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Subject: V. Countryman - Lek Securities.pdf

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Attached please find an Application of the Activity Cap for LSC from Seward & Kissel.

If you need any additional information, please let us know.

Thank you

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November 1, 2021

VIA EMAIL

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

Lek Securities Corporation

Dear Madame Secretary:

We represent Lek Securities Corporation ("LSC") in connection with its application to the U.S. Securities and Exchange Commission (the "Commission") pursuant to Rule 19d-3 of the General Rules and Regulations Under the Securities Exchange Act of 1934 and Rule 420 of the Commission's Rules of Practice to stay a summary limitation of access to clearing services implemented by NSCC, effective October 27, 2021, imposing a cap of "\$300 million of aggregate unsettled clearing activity as measured by the gross market value ("GMV") of its unsettled portfolio each business day coinciding with the approval of [LSC's] start-of-day margin call (the "Activity Cap")." The Activity Cap is also included in the matters covered under a request for a hearing filed with NSCC on October 29, 2021 objecting to NSCC's determination to cease acting for LSC, subject to LSC's right to a hearing.

LSC's application follows.

* * *

Application

LSC is a broker registered with the Commission whose business is limited to effecting transactions on an agency basis for customers of LSC and other brokers. The Activity Cap whose imposition the Commission is being requested to stay imposes an unfair and unreasonable limitation of the activities and operations of LSC under the applicable rules of NSCC.

If the Commission finds that a sanction imposed by NSCC is an unnecessary or inappropriate burden on competition or is otherwise excessive or oppressive, the Commission

may stay the imposition of that sanction. 15 U.S.C. § 78s(e)(2). Similarly, the Exchange Act rules adopted by the Commission mandate 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 dealer services [e.g., LSC] to obtain membership on fair and reasonable terms at the clearing agency to clear securities for itself or on behalf of other persons.” Rule 17Ad-22(b)(5).

The stated basis for the imposition of the Activity Cap is “summarily limiting [LSC’s] clearing activity” and occurs in the context of a determination by NSCC “to cease to act for [LSC], subject to [LSC’s] right to a hearing.” Also, LSC was informed orally that the Activity Cap was intended to help LSC in winding down. LSC is a fully operational clearing broker that has no intention of winding down and is appealing NSCC’s determination to cease acting for LSC. That determination is “subject to [LSC’s] right to a hearing,” and LSC believes that the hearing will result in NSCC continuing to act for LSC.

It is inconsistent with NSCC’s position of subjecting its determination to cease acting to a hearing and, at the same time, truncating LSC’s clearing activities before the hearing has been completed.

For the foregoing reasons, LSC respectfully requests that the Commission stay the application of the Activity Cap until the conclusion of NSCC’s hearing process and of any further appeal of that decision that may occur.

* * *

LSC is ready and willing to work with NSCC and the Commission to resolve the foregoing issue and to provide the Commission any information, materials or briefings that the Commission believes would be useful to its decision on this application.

Respectfully submitted,


Paul T. Clark

Anthony C.J. Nuland

November 1, 2021

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