first affirmation, it's paragraph 44. Second sentence says, "Moreover, there are no restrictions on the use of funds." 10:32:02 10:32:04 10:32:13 10:32:14 10:32:17 10:32:26 10:32:30

And then paragraph 45 specifically, "Anyone can lend money to Lek Holdings, as long as Lek Holdings 10:32:34 10:32:35 10:32:38

PROCEEDINGS

wants the money," right? 10:32:41

A. That is correct, yes. My only -- 10:32:42 10:32:43

Q. Okay. 10:32:43

A. My only comment was that Lek Holdings does have an obligation to the investor to return the money. That was the only piece I wanted to add. 10:32:43 10:32:45 10:32:46 10:32:48

Q. Okay. But there's no requirement that Lek Holdings lend that investor/customer money to Lek, right? 10:32:52 10:32:53 10:32:58

A. Correct. And there's no requirement for the broker/dealer to increase the trading capabilities either. 10:33:01 10:33:04 10:33:06 10:33:08

Q. So Lek Holdings, for example, could actually use that money and lend it to another entity; it could lend it to Lek UK, for example, right? 10:33:09 10:33:15 10:33:19 10:33:22

A. It could, yes. 10:33:24

Q. And, in fact, Lek Holdings has executed promissory notes with Lek UK, right? 10:33:25 10:33:28 10:33:31

A. That is correct, yes. 10:33:32

PROCEEDINGS

A. We do not have a specific ratio, but it is a factor in our credit rating model. 15:10:36 15:10:38 15:10:39

Q. I understand that. 15:10:39

A. So we do have a standard around that particular metric, but it is not an absolute threshold. 15:10:40 15:10:41 15:10:43

Q. What is that standard; is that standard by dollars or is that discretionary based on the NSCC's valuation? 15:10:45 15:10:50 15:10:53 15:10:57

A. It's one of many factors in the quantitative portion of our CRRM credit rating model, nonsegregated cash to total assets, because it's part of a statistical model. I can't speak to a specific threshold as being high or -- the one-to-one threshold that is acceptable or not. But, generally speaking, the higher that level, the more positive impact on the credit rating. If that makes sense. 15:10:57 15:11:05 15:11:09 15:11:12 15:11:16 15:11:18 15:11:23 15:11:25 15:11:27 15:11:32 15:11:36

Q. I understand that. But there's no minimum cash-to-asset ratio 15:11:38 15:11:39

PROCEEDINGS

built into that model, is there? 15:11:43

A. No, there's not. 15:11:46

Q. And DTC has no rules or standards with respect to a broker/dealer's minimum cash-to-asset ratio, does it? 15:11:48 15:11:53 15:11:54 15:11:58

A. Can you repeat the question, please. 15:11:59 15:12:00

Q. DTC has no rules or standards with respect to a broker/dealer's minimum cash-to-asset ratio, does it? 15:12:00 15:12:03 15:12:08

A. There's nothing in our rules that specify a minimum ratio. 15:12:11 15:12:14

Q. Has DTCC ever advised LSC what it would consider to be an adequate cash-to-asset ratio for LSC? 15:12:16 15:12:23 15:12:25

A. I'm not aware whether we have or have not, but I will add that -- if I may? 15:12:30 15:12:36 15:12:40

Q. Yes. By all means, I'm sorry. 15:12:41 15:12:43

A. Just to try to fully answer. Just to reiterate what I mentioned, this being an important factor in our 15:12:43 15:12:45 15:12:51

PROCEEDINGS

credit rating model. Our credit rating model, for everyone's information, it was approved by the SEC in a filing which was subject to public comment. So these -- all the factors, including the cash-to-total-assets ratio would have been accessible and visible to Lek Securities when the rule filing was going on. Just wanted to share that. 15:12:52 15:12:54 15:12:54 15:12:57 15:12:59 15:13:01 15:13:05 15:13:08 15:13:10

Q. But in any of those disclosures, there wasn't ever a minimum cash-to-asset ratio suggested to anybody, including LSC or brokers like them? 15:13:13 15:13:15 15:13:18 15:13:20 15:13:23

A. As part of the specific rule filing, no. But again, I'm not sure whether it was conveyed over the years of discussions between Lek and my teams, I can't confirm whether that was or was not. 15:13:24 15:13:29 15:13:33 15:13:35 15:13:37 15:13:39

Q. But you're not aware of -- 15:13:39

A. Outside of the context of the rule. I'm not aware that it was. 15:13:41 15:13:42

Q. To your knowledge, has DTCC 15:13:45

PROCEEDINGS

ever determined internally what it would consider to be an adequate cash-to-asset ratio for LSC? 15:13:49 15:13:52 15:13:55

A. Similar to my comment earlier, we don't use a specific threshold to say that is a magic number. The cash-to-assets is taken in the context of both standalone and compared to other broker/dealers, but also in the context of the activity a counterparty does with NSCC, as well as its access to other sources of cash and financing. 15:13:56 15:14:00 15:14:02 15:14:06 15:14:09 15:14:12 15:14:14 15:14:18 15:14:20 15:14:23

Q. So the answer to the question is no, DTC has never determined what it would consider to be an adequate cash-to-asset ratio for LSC? 15:14:24 15:14:25 15:14:29 15:14:31

A. No. 15:14:33

Q. Talk a little bit about capital requirements, okay. 15:14:36 15:14:39

NSCC alleges that LSC has weak capital relevant to the level of activity it conducts at NSCC, correct? 15:14:41 15:14:46 15:14:49

A. Correct. 15:14:51

EXHIBIT O

LEK SECURITIES

BEFORE THE DTCC HEARING PANEL

- -x

In the Matter of

LEK SECURITIES CORPORATION

- -x

STATE OF NEW JERSEY

COUNTY OF MONMOUTH

VIRTUAL ZOOM HEARING

BEFORE:

TONY MILLER

SHAWN FEENEY

PINAR KIP

February 24, 2022

8:00 a.m.

TRANSCRIPT OF PROCEEDINGS

LEK - CLOSING

I will turn it over to Ms. Dale for closing remarks.

MS. DALE: Thank you so much.

Good afternoon members of the panel and thank you for your time over the past two hearing days and for your attention to the papers.

I want to take a step back and put this into perspective.

Risk assessment is key to everything that DTCC does. Day in and day out, the people at NSCC and DTCC are making risk assessments of their members.

They are making these assessments not just to protect the clearing agencies themselves, but also to protect the members, because the clearing agencies mutualize risk among the members, and the market and as the Exchange Act requires.

It's critical for DTCC to get these risk assessments right, and the only way DTCC can get these risk assessments right, is if it has complete and accurate information about its members

EXHIBIT P

From: Dale, Margaret A.
To: Kotwick, Mark D.
Cc: Dale, Margaret A.; Catalano, Benjamin J.
Subject: Lek
Date: Monday, April 4, 2022 4:32:45 PM

Dear Mark,
We received Lek's application for review and motion to stay on Sunday, April 3, 2022. Those papers make no mention of the dates I provided to you on Wednesday, March 30, 2022 regarding the timing of implementation of the cease to act at NSCC and DTC.
As I explained, with respect to NSCC, we intend to stop accepting trades for Lek on May 4, 2022, and the cease to act will become effective a week later on May 11, 2022. With respect to DTC, we intend the cease to act to be effective on June 9, 2022.
Margaret

Margaret A. Dale
Partner
Vice Chair, Litigation Department

Proskauer
Eleven Times Square
New York, NY 10036-8299
d 212.969.3315
c 917.975.8748
f 212.969.2900
mdale@proskauer.com

EXHIBIT Q

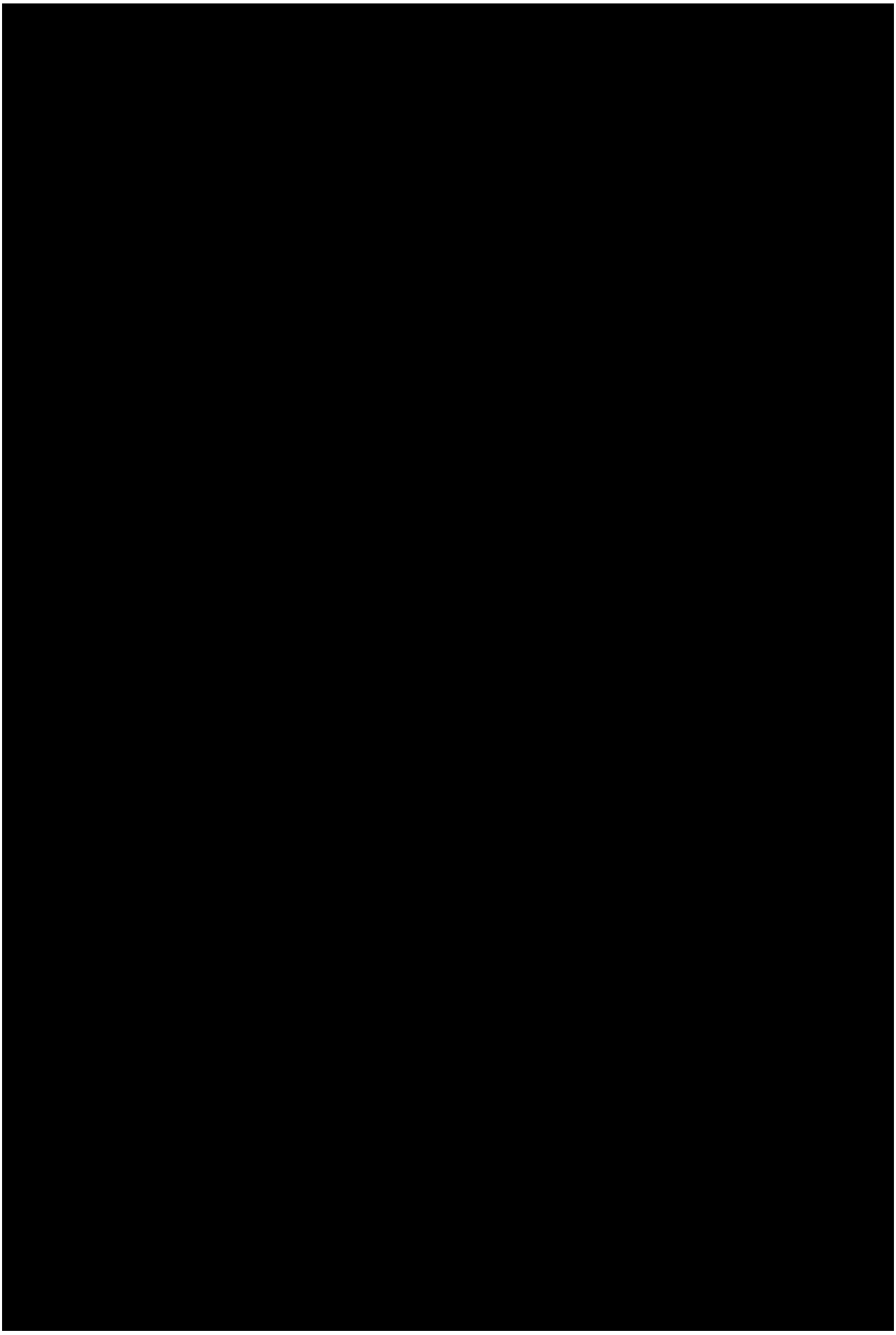
FOIA CONFIDENTIAL TREATMENT REQUESTED

[redacted]

OS Received 06/30/2022

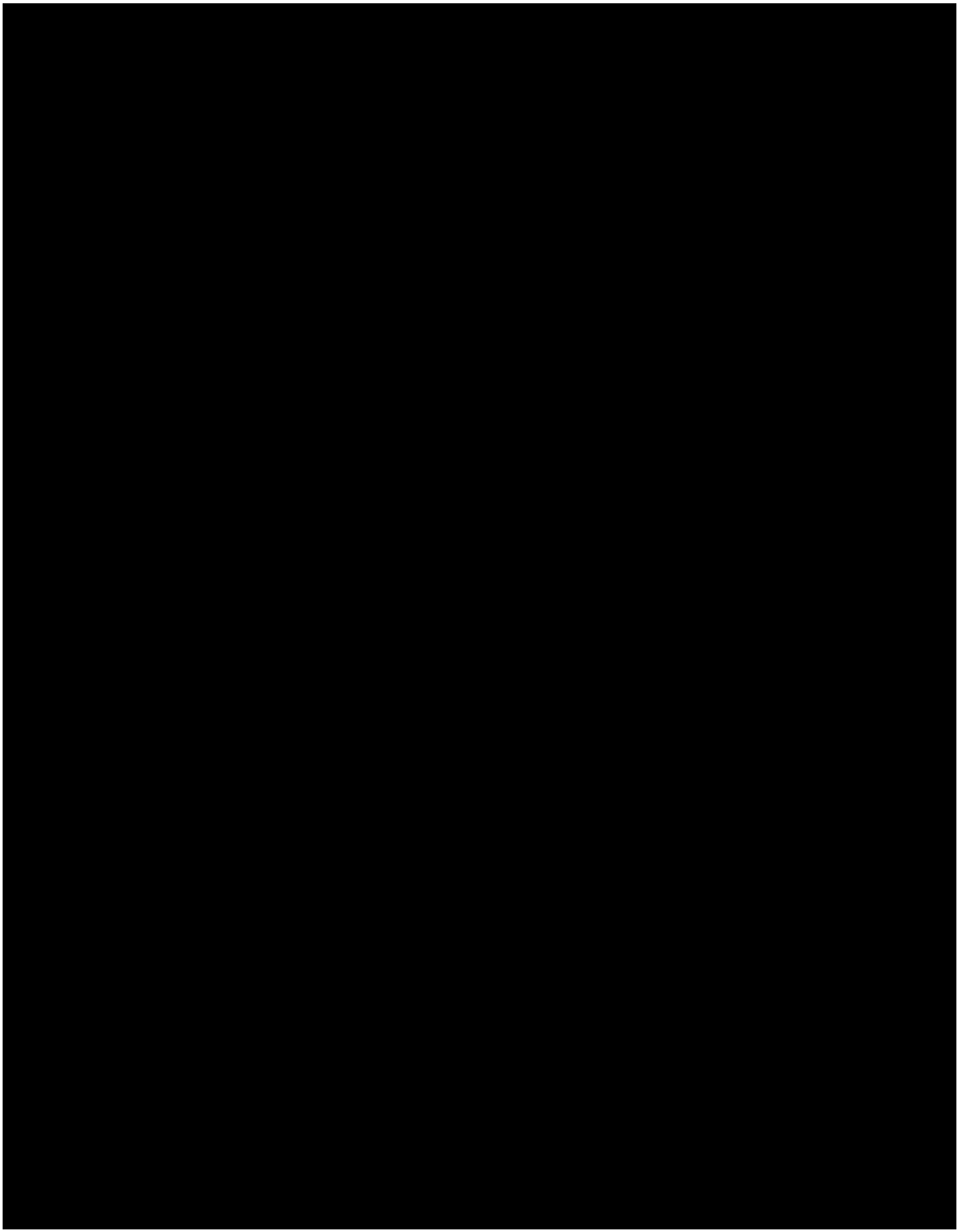
FOIA CONFIDENTIAL TREATMENT REQUESTED

OS Received 06/30/2022



OS Received 06/30/2022

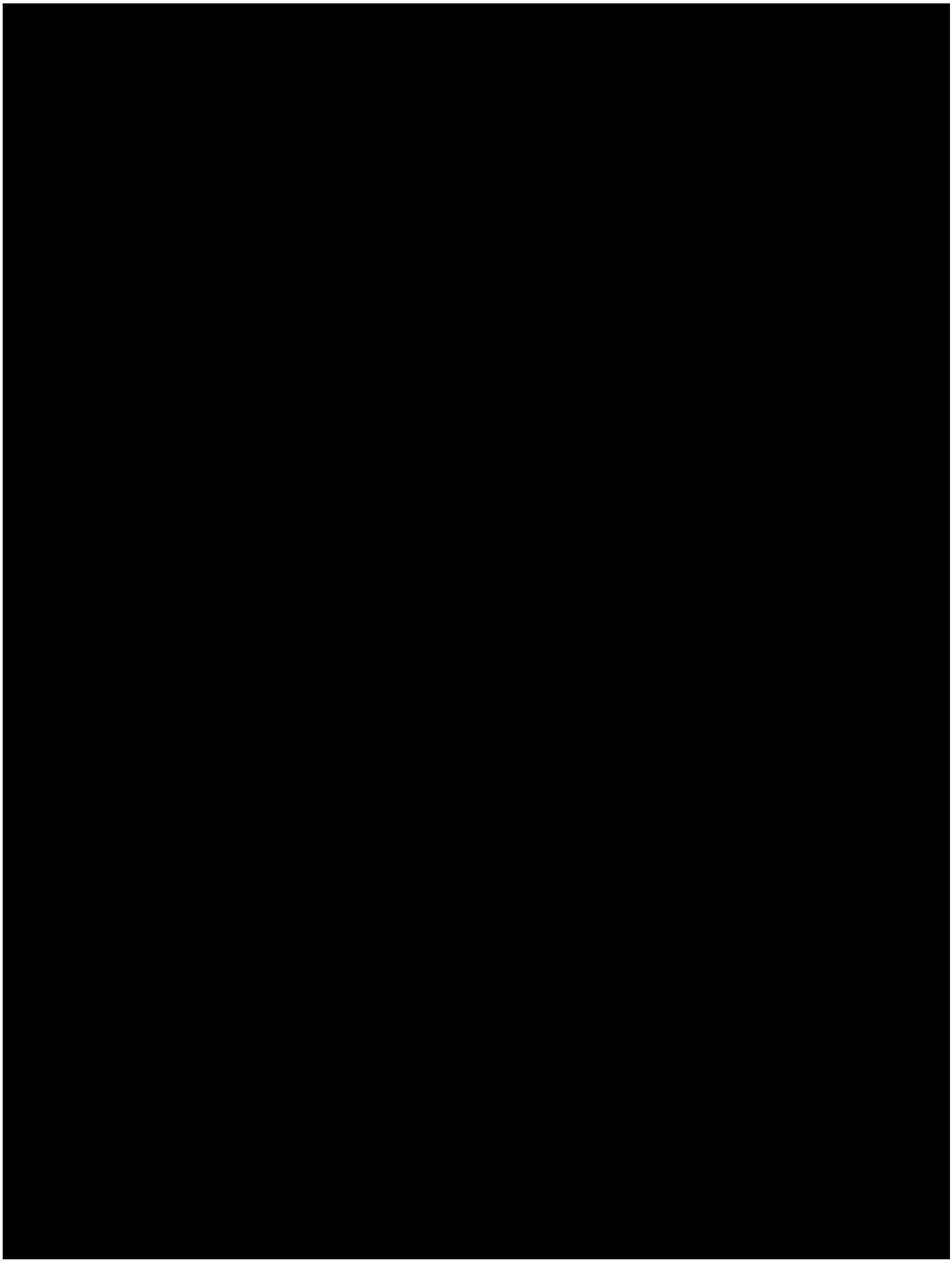
[redacted]

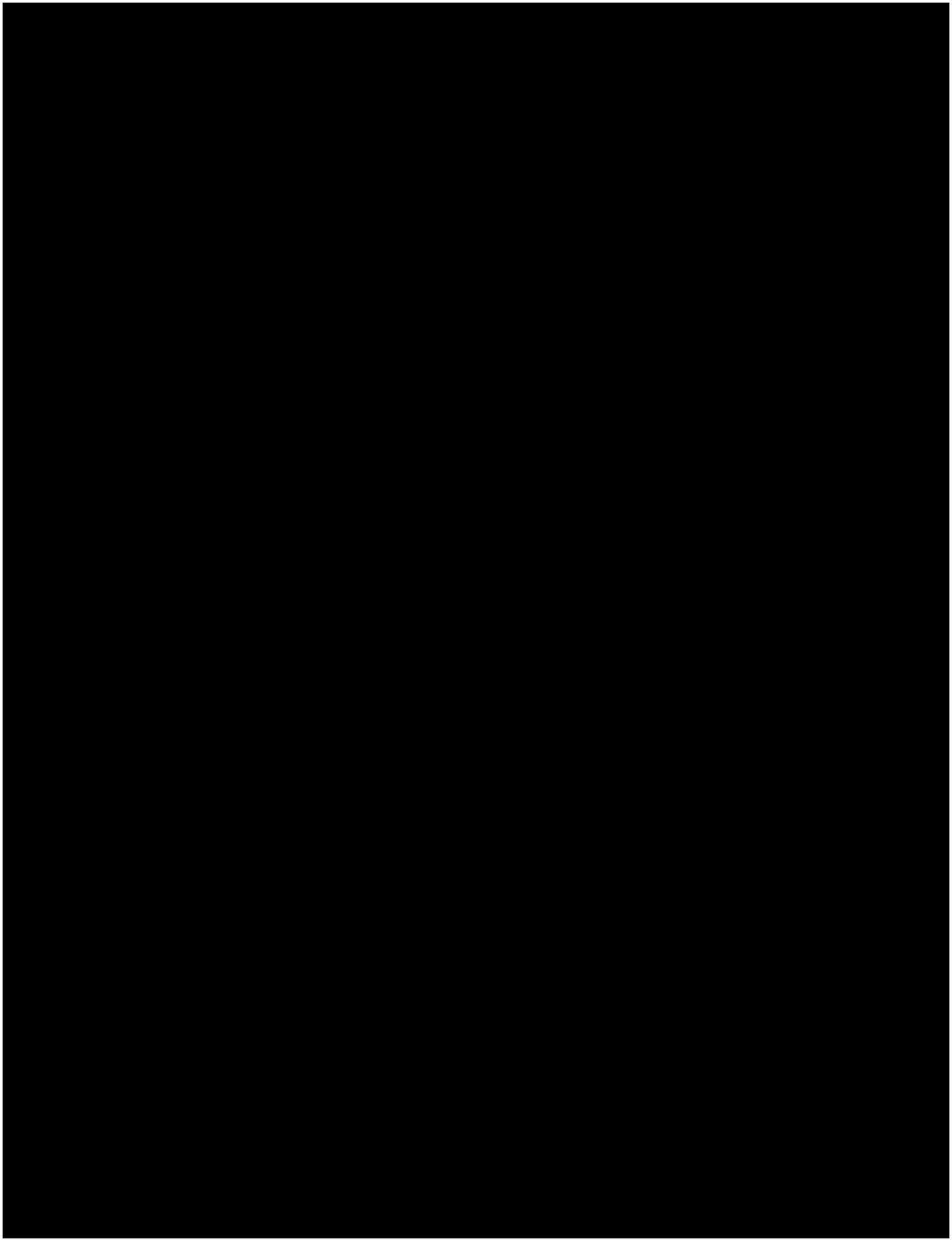


OS Received 06/30/2022

[redacted]

OS Received 06/30/2022





OS Received 06/30/2022

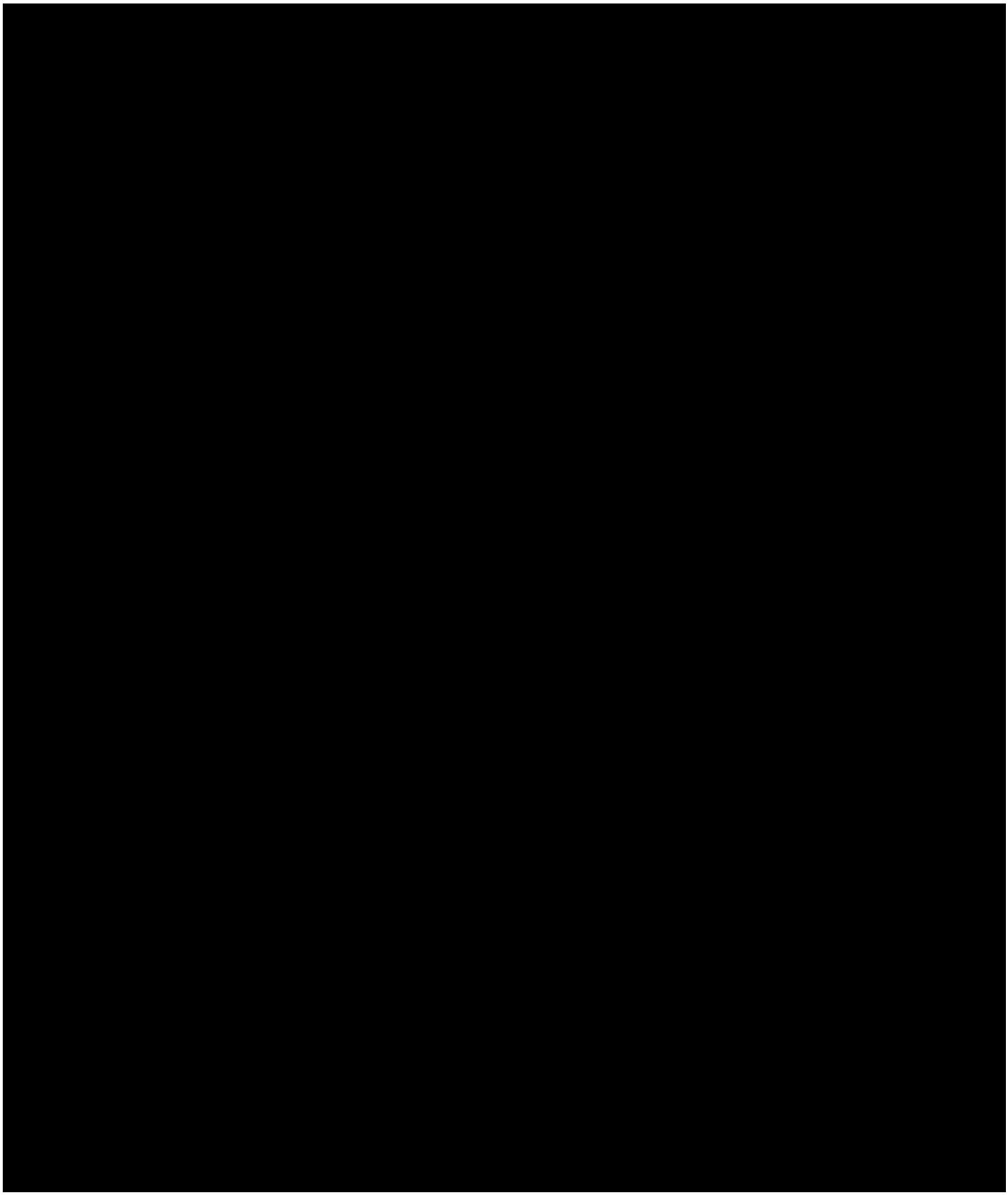
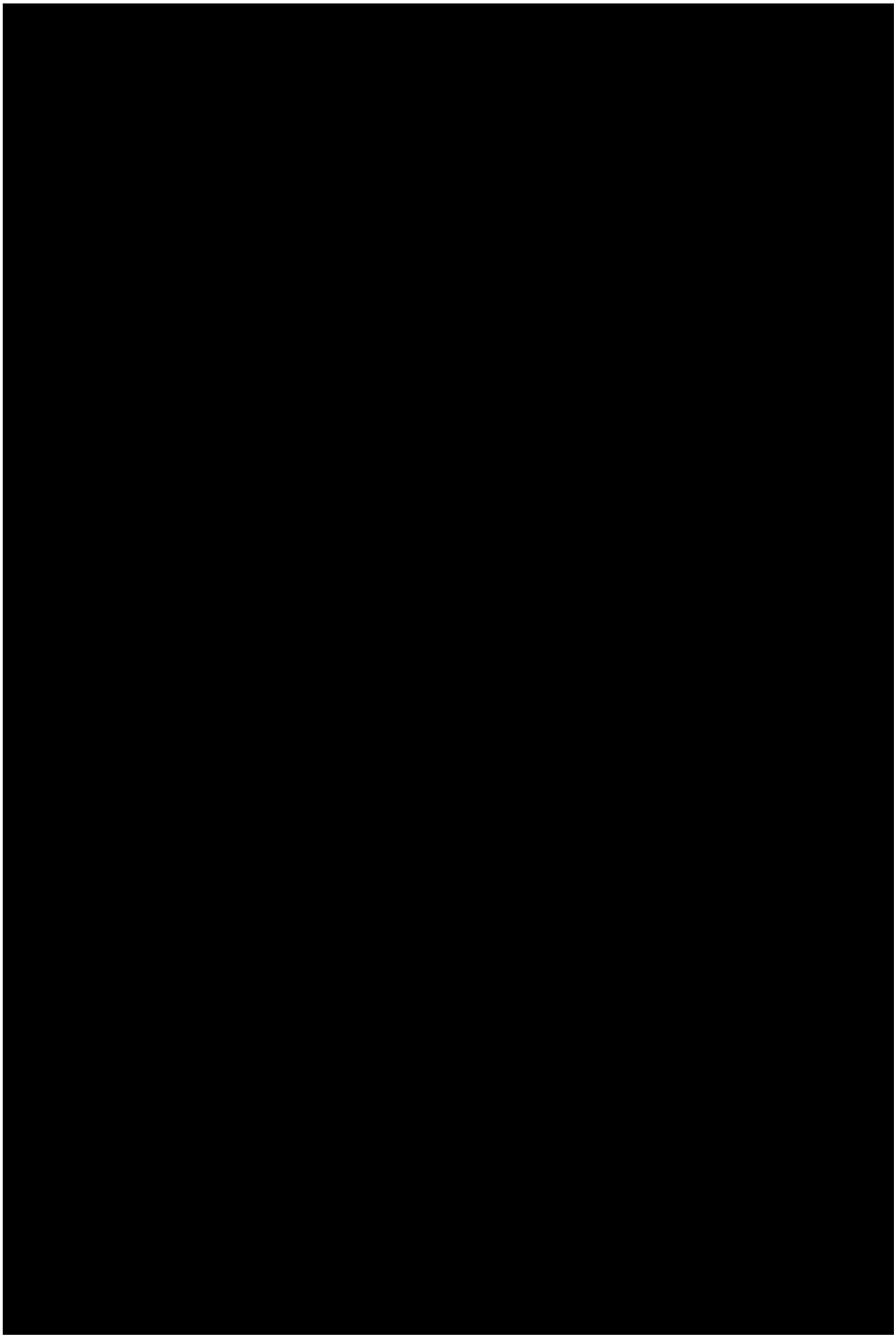
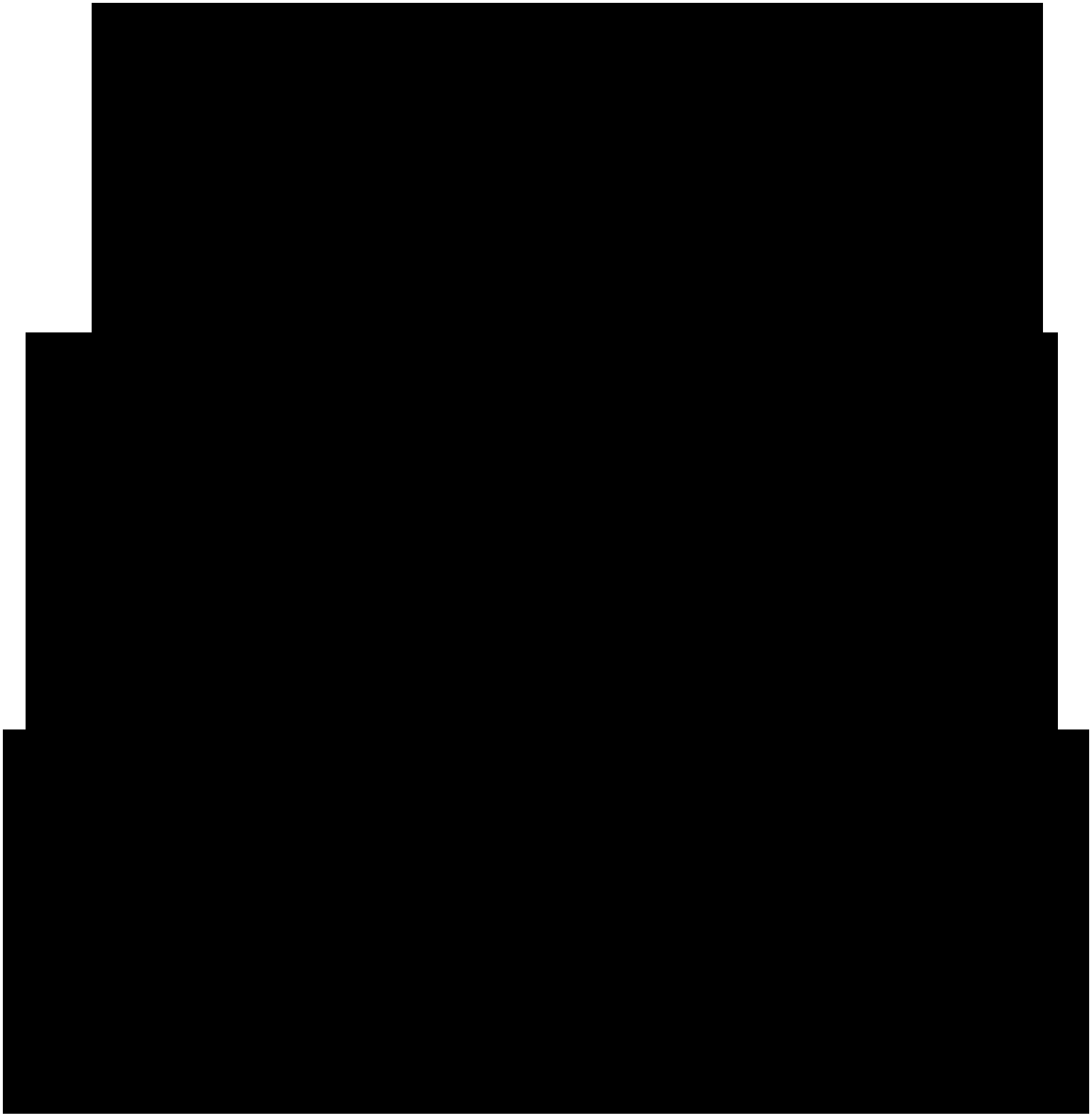


EXHIBIT R

CONFIDENTIAL TREATMENT REQUESTED

[redacted]





OS Received 06/30/2022

EXHIBIT S

UNITED STATES OF AMERICA
Before The
SECURITIES AND EXCHANGE COMMISSION
April 8, 2022

ADMINISTRATIVE PROCEEDING

File No. 3-20808

In the Matter of the Application of

LEK SECURITIES CORPORATION

OPPOSITION OF NSCC AND DTC TO LEK SECURITIES CORPORATION'S MOTION TO STAY AND INCORPORATED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

TABLE OF CONTENTS

Page

Meanwhile, a stay would present a significant risk of harm for DTCC and its members that would be subject to significant economic loss in the event Lek were to default on its obligations. Lek contends that the credit risk it poses is insignificant and that there is no risk of harm even if Lek defaulted, because DTCC's *other* members are financially sound and make their required Clearing Fund deposits. But this is not how DTCC's comprehensive risk management scheme works—the only way DTCC can protect against the risks of default to the extremely high level of confidence mandated by statute is by requiring *all* of its members to comply with their *own* financial requirements.

The public interest is not served by a stay pending extensive proceedings that jeopardize the financial position of DTCC, its members, and the public. It is better served by the orderly transition of the clearing functions Lek performs to a more financially responsible clearing member.

Lek's request for a stay should be denied.

BACKGROUND

A. DTCC and Risk Management

NSCC and DTC are wholly owned subsidiaries of The Depository Trust and Clearing Corporation. They are clearing agencies registered with the Securities Exchange Commission ("SEC" or the "Commission") pursuant to Section 17A of the Exchange Act, and are required to comply with Rule 17Ad-22 thereunder. NSCC provides central counter-party clearance, guaranteeing completion of each NSCC member's unsettled transactions in the event of a default. DTC is a central securities depository for U.S. transactions in equity and other securities. Both NSCC and DTC face significant credit risks associated with their activities—NSCC with the risk of completing unsettled trades in the event of a default and DTC with the risks associated with member's end-of-day net funds settlement of securities transactions on each

business day. Each must manage that credit risk with a high degree of confidence. NSCC, in particular, must have a "risk-based margin system" designed "to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default" to a level of assurance exceeding 99 percent.[8] NSCC and DTC have been designated as Systemically Important Financial Market Utilities ("SIFMUs") because a failure or a disruption to either agency could increase the risk of significant liquidity problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system. As SIFMUs, NSCC and DTC must place a special emphasis on risk management.[9]

NSCC and DTC manage credit and market risk through their membership admission criteria[10] and through ongoing monitoring of each of their members.[11] NSCC's and DTC's ability to monitor members' financial and operational activity relies on each member providing complete and accurate information in a timely manner in response to affirmative reporting requirements and requests for information under NSCC and DTC Rules. Honesty and compliance with these obligations is the cornerstone of self-regulation and proper enforcement under the Exchange Act.[12]

---

[8] *See* 17 C.F.R. §§ 240.17Ad-22(e)(6)(iii); 240.17Ad-22(a)(13) (defining "potential future exposure" to mean "maximum exposure estimated to occur at a future point in time with an established single-tailed confidence level of at least 99 percent with respect to the estimated distribution of future exposure").
[9] Ex. 7, Leibrock Hearing Aff. I ¶ 6.
[10] *See* NSCC Rule 2A; DTC Rule 2.
[11] *See* NSCC Rules 2A, 2B; DTC Rule 2.
[12] *See, e.g.*, *Mitchell H. Fillet*, Exchange Act Rel. No. 75054, 2015 WL 3397780, *14-15 (May 27, 2015); *Peter W. Schellenbach*, Exchange Act Rel. No. 30030, 1991 WL 288493, *4 (Dec. 4, 1991) aff'd, 989 F.2d 907 (7th Cir. 1993) ("[D]eliberate deception" of "regulatory authorities" "reflects strongly on the perpetrator's fitness to serve in any capacity in the securities business."); *Trevor M. Saliba*, Exchange Act Rel. No. 91527, 2021 WL 1336324, *26 (Apr. 9, 2021) (affirming full bar of individual investor for providing backdated compliance forms to FINRA); *Tex. E&P Partners*, FINRA Disciplinary Proc. No. 2014040501801, at 33–34 (Dec. 13, 2016) (upholding expulsion for backdating documents).

demonstrating that the impact, absent a stay, would result in the destruction of its business.[61] "[M]ere injuries, however substantial, in terms of money, time, and energy necessarily expended in the absence of a stay, are not enough to constitute irreparable harm."[62] Clearly, Lek has not met its burden.

Lek offers only two conclusory paragraphs from Mr. Lek in support of its claim that it will suffer irreparable harm.[63] He testifies that, upon implementation of the cease to act, Lek "will be required to notify its clients to make arrangements to transition L[ek]'s customers," which "will cause a 'run on the bank' and result in immeasurable damage to L[ek]'s business and reputation in the market,"[64] and he states that Lek may need to downsize after implementation of the cease to act.[65] None of these speculative events rises to the level of a destruction of business sufficient to show irreparable harm. The Motion argues only that Lek will be "forced out of its ***current manner of conducting business***" absent a stay.[66] Lek does not say it will be put out of business entirely and suggests the existence of a path forward even if the cease to act is implemented.

---

[61] *See In the Matter of the Application of Robbi J. Jones & Kipling Jones & Co., Ltd., for Rev. of Disciplinary Action Taken by FINRA*, Release No. 91045 (Feb. 2, 2021) ("Without submitting evidence about an inability to meet financial obligations or continue in business because of the bars, we cannot find that Applicants have established they will suffer irreparable harm."); *In the Matter of the Application of Alpine Sec. Corp. for Rev. of Action Taken by the Nat'l Sec. Clearing Corp.*, Release No. 87599 (Nov. 22, 2019) (suggesting failure to submit "information regarding, among other things, its expenses, level of profitability, or exhaustion of available resources" prevented SEC from determining a likelihood applicant is "likely to cease operations").

[62] *In the Matter of the Application of Bruce Zipper for Rev. of Action Taken by FINRA*, 2017 WL 5712555, at *4 (quoting *Dawson James Sec., Inc.*, Exchange Act Release No. 76440, 2015 WL 7074282, at *3 (Nov. 13, 2015) (internal quotation marks omitted) (collecting cases)).; *see, e.g.*, *In the Matter of the Application of Se. Invs., N.C., Inc. & Frank Harmon Black for Rev. of Disciplinary Action Taken by FINRA*, Release No. 86097 (June 12, 2019) (finding a claim that impact, absent a stay, will "severely hamper" operations is not irreparable injury.)

[63] Lek Ex. P, ¶¶ 10-11.

[64] *Id.* ¶ 10.

[65] *Id.* ¶ 11.

[66] Motion at 15 (emphasis added).

Similarly, Lek claims that "being able to self-clear" is Lek's "key service differentiator" that will be lost in the event the cease to act is implemented.[67] But Mr. Lek's affirmation in support of the Motion makes no mention of self-clearing as a "differentiator" and there is otherwise no support for this claim in the record. In its Motion and throughout the proceedings, Lek identified its primary business as being agency brokerage. That business can be performed by Lek without membership in DTCC, as an introducing broker clearing through another DTCC member.[68]

Even where a movant alleges it "will be forced to cease operations absent a stay," the other stay factors can outweigh the irreparable injury prong. For example, in *In the Matter of the Application of Bruce Zipper for Rev. of Action Taken by FINRA*, the Commission denied a stay where the movant "failed to show that his appeal raises a substantial question on the merits, let alone that he is likely to succeed" and where "the public interest and risk of harm to others decidedly outweigh any irreparable harm to [the movant]."[69] The Commission denied the stay despite finding the firm's statements it would be forced out of business "do not appear entirely speculative."[70]

III. A stay would have a substantial negative impact on DTCC, its members, and other third parties.

NSCC and DTC Rules reflect a risk management framework designed to protect DTCC, its members, and the market from the risk of default and other financial and operational issues

[67] *Id.* at 16.
[68] Ex. 18, Cuddihy Decl. ¶ 5.
[69] Release No. 82158 (Nov. 27, 2017), at *6.
[70] *Id.* at *4-5 (relying on uncontested statements that FINRA communicated it intended to "shut down" business); *see also In the Matter of the Application of Potomac Cap. Markets, LLC for Rev. of Action Taken by FINRA*, Release No. 91172, 2021 WL 666510, at *1, *4 (Feb. 19, 2021) (denying stay for broker-dealer that failed to file audit report where "the other factors such as the fact that it has not raised a serious question on the merits" outweighed any harm Potomac might suffer).

suffered by its members. NSCC and DTC made the determinations to cease to act for Lek because it failed to meet DTCC's financial standards and repeatedly and willfully violated its reporting obligations. For the Commission to stay such actions would undermine the comprehensive risk management scheme set out by the Rules and place DTCC, its members and the market at risk.

In support of its claim that a stay would not harm third parties, Lek reiterates its argument that "NSCC is already required to require deposits from member firms that protect itself to a 99% level of confidence" and that Lek "has never missed a required margin payment."[71] This argument fails because, under the statutory scheme, DTCC's *other* members should not have to cover for Lek's credit risk, especially where the Hearing Panel—on a fully-developed evidentiary record—finally determined that Lek "presents an unacceptable risk."[72]

Lek claims its "pre-trade payments from investors to cover initial margin requirements under the Lek Holdings Note Program" are protective of DTCC, investors, and the market.[73] But again, Lek ignores the Hearing Panel's determination that the Lek Holdings Note Program "presents numerous disqualifying features" and that Lek "has advanced no evidence that gives us any confidence it can adequately control its own processes."[74] And, with regard to Lek's arguments concerning its access to unsecured financing and its current levels of excess net

[71] Motion at 17.
[72] Decision at 11; *see also id.* ("DTCC has an obligation to itself, its entire membership, and the financial system as a whole, to find and eliminate potential problems before they happen. And it must do so to a greater than 99 per cent confidence level.").
[73] Motion at 17.
[74] Decision at 8-9.

capital,[75] Lek cannot contest that its "reported capital and bank lines of credit do not meet L[ek]'s NSCC margin requirements."[76]

Finally, Lek suggests that the determinations to cease to act amount to a "corporate death penalty" that will have "repercussion to customers and the market."[77] While harm to customers is commonly raised by movants to justify a stay, the Commission often has found that the risk of future harm to customers and others outweighs any potential benefit they might realize from a stay.[78] If a stay is granted and Lek defaults during the pendency of its review before the Commission, which could take some time, Lek's customers and others undoubtedly will be harmed by the less orderly transition that would result.[79]

IV. A stay is not in the public interest.

Lek's argument that a stay would serve the public interest because it provides clearing and custody services to "Small Firms,"[80] does not withstand scrutiny. Lek's speculative assertion that some small firms "might otherwise struggle to find a broker willing and able to clear their securities transactions"[81] is conclusory and wholly unsupported. On the contrary, in DTCC's experience, those firms should have many options for continuing their business with minimal or no interruption, including clearing through another DTCC member firm (or through

[75] Motion at 17.
[76] Decision at 7; *see also id.* n.10 ("Indeed, it appears that L[ek] has, or at least would need to, use cash obtained through the Lek Holdings Note Program just to meet its minimum Required Fund Deposit at NSCC.").
[77] Motion at 3.
[78] *See Dawson James Sec.*, Exchange Act Release No. 76440, 2015 WL 7074282, at *3 (Nov. 13, 2015) (any potential harm to customers outweighed by FINRA's concerns about movant's ability to comply with securities laws and the threat movant posed to investors); *In the Matter of the Application of Paul H. Giles for Rev. of Action Taken by FINRA*, Release No. 92177 (June 14, 2021) ("[A]ssertions that [broker's] clients could be harmed in some unspecified way are insufficient to meet his burden of demonstrating irreparable harm. . . . [Broker] has not produced any evidence or even alleged that his clients would be unable to find another comparable broker pending this appeal.").
[79] Ex. 18, Cuddihy Decl. ¶ 7.
[80] Motion at 17.
[81] *Id.* (citing Lek Ex. P, ¶ 6).

Lek under an arrangement in which Lek clears through another DTCC member).[82] Lek's assertion that these "small firms" might have nowhere else to go is belied by Lek's contention that it may lose business as a result of a "run on the bank" where its clients flee to other firms.[83] Its claim demonstrates that even Lek knows there are other readily-available options for its clients,[84] and the public interest is better served by those customers and other broker-dealers having their trades cleared and settled by a more financially responsible broker-dealer.

NSCC and DTC Rules function to set up a robust risk management framework that is intended to protect the public. The public interest requires that the Rules be enforced to protect against the risk of default by a member. A stay, especially in view of the Hearing Panel's findings, does not serve this goal.

V. There is no basis to stay the imposition of a censure and fine for Lek's violations of the Activity Cap.

In a footnote, Lek purports to seek a stay of NSCC's determination to censure and fine Lek for its violations of the Activity Cap. Motion at 1 n.1. NSCC informed Lek in letters dated November 5 and November 7, 2021 that it intended to censure and fine Lek $20,000 for each of its violations of the Activity Cap.[85] In the Decision, the Hearing Panel upheld NSCC's determination to impose the censure and fine on Lek.

Lek makes no effort in the Motion to explain why the Hearing Panel's decision to uphold the censure and fine should be stayed. Contrary to Lek's claim, the Hearing Panel did ***not*** uphold the censure and fines based on "the same . . . rationale for upholding the 'cease to act'

[82] Ex. 18, Cuddihy Decl. ¶ 6.
[83] Motion at 15.
[84] Lek admits there are other "agency-only self-clearing broker dealers," including "other clearing brokers [that] will provide clearing services" to small firms. *Id.* at 1, 4.
[85] Exs. 5, 6.

EXHIBIT T

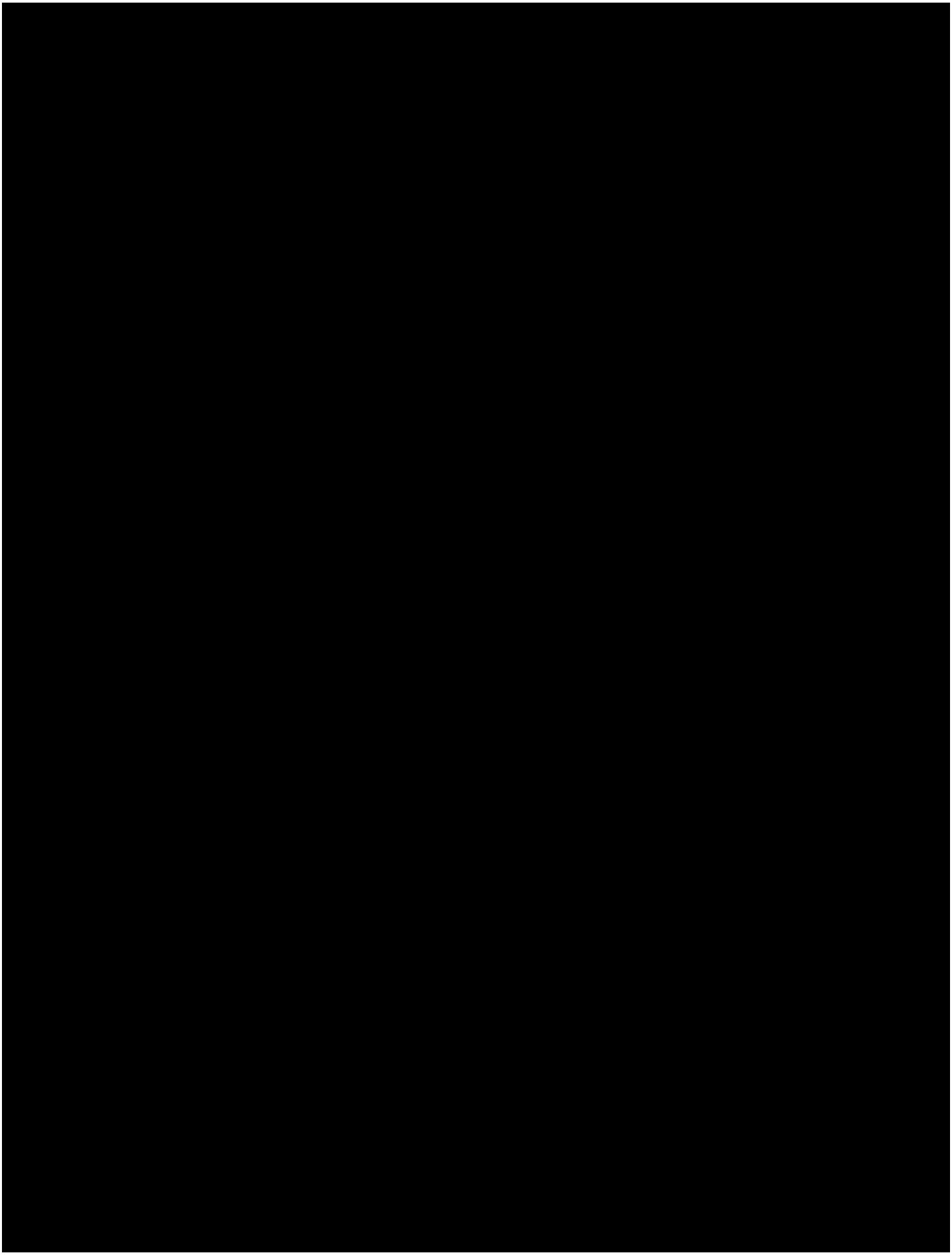
FOIA CONFIDENTIAL TREATMENT REQUESTED

[redacted]

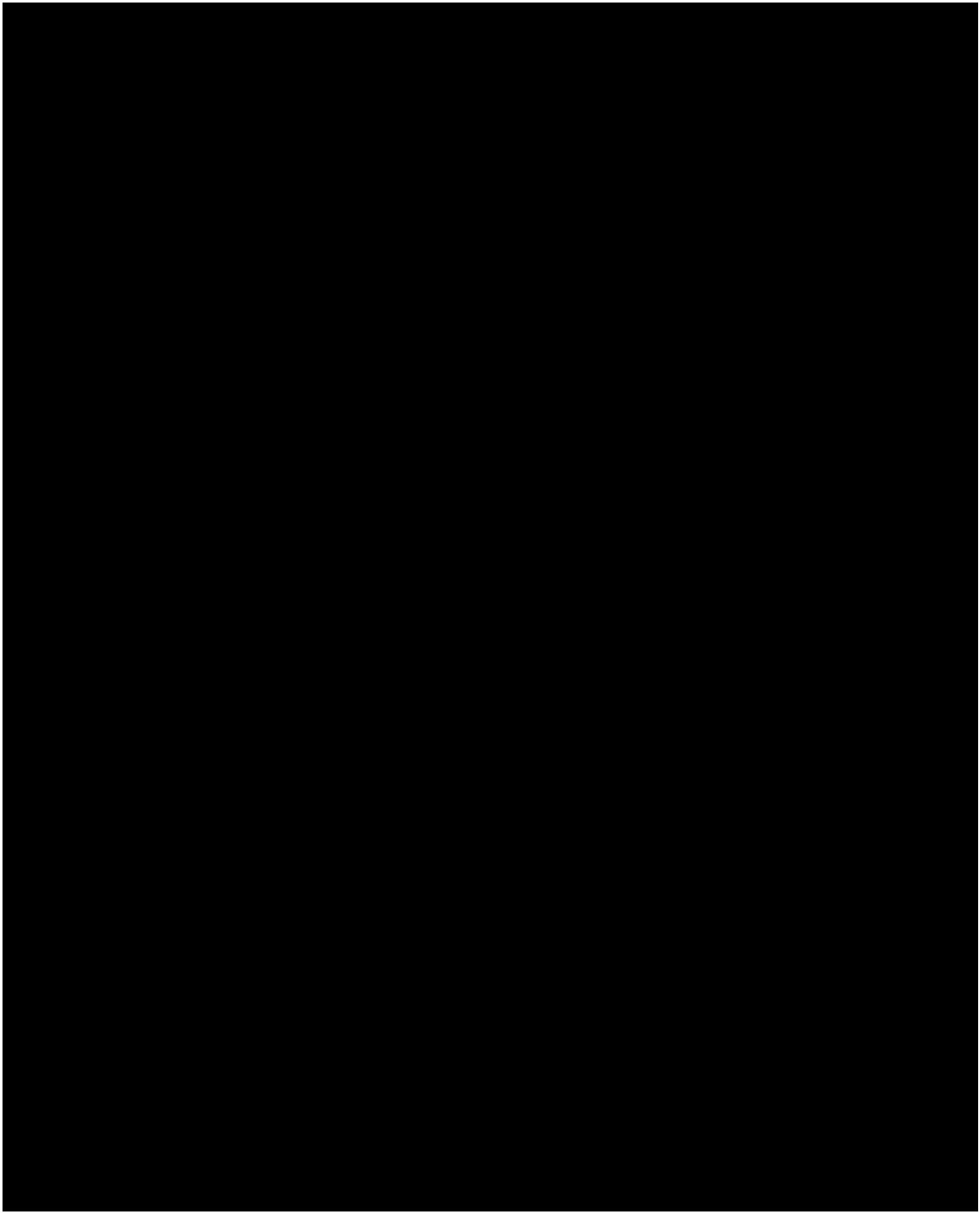
FOIA CONFIDENTIAL TREATMENT REQUESTED

[redacted]

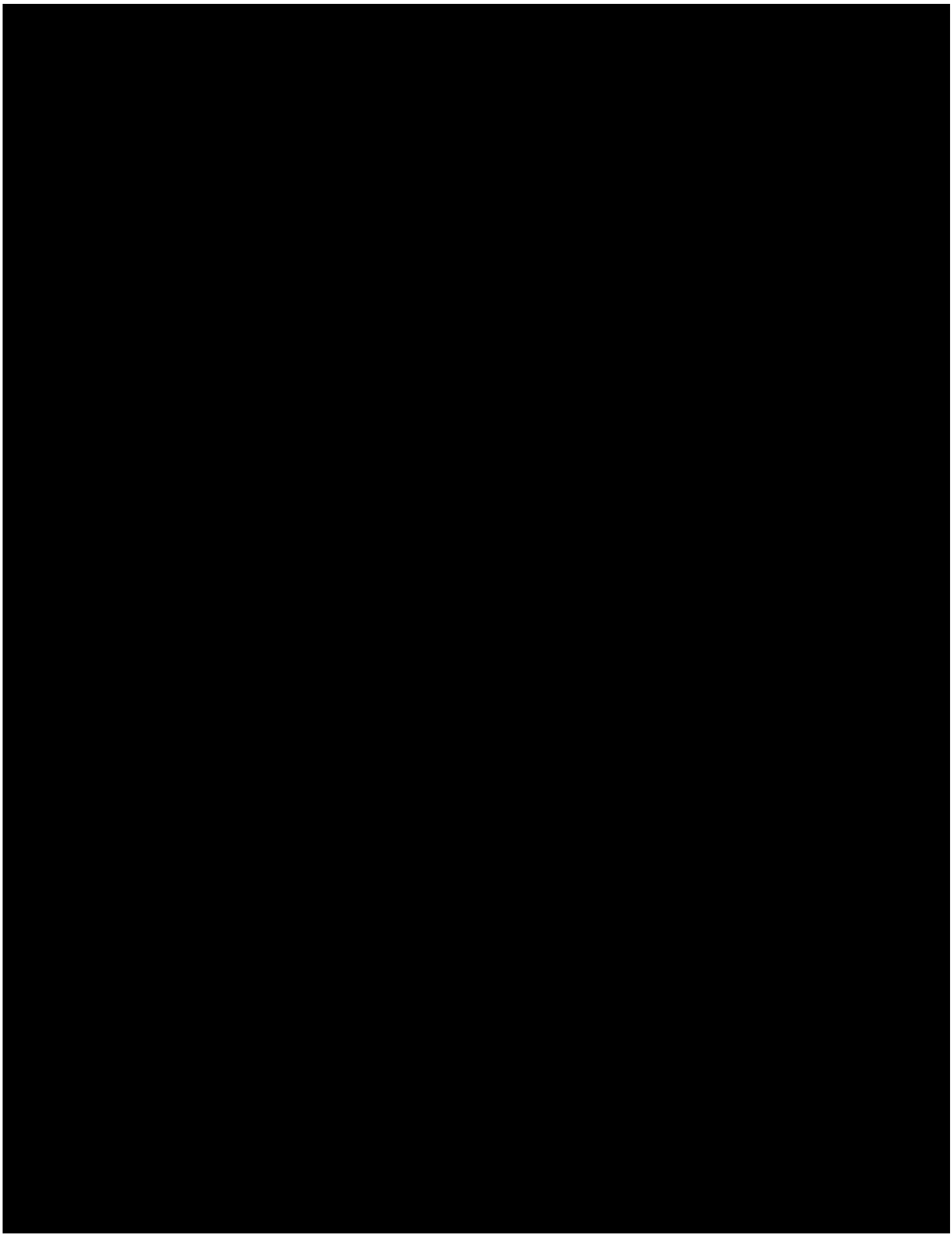
[redacted]



OS Received 06/30/2022



OS Received 06/30/2022



OS Received 06/30/2022

EXHIBIT U

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20808

In the Matter of the Application of

LEK SECURITIES CORPORATION

AFFIRMATION OF CHARLES F. LEK IN SUPPORT OF LEK SECURITIES CORPORATION'S REPLY BRIEF IN SUPPORT OF MOTION TO STAY

I, Charles F. Lek, pursuant to 28 U.S.C. §1746, hereby declare under penalty of perjury under the laws of the United States of America that the following is true and correct to the best of my knowledge, information and belief:

1. I am the Chief Executive Officer of Lek Securities Corporation ("LSC") and have personal knowledge of the facts set forth herein.

2. This Affirmation is submitted in support of LSC's Reply Brief in Support of the Motion to Stay of the March 10, 2022 decision of a DTCC Hearing Panel affirming the determination to cease to act for LSC by the National Security Clearing Corporation ("NSCC") and the Depository Trust Company ("DTC") (hereinafter the "DTCC Decision").

3. The NSCC requires every NSCC member, including LSC, to post margin collateral ("Required Fund Deposit"), which NSCC calculates using a risk-based margin system. As the DTCC Decision notes, "NSCC is required to ensure to a confidence level that exceeds 99 percent that its risk-based margin system will cover its potential exposure to default

OS Received 06/30/2022

by a member." Dec. at 6. In other words, so long as a member posts its Required Fund Deposit, which LSC has always done, NSCC is protected against a member's default to a confidence level in excess of 99 percent.

4. On August 2, 2021, DTCC notified LSC that LSC would now have a daily minimum Required Fund Deposit with NSCC of $20 million. *See* Ex 1 (August 2, 2021 Email from Timothy Hulse to Shaniqua Jones). On November 5, 2021, NSCC notified LSC that LSC's daily minimum Required Fund Deposit with NSCC would be increased from $20 million to $27 million, effective November 8, 2021. *See* Ex 2 (November 5 NSCC Notice). Thus, if LSC's actual trade-based margin requirement is less than $27 million, LSC must still deposit $27 million with NSCC. If LSC's customer trading creates a margin obligation in excess of $27 million, per the NSCC notice, LSC's daily minimum Required Fund Deposit will be reset to that higher amount. *Id.* LSC has never failed to meet its daily minimum Required Fund Deposit.

5. Ever since DTCC implemented the $27 million minimum Required Fund Deposit on November 8, 2021, LSC has had an average daily requirement of approximately $10 million with an excess deposit of approximately $17 million.

6. If the Commission grants LSC's Motion to Stay, LSC will agree to place limitations on customer trades in order to keep LSC's NSCC margin obligation at or below $27 million until the time when the Commission issues a final decision in LSC's appeal of the DTCC Decision; provided that LSC's agreement to maintain it margin obligation below $27 million will not apply following any event or action by the United States government or any United States governmental entity that interrupts, suspends or terminates trading in debt or

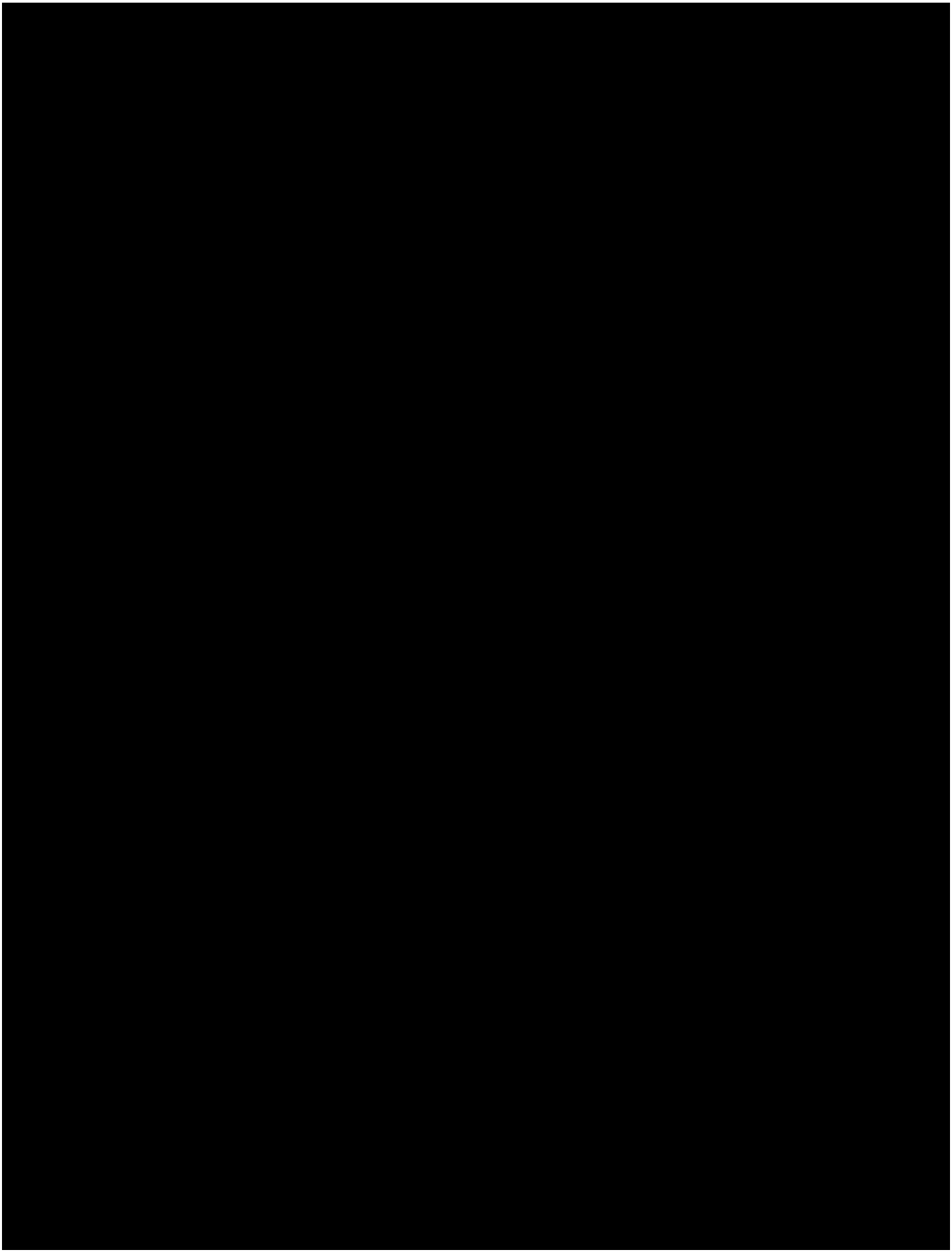
OS Received 06/30/2022

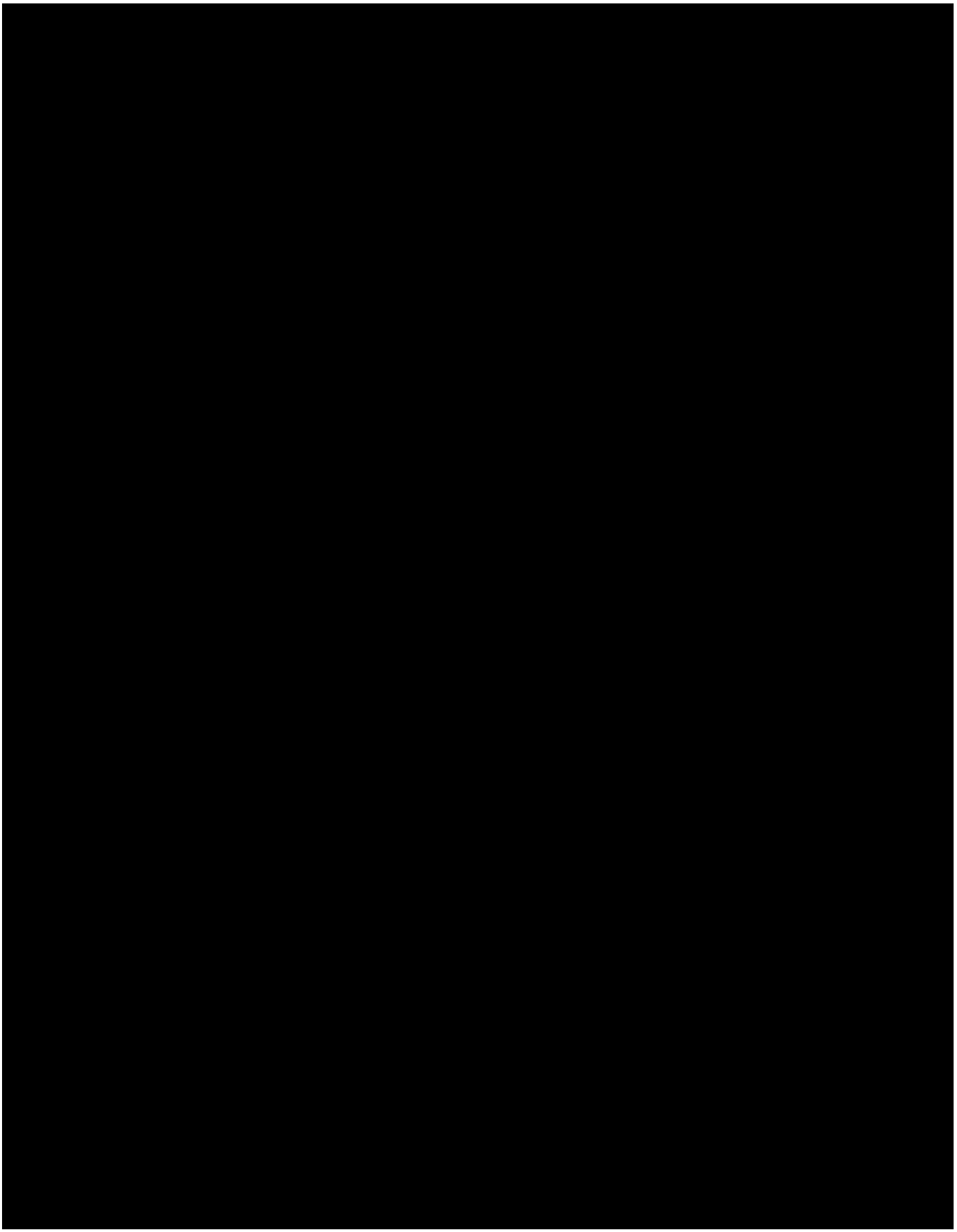
equity securities or options on or futures covering debt or equity securities or indices on debt or equity securities.

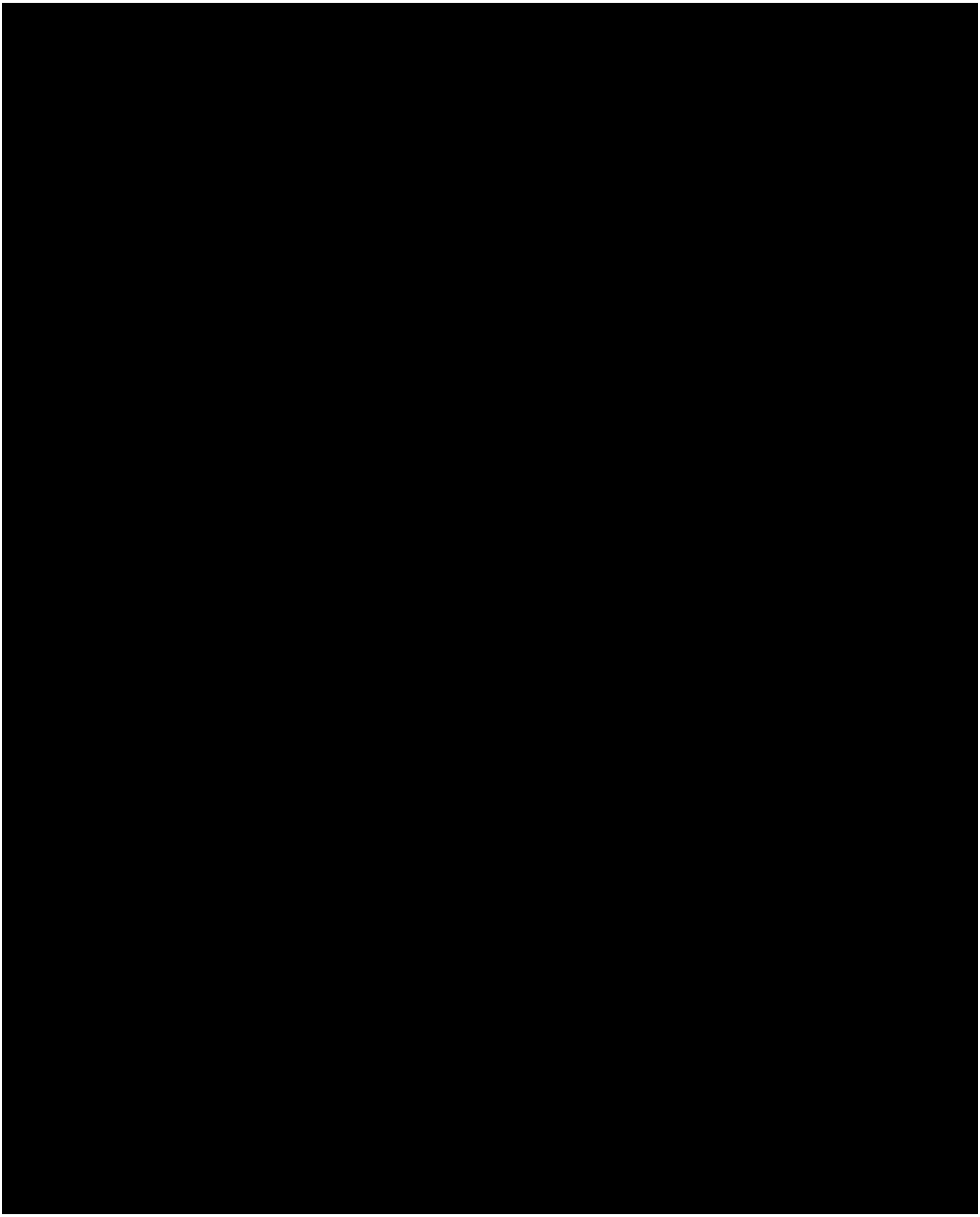
Dated: April 13, 2022

Charles F. Lek

EXHIBIT V







LSC EXHIBIT B

DTCC
ADVANCING FINANCIAL MARKETS. TOGETHER.™

Timothy J. Cuddihy
Managing Director, Financial Risk Management

55 Water Street
New York, NY 10041

Tel: 212.855.5237
tcuddihy@dtcc.com

June 10, 2022

VIA EMAIL
Lek Securities Corp.
4 World Trade Center, 44th Floor
New York, NY 10007
Attn: Charles Lek

Re: Implementation of the NSCC Cease to Act and DTC Cease to Act for Lek Securities Corp.

Dear Mr. Lek,

Please be advised that in accordance with the decision of the Hearing Panel of The Depository Trust & Clearing Corporation, dated March 10, 2022, the National Securities Clearing Corporation ("NSCC"), in preparation for the NSCC Cease to Act, will suspend trade capture services for Lek Securities Corp. Account No. 0512 ("Lek") at approximately 8:30 p.m. EDT on July 19, 2022 (the "Input Takedown"). At approximately 5:00 p.m. EDT on July 27, 2022, NSCC will cease to act for Lek (the "NSCC CTA"). The activity cap that is currently imposed on Lek will remain in force until the NSCC CTA. The Depository Trust Company ("DTC") will implement the DTC Cease to Act for Lek at approximately 5:00 p.m. EDT on September 20, 2022 (the "DTC CTA").

After the Input Takedown, Lek will no longer be permitted to submit transactions to NSCC. This includes, but is not limited to, locked-in trading activity submitted by exchanges, trading venues and other input sources[1] to NSCC's Universal Trade Capture system, all inputs and subsequent actions into Obligation Warehouse, the Corporate, Municipal and UIT RTTM system, any TIF submissions into Automated Customer Account Transfer Services (ACATS) and limit inputs and modifications into Limit Monitoring. Access to CNS, Envelope Settlement Services and Cost Basis Reporting Services will be available until the NSCC CTA. Transactions (including ACATS transfers) that are accepted before the Input Takedown will be allowed to settle in accordance with NSCC rules and procedures until the NSCC CTA. If Lek still has open NSCC positions or activity at the time of the NSCC CTA, whether due to fails or otherwise, NSCC will take steps to close out the open positions in accordance with our rules, which steps may include, but are not limited to, liquidation of securities and rejection of pending ACATS transfers.

After the NSCC CTA, as part of the DTC CTA, Lek's Net Debit Cap at DTC will be set to $1. This means that Lek will be required to prefund any transactions requiring payment, however Lek will be able to make free deliveries of securities in accordance with DTC rules and procedures.

[1] This includes options exercise and assignment instructions from The Options Clearing Corporation.

Additionally, Lek's account will be chilled for deposits, meaning that Lek will not be permitted to deposit additional securities. If any inventory remains credited to the Lek DTC account at the time of the DTC CTA, the inventory will be moved to an internal DTC control account until further arrangements can be made for transfer or exit, or such other disposition as DTC shall determine.

NSCC and DTC strongly encourage Lek to take all the necessary steps to ensure an orderly transition for its customers before the NSCC and DTC Cease to Acts. Lek should promptly reach out to NSCC and DTC with any operational questions. Please note that while this letter provides some details about the aforementioned actions, it does not purport to describe the totality of what will, or what may, occur in connection with the NSCC and DTC Cease to Acts. Further, Lek is reminded that it continues to be responsible for all its obligations and requirements under the respective rules and procedures of NSCC and DTC.

Nothing in the foregoing waives or modifies NSCC's and DTC's rights to take other actions under their rules, including without limitation ceasing to act for Lek at any time, modifying the activity cap, or imposing additional requirements or restrictions.

Please feel free to contact the undersigned with any questions.

Sincerely,

cc: Jeffrey Tabak, Lek
Jeffrey Mooney, SEC
Michael Macchiaroli, SEC
Thomas McGowan, SEC
Ornella Bergeron, FINRA
Brian Kowalski, FINRA
Dale Michaels, OCC
Joe Kamnik, OCC

LSC EXHIBIT C

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 22-1099 **September Term, 2021**

SEC-3-20808

Filed On: June 28, 2022

In re: Lek Securities Corporation,

Petitioner

Depository Trust Company and National Securities Clearing Corporation,
Intervenors

BEFORE: Henderson, Wilkins, and Katsas, Circuit Judges

O R D E R

Upon consideration of the petition pursuant to the All Writs Act for stay pending administrative review, the responses thereto, and the reply, it is

ORDERED that the petition be denied. Because petitioner seeks relief under the All Writs Act that is equivalent to a stay, it must meet the requirements for a stay pending court review. See Reynolds Metals Co. v. FERC, 777 F.2d 760, 762 (D.C. Cir. 1985). Petitioner has not satisfied these stringent requirements. See Nken v. Holder, 556 U.S. 418, 434 (2009); D.C. Circuit Handbook of Practice and Internal Procedures 33 (2021).

Pursuant to D.C. Cir. Rule 36, this disposition will not be published.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Tatiana Magruder
Deputy Clerk

OS Received 06/30/2022

LSC EXHIBIT D

From: Demas, Jonathan <jdemas@lakesidebank.com>
Sent: Thursday, June 16, 2022 11:56:18 AM
To: Charles Lek <charles.lek@leksecurities.com>
Cc: McGrogan, James <jmcgrogan@lakesidebank.com>
Subject: FW: Lakesides Banks Renewal and New Lines of Credit approved for LEK this morning

Hi Charlie,

This morning we had our discount committee meeting to renew the existing lines and try for additional funds for LEK. Considering the current market conditions, March wire movement and LEKs DTCC circumstances, we did well thanks in large part to the strength and history of our relationship.

The committee agreed to renew and increase the total amount of lines up to our policy limit of $50mm. Specifically, they agreed to renew the existing two lines; $20mm DTCC stock loan and $10mm NSCC Agreements to Pledge line, except for limiting the $20mm DTCC line to single Stock Equities only and to include a $25,000 renewal fee. The $10mm line has a $10,000 renewal fee and must be collateralize with a UCC on LEK Securities business assets.

The additional $20mm approved will be a new DTCC secured line and consist of Bonds or EFTs only. The new funds come with a 1% loan fee, the same minimum usage fees already in place for the existing credits and standard doc fees for each loan. There is also an increase to the guarantee from $7.5mm to $10mm and a "request only" for a personal deposit account. If the guarantee is becoming a balance sheet problem, we could take a $10mm personal CD as a deposit and hypothecate the CD to secure the $10mm NSCC line. Hopefully, the additional $20mm will give you enough readily available funds to support your appeal long enough for a partner bank to come on board.

We hope this is something you are pleased with, and we will continue to press forward with other lenders interested in a participation. We anticipate being asked questions about LEK UK, so can you supply any financials they report?

Please call if you have questions or concerns, we will get documents out to you ASAP.
Best, John

Jonathan Demas
Assistant Vice President, Commercial Lending
NMLS ID 801106

Lakeside Bank
It's about time.®

Board of Trade
141 W. Jackson Blvd., Chicago, IL 60604
Office: (312) 435-1638 | Mobile/SMS:
jdemas@lakesidebank.com

Click on the links above to learn more!