March 18, 2013

Elizabeth M. Murphy,
Secretary, Securities and Exchange Commission,
100 F Street, NE,
Washington, D.C. 20549-1090.
By electronic mail to: rule-comments@sec.gov

**RE: SR-NSCC-2012-810 / SR-NSCC-2012-10**
**Elimination of ID Offset in the computation of a participant's clearing fund deposit**

Dear Ms. Murphy:

Lek Securities Corporation is grateful to the Commission and its Division of Trading and Markets for having extended the period of time until April 4, 2013 by which the Commission will decide whether to approve or disapprove NSCC's proposal to eliminate the ID Offset. We are encouraged that the Commission understands the significance of the proposal and the impact that it will have on agency broker dealers and we are confident that – whatever the outcome - the Commission will make the correct decision in the interest of the stability of the U.S. markets and the furtherance of competition in the industry.

On February 22, 2013, Murray C. Pozmanter, Managing Director of NSCC responded to our comment letter dated January 25, 2013. Importantly, NSCC does not deny that the elimination of the ID Offset will have a devastating impact on agency brokers to remain in business. NSCC simply states that it provided the affected firms with adequate warning, and that it intends to implement the proposal over an 18 month period. However, it is undisputed that the ultimate result of NSCC's proposal will be that agency broker dealers will likely be forced out of the business of executing orders for large institutions. This will reduce overall competition in the industry, which is at odds with one of the most important goals of the Act. The proposal, if approved, will require agency brokers to post the same margin as proprietary dealers, even though the risk of dealing as agent is significantly less. As a result, institutions will have less choices available to them when considering how to execute their orders and will have no other option than to deal with the large banks that will undoubtedly steer order-flow to their proprietary trading desks and away from our auction markets. This will in turn will have negative impact on price discovery and reduce liquidity in our markets. Institutions will no longer have the option of dealing with brokers that do not also trade for their own account. They will therefore be forced to do all of their business with dealers, with whom there is a natural conflict of interest.

**Affirmed ID Confirms Provide a Large Degree of Comfort**

We agree that NSCC has a critical role in maintaining stability in the financial markets and that it must ensure it continues to protect itself from the losses that could result from the default of any of its participants. We also agree that NSCC should not necessarily rely on past events as indicators of future risks and that high frequency trading and computerized algorithms have introduced additional risk into the market. As an example, NSCC points to the technology-related trading disruption that occurred in August 2012 when Knight Securities computer systems malfunctioned and erroneously introduced thousands of orders into the market. These arguments would be a valid reason to support an overall increase in the margin requirement. However, none of these issues pertain directly to the elimination of the ID Offset. Indeed, if Knight had had affirmed ID Confirms for all of its trades, it would not have subjected itself to the losses that it suffered and it would not have exposed NSCC and its participants to any risk. In fact, the Knight debacle underscores our argument that proprietary trades are risky and should be margined accordingly, but that once there is an affirmed ID Confirm in place that all of the risk is virtually eliminated, and that therefore the ID Offset is reasonable.

**Affirmed ID Confirms Constitute an Acknowledgement of a Binding Contract**

We strongly disagree with NSCC's assertion that an institution that affirms a trade is not bound by a legally enforceable contract. The failure of the broker dealer that is the counter party to an institutional trade is not a valid excuse for the institution to fail to honor the trade. One way or the other, the institution is bound by the contract and will need to make good on its obligations. NSCC is however correct that there is lack of privity of contract between NSCC and the institutional counterparty, and that if left un-addressed NSCC would not be able to complete the pending ID transactions. We applaud NSCC for identifying this concern. However, this is a *small problem* with a *simple solution*: The ID confirmation and affirmation process is handled by Omgeo, a sister company of NSCC. A feasible and practical solution would be for Omgeo to amend the terms of the affirmation, so as to allow assignment of the contract to NSCC at NSCC's option. The solution would work very much along the same lines as NSCC's current ID Net System, where institutional trades are settled directly between the institution and NSCC. This alternative has been broadly discussed between the agency brokers and NSCC staff members who claim that it is workable and it would satisfy all of NSCC's concerns without the devastating impact on competition that will result from the elimination of the ID Offset. This proposal is particularly suitable, because it actually eliminates risk from the system as opposed to securing risk by requiring more margin. Moreover, it would be completely voluntary. Institutions that would not agree to an assignment, could simply not affirm the confirm, or alternatively, Omgeo could create two categories of affirmations; one that allowed for assignment to NSCC and another that would not. If an institution affirmed under the first method, the ID Offset would be maintained. If it affirmed under the latter method, the Offset would be eliminated.

Unfortunately, we sense little support for this alternative from NSCC's senior management and we have been told that it is not "viable" because it lacks support from the "custodians". However, these custodians are exactly the same banks that make up the majority of NSCC's board and stand to gain from the elimination of the ID Offset and the resulting reduction in competition. Without protection from the SEC at this critical juncture, the continued existence of the independent agency broker may soon fall victim to the anti-competitive behavior of the large banks.

We therefore urge the Commission to reject the proposed rule change and encourage NSCC to submit alternative measures for approval that will accomplish the same benefit, without the unwarranted effect of destroying the independent institutional agency broker dealers.

Respectfully submitted,

Samuel

Samuel F. Lek
Chief Executive Officer