February 21, 2010

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File No. S7-03-10 Release 34-61379
Risk Management Controls for Brokers or Dealers with Market Access

Dear Ms. Murphy:

Lek Securities Corporation ("LSC") appreciates the opportunity to comment on the Commission's proposed Rule 15c3-5 concerning new required Risk Management Controls for Brokers or Dealers with Market Access. LSC is best known for the ROX System, an electronic front-end to many market centers and a provider of clearing services to professional and institutional clients. We have provided electronic access to exchanges and ATS systems for almost twenty years to a large and diverse number of market participants. We therefore hope that the Commission will find our comments useful.

Proposed Rule 15c3-5 would effectively ban all unfiltered access[1] to an exchange or ATS, and require exchange members and ATS participants to have electronic controls in place to enforce reasonable credit limits, prevent obvious errors, and ensure compliance with all regulatory requirements. As set forth below, we believe that the rule is well designed to further an important regulatory goal, but that the technical changes we propose would improve its effectiveness and reduce unnecessary costs.

First, we believe that the rule should cover all securities markets, not just electronic venues and equity markets. There is, in our view, no justification to exempt the fixed income markets, including the markets for mortgaged backed securities and credit default swaps, from the obligation for appropriate risk controls. It was these markets, after all, that caused the recent

[1] In connection with Nasdaq's proposal to modify Rule 4611, we have previously urged the Commission to ban the practice of allowing *unregulated* entities to have electronic access to exchanges and ATS systems, without orders first passing through credit and compliance checks of the sponsoring *regulated* member. Unfiltered access creates serious risks of systemic failures, with little or no offsetting benefit to investors. See letter from Samuel F. Lek to Elizabeth M. Murphy dated June 15, 2009 http://sec.gov/comments/sr-nasdaq-2008-104/nasdaq2008104-14.pdf

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financial crisis. We therefore suggest that the Commission extend the rule's applicability to "any broker dealer that enters into a contractual obligation or otherwise assumes financial responsibility for a securities transaction for its own account or for the account of another person" as opposed to "exchange members and subscribers to ATS systems." If a market is not electronic, the controls of course cannot be automated, as contemplated by the current proposal, but this should not be an excuse for not having any controls at all.

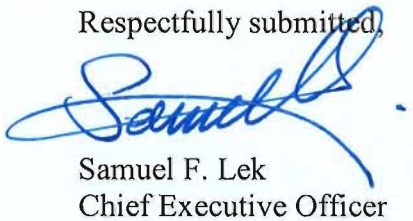
Second, the rule should continue to permit sponsored access where the person being sponsored is itself an exchange member or ATS participant. Several exchanges and ATS systems have a tiered pricing structure in place whereby they significantly reduce fees for their larger customers. Market participants have responded by aggregating their order flow and trading under the mnemonic of a large exchange member so that with the combined volume the parties can benefit from a lower pricing tier. As currently proposed, Rule 15c3-5 would prohibit an exchange member that uses the mnemonic of another member, simply to reduce trading costs, to route orders directly to the market. There is no regulatory justification for this restriction, because the exchange member is already subject to the rule. In effect, barring sponsored access would merely increase trading costs for smaller exchange members or ATS participants without any corresponding regulatory rationale. Another benefit of continuing to permit sponsored access for persons already subject to the rule would be to allow broker dealers to use the facilities of other members that might have specialized expertise in risk management to handle connections to market centers. Without this exemption, a member that outsources the task to another member would not be permitted to use its own mnemonic. We believe that allowing broker dealers to share the development cost promotes efficiency without reducing the rule's effectiveness and should not be prohibited by the Commission. Continuing to permit sponsored access for persons already subject to the rule will prevent duplication of the compliance effort and promote economic efficiency, without in any way reducing the rule's effectiveness.

Third, the rule should reduce current incentives to sacrifice compliance for speed. As noted in our June 15, 2009 concerning NASDAQ Rule 4611, absent corrections, the rule perpetuates perverse incentives to do as little checking as possible so the orders can win the race of getting to the market "first". Any type of credit or compliance checking increases the amount of time it takes for an order to reach the market. The proposed rule also gives exchange members (who have direct access to the market for their proprietary orders) a time advantage over non-member broker dealers and customers (who have to go through third party checks before their orders can reach the exchange). To minimize time pressures and maximize compliance, and to level the playing field, we believe that the Commission should limit the number of orders/cancellations that a single beneficial owner can send to an exchange in a single symbol on the same side of the market to one per second, and require that all orders received within one second be considered

received at the same time and be placed on parity.[2] This will eliminate the need for sub-millisecond speed and create a more level playing field. The result will be less quote flicker, more market participation, fewer barriers to trading, and increased liquidity.

Finally, we submit that requirement for documented annual certifications is unnecessarily burdensome. We estimate that the cost of compliance will exceed 10 to 20 times the amount projected by the Commission. Under the proposed rule, every exchange gateway will have to be "quote aware" in order to prevent orders that are clearly erroneous. The cost of receiving and processing market data for hundreds of thousands of symbols (including options) alone will already exceed the cost of compliance estimated by the Commission. Broker dealers spend vast amounts on compliance. The rule's new requirement that firms have procedures to review their procedures, and then document and retain the written review of the procedures for no less than three years, diverts resources that would better be used by the broker dealer to build superior systems and controls in the first place. Moreover, the Chief Executive is not likely to be a specialist in the area of risk management and the development of computerized controls, so the requirement that he certify compliance on an annual basis will likely lead to the need to hire a consultant to review the controls. This will likely cost between $500,000 and $1 million per year. We therefore strongly recommend that the review and certification requirements be dropped, at least initially, subject to further consideration if the modified rule does not provide the desired level of compliance.

Respectfully submitted,



Samuel F. Lek
Chief Executive Officer

[2] Limiting the granularity of *time* priority by treating orders received within a single second as being received at the same time is analogous to the Commission's prior limiting of *price* priority by banning sub-penny pricing.