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August 5, 2013

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: File Numbers SR-NSCC-2013-02 and SR-NSCC-2013-802

Dear Ms. Murphy:

This letter is submitted by Charles Schwab & Co., Inc. ("Schwab")[1], a broker-dealer registered with the Securities and Exchange Commission (the "Commission") under the Securities Exchange Act of 1934, as amended (the "Exchange Act") and a member of the National Securities Clearing Corporation ("NSCC"), in response to the above-referenced rule proposal submitted by NSCC pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 adopted thereunder. The rule proposal is intended to augment NSCC's liquidity sources.

[1] The Charles Schwab Corporation (NYSE: SCHW) is a leading provider of financial services, with more than 300 offices and 8.9 million active brokerage accounts, 1.6 million corporate retirement plan participants, 888,000 banking accounts and $2.08 trillion in client assets as of March 31, 2013. Through its operating subsidiaries, the company provides a full range of securities brokerage, banking, money management and financial advisory services to individual investors and independent investment advisors. Its broker-dealer subsidiary, Charles Schwab & Co., Inc. (member SIPC), and affiliates offer a complete range of investment services and products including an extensive selection of mutual funds; financial planning and investment advice; retirement plan and equity compensation plan services; referrals to independent fee-based investment advisors; and custodial, operational and trading support for independent, fee-based advisors through Schwab Advisor Services.

The original rule proposal (the "Original Proposal") was filed with the Commission on March 21, 2013, and noticed in the Federal Register on April 10, 2013, at page 21487 (the "April 10 Notice") and thereafter was amended twice. The first amendment, which added to the Original Proposal a comment letter to NSCC dated March 19, 2013, was contained in a submission noticed in the Federal Register on May 29, 2013, at page 32292. The second amendment, which made changes to the Original Proposal, was contained in a submission noticed in the Federal Register on July 15, 2013, at page 42140 (the "July Amendment").[2]

We agree that NSCC should have the resources it needs to be a source of strength for the national clearing and settlement system and would support alternatives that do not have anti-competitive consequences or create risks for the national clearing

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[2] On April 25, 2013, in Release Number 34-69451; File Number SR-NSCC-2013-802 (the "April 25th Release") the Commission requested comments on NSCC's submission of an advance notice under Section 806(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 (July 21, 2010) ("Dodd-Frank") with respect to the Original Proposal (the "Advance Notice"). The Advance Notice appears to have been submitted on March 21, 2013 as part of NSCC's Rule 19b-4 submission of the Original Proposal. The Rule 19b-4 submission for the Original Proposal was published in the Federal Register on April 10, 2013 without any reference to the Advance notice. On May 1, 2013, the Advance Notice, as modified by an amendment thereto, was noticed in the Federal Register at page 25496. On July 15, 2013, the Commission noticed in the Federal Register at page 42127 a submission by NSCC further amending the Advance Notice to conform it to the changes made to the Original Proposal in the July 15 Notice.

In Release 34-67286, published in the Federal Register on July 13, 2012, at pages 41602 et seq. (the "July 13, 2012 Release") the Commission adopted amendments to Rule 19b-4 to address, among other matters, the advance notice requirements contained in Section 806(e) of Dodd-Frank. In that Release, the Commission noted, in Section II F., at page 41626, that the requirements of Section 19 of the Exchange Act and Section 806(e) of Dodd-Frank were different and that the "…filing requirements of …Section 806(e) and Exchange Act Section 19(b) are distinct from each other subject to different statutory standards for Commission review…." The Commission further stated that when a clearing agency submits a rule filing for more than one purpose "…the Commission will endeavor to evaluate such filings in tandem as part of a parallel process…." The Commission added, at page 41626, "[H]owever, each of the…processes will remain distinct from the other processes. Each proposed rule change…and Advance Notice will be reviewed and evaluated independently by the Commission in accordance with the applicable statute and regulatory authority…"

and settlement system, even if the cost to NSCC members of doing so, including as a result of increased NSCC fees, may be greater than other alternatives. Unfortunately, the Original Proposal as supplemented by the July Amendment (the "Amended Proposal") creates two de facto classes of members, with one class, by the exercise of choices available to it, able to affect the liquidity deposit requirements applicable to the other class. This "have and have not" structure is clearly anti-competitive.

We do not believe that the Amended Proposal provides a sufficient basis under the Exchange Act for the Commission to approve the Amended Proposal. We believe NSCC should withdraw the Amended Proposal or request additional time from the Commission to modify it and, in either case, to pursue the initiatives we suggest below. If NSCC does not withdraw the Amended Proposal or request additional time from the Commission to modify it, for the reasons set forth below we believe that the Commission should by order disapprove the Amended Proposal pursuant to Section 19(b)(2)(A)(i)(I) of the Exchange Act.

The Original Proposal and Schwab Comments on the Original Proposal

The Original Proposal. The Original Proposal is a response by NSCC to the requirements of Rule 17Ad-22(b)(3) adopted by the Commission pursuant to Section 805 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 (July 21, 2010) ("Dodd-Frank") ("Rule 17Ad-22(b)(3)") regarding the obligation of an entity, such as NSCC, that performs central counterparty services (a "CCP") to maintain "…sufficient financial resources to withstand, at a minimum, the default by the

participant family to which [the CCP] has the largest exposure in extreme but plausible market conditions….”

Under the Original Proposal, NSCC proposes to satisfy the requirements of Rule 17Ad-22(b)(3) by amending NSCC’s rules to add a supplemental liquidity deposit requirement to NSCC’s rules (the “SLDR”). The SLDR would be implemented by (i) identifying the NSCC member or family of affiliated members (“Affiliated Family”) whose default would generate the largest payment obligation to NSCC in stressed conditions and determining the amount of that payment obligation (the “Target Amount”), (ii) identifying the 30 NSCC members and Affiliated Families that generate the largest liquidity needs (the “Supplemental Liquidity Providers”) in each of the regular settlement cycles and options expiration settlement cycles, (iii) imposing supplemental clearing deposit requirements equal in the aggregate to the Target Amount on each group of Supplemental Liquidity Providers in proportion to the liquidity risks they present in each type of settlement cycle and (iv) reducing the supplemental clearing deposit requirements for any Supplemental Liquidity Provider by the amount by which any of its affiliates participates in a committed credit facility in favor of NSCC (the “Credit Facility”).

Schwab Comments on the Original Proposal. We were constrained in our ability to provide meaningful comment on the Original Proposal by the deficiencies in NSCC’s filing with the Commission under Rule 19b-4, which we drew to the attention of the Commission in a comment letter submitted on April 22, 2013 and again in a comment

letter submitted on May 1, 2013. As a result of those deficiencies, we were forced to base our comments in both letters on one or more of the following assumptions regarding the Original Proposal: (i) NSCC did not consider alternative approaches to satisfying its liquidity requirements, such as modifying the Credit Facility to increase its attractiveness to lenders that are not affiliated with NSCC members, developing supplemental credit support arrangements, or increasing NSCC clearing fees; (ii) NSCC did not consider working with the Commission to reduce NSCC's liquidity needs by shortening the settlement cycle under NSCC's Continuous Net Settlement system; (iii) only banks will be able to participate in the Credit Facility; (iv) members and Affiliated Families will not be able to determine whether or why they may be included in one of the groups of Supplemental Liquidity Providers; (v) members and Affiliated Families will not be able to determine the amount of their SLDRs but can expect them to be an additional two to three times their current clearing deposit requirements; (vi) NSCC has not determined the application of Regulation W of the Board of Governors of the Federal Reserve System, which limits loans by a bank to, or for the benefit of, an affiliate, to a decision by a bank affiliated with an NSCC member or Affiliated Family to participate in the Credit Facility; (vii) NSCC has not obtained the Commission's views on the treatment of members' and Affiliated Families' supplemental clearing deposits under the Commission's net capital rules; (viii) NSCC has not considered the effects on members and Affiliated Families of requirements that may be imposed by other registered clearing agencies that are subject to Rule 17Ad-22(b)(3); and (ix) in determining the NSCC members and Affiliated Families whose default would generate

the largest payment obligations to NSCC, NSCC has not included payment obligations of those entities to NSCC resulting from NSCC's interfaces with other clearing agencies.

Our April comment letter asked that the Commission either request NSCC to withdraw the Original Proposal and re-submit it after correcting its deficiencies or significantly extend the comment period so that the deficiencies could be remedied during the comment process. Our May comment letter, among other things, drew the Commission's attention to the discriminatory and anti-competitive effects of creating two de facto membership classes by reducing the SLDR of a member with a bank affiliate engaged in commercial lending by the amount of any participation in the Credit Facility by the affiliated bank and, because of that and other issues, requested that the Commission disapprove the Original Proposal.

The July Amendment

The July Amendment focuses primarily on matters relevant to our assumptions (iv) (ability of members and Affiliated Families to determine whether they will be Supplemental Liquidity Providers) and (v) (ability of members and Affiliated Families to determine the amount of their SLDRs) which were discussed in our comment letters. The July Amendment does not address adequately the deficiencies in the Original Proposal that are relevant to our remaining seven assumptions and that were noted in our comment letters and discussed in meetings and telephone calls with NSCC and with the Commission's staff. As a result, we continue to base our comments on all but (iv)

and (v) of the foregoing assumptions. We note that the issues covered by assumption (i) are in part identified in the July Amendment as matters NSCC intends to review in the future "prior to the next renewal of the Credit Facility in May 2014." We believe these issues, which are discussed below, should be addressed before NSCC is permitted to implement the Amended Proposal.

In the July Amendment, NSCC explains that the Amended Proposal is intended to supplement the NSCC Clearing Fund and the Credit Facility as liquidity resources in the event of a member default. NSCC then alludes to a "liquidity differential" that exists currently between the liquidity exposures created by members that cause the largest liquidity risks and the amounts those members contribute to the NSCC clearing fund. NSCC's solution to the "liquidity differential" is to designate the 30 largest liquidity users as Supplemental Liquidity Providers and subject them to the SLDR.

The July Amendment adds a number of changes to the Rule Proposal that NSCC refers to as "enhancements." We believe these changes are useful only at the margins. The enhancements would: reduce the deposit requirements of all Supplemental Liquidity Providers by the amount of any Credit Facility commitment excess attributable to a Supplemental Liquidity Provider; include the liquidity needs for monthly option expirations in Special Activity Liquidity Obligations and calculate and collect those amounts 12 times per year; add a definition of "Other Qualifying Liquid Resources" to permit NSCC to take new sources of liquidity into account when computing the SLDRs;" increase the information that NSCC will provide members about the liquidity exposures

the members present; and work with members to help them identify their funding obligations with adequate lead times. While these enhancements are an improvement to the Rule Proposal, they do not address the fundamental issues of competition and protection of investors and persons acting for them that we and others have identified previously and that we repeat below.

One proposed enhancement is fanciful: the "Unaffiliated Lender Enhancement". It would permit a member to arrange for an unaffiliated commercial lender to commit to the Credit Facility as a designee of the member for purposes of reducing the member's SLDR. It is not apparent how this arrangement could work in practice. Either the terms under which a lender could participate in the Credit Facility would be sufficiently attractive to draw lenders from the market, in which case the added incentive of a relationship with a Supplemental Liquidity Provider would be unnecessary, or the terms would not be attractive, in which case the unaffiliated lender would require a quid pro quo of an indeterminate amount from the Supplemental Liquidity Provider. That the approach embodied in this enhancement is not adequately evolved is clear from NSCC's statement in the July Amendment that, in connection with the renewal of the Credit Facility in May 2014, the NSCC Board should review the "…aggregate costs (if any) for [m]embers to designate commercial lenders to commit to the Credit Facility as their [the members] designees."[3]

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[3] The July Amendment contains a list of items that NSCC proposes to have its Board review in May of 2014. In our view, the following items from that list should have been evaluated prior to the issuance of the Original Proposal:

"i. analysis of the availability, size, cost, and credit risk necessary to obtain the additional commitments under the Credit Facility likely to reduce the Regular Activity Supplemental Deposit requirements to zero;

Requirements
of Section 19(b)(1) of the Act.

In our previous letters, we stated that the Original Proposal did not satisfy the requirements of Section 19(b)(1) of the Exchange Act. There is nothing in the July Amendment that causes us to change our view. Under Section 19(b)(1) the Amended Proposal is required to comply with the Commission's rules adopted pursuant to that Section. Those rules, Rule 19b-4 and Form 19b-4, require that a rule proposal present information in a manner that will enable (i) the public to provide meaningful comment and (ii) the Commission to determine whether the rule proposal would be consistent with the purposes of the Exchange Act. Even as supplemented by the July Amendment, the Amended Proposal does neither.

The Original Proposal failed to accurately reflect the requirements of the Exchange Act that a rule proposal must satisfy.[4] Under Section 19(b)(2) of the Exchange Act the Commission may not approve a rule of a self-regulatory organization unless the Commission finds that the rule is consistent with the requirements of the

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ii. analysis of the availability, size, cost, and credit risk to obtain a new multi-year committed facility to replace the existing Credit Facility;

iii. an understanding of the aggregate costs (if any) for Members to designate commercial lenders to commit to the Credit Facility as their designees; [and]

iv. analysis of the availability, size, cost, and potential depth of a capital markets funding among Members and/or third parties as an additional liquidity resource, including the viability of offering the funding to Members or mandating their participation in such funding;"

[4] The April 10 Notice referred to competition by stating that "…the Rule Proposal change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act…," which is the standard applicable to the registration of clearing agencies and not to approvals of clearing agency rules by the Commission. *See* Section 17A(b)(3)(I) of the Exchange Act.

Exchange Act. As to clearing agencies, those requirements are contained in Sections 17A(a)(1) and (2) of the Exchange Act. The particular standards contained in Sections 17A(a)(1) and (2) of the Exchange Act that are most pertinent to NSCC and the Rule Proposal are:

> "…increasing the protection of investors and persons facilitating transactions by and acting on behalf of investors…" and
>
> "…having due regard for … the protection of investors, the safeguarding of funds and securities and the maintenance of fair competition among brokers and dealers, clearing agencies…."

Unlike the Original Proposal, which referred to an inapplicable standard, the July Amendment references the correct standard. However, the July Amendment, and therefore the Amended Proposal, does not adequately analyze the competitive issues required by the statutory standard.

As described below, the Rule Proposal as supplemented by the July Amendment continues to have major shortcomings and omissions. These persist despite our earlier comments and those of others, including the Securities Industry and Financial Markets Association ("SIFMA"), and perpetuate an absence of information necessary for meaningful comment and a resulting lack of an adequate record for Commission action. The two primary shortcomings are the analyses and discussions relating to (i) competitive issues and (ii) the protection of investors and persons facilitating transactions by and acting on behalf of investors. The omissions are failures to discuss the treatment of the SLDR under the Commission's net capital rule and to address the

systemic risk of both the existing Credit Facility and its operation in a SLDR environment.

Due Regard for the Maintenance of Competition
Among Brokers and Dealers and Clearing Agencies.

The portions of the July Amendment that purport to address competitive issues are not even responsive to the issues raised, let alone accurate or credible. NSCC argues that because of its position as a utility for the securities industry, NSCC has no "…reason, interest or intent to discriminate among its Members…" and therefore that any disparate effects its rules of general applicability may have on its members because of their particular circumstances should not be viewed as actions by NSCC imposing burdens on competition. In addition, NSCC argues that concerns about competition among members and between members and other market participants can be reconciled with (i) the interests of its members as a whole, (ii) the importance of its mission to facilitate the prompt and accurate clearance and settlement of, and to safeguard, securities and funds and (iii) the requirements that Rule 17Ad-22(b)(3) imposes on clearing agencies.. But, NSCC warns, to insure that NSCC has the liquidity to operate its clearing and settlement business safely, members must "recognize that some accommodation may be required on their part." NSCC then explains how the enhancements it has proposed address concerns about competition.

Two of the July Amendment enhancements cited are designed to reduce the size of the SLDRs, which presumably will benefit the members that may be designated as

Supplemental Liquidity Providers. The other two are the unrealistic Unaffiliated Lender Enhancement and a tautological statement that, because Credit Facility Lenders can increase their commitments at any time, affiliated Supplemental Liquidity Providers can benefit from a decrease in their SLDRs after they have been determined but before the Supplemental Liquidity Providers are required to start making supplemental liquidity deposits (the “Increased Commitment Enhancement”).

As described above, by its nature the Unaffiliated Lender Enhancement is of questionable utility. The Increased Commitment Enhancement would exacerbate the anti-competitive effects of the Credit Facility contributor - Supplemental Liquidity Provider linkage described below.

In the July Amendment, NSCC purports to address any anti-competitive effects that the designation of 30 members as Supplemental Liquidity Providers will have on the regulatory capital requirements of smaller Supplemental Liquidity Providers by stating that the proposed arrangement would “most appropriately capture” the liquidity exposure over and above available NSCC Clearing Fund liquidity because (i) the Supplemental Liquidity Providers represent approximately 85% of NSCC’s liquidity needs and (ii) the remaining members’ liquidity needs are covered by the required deposits to the NSCC Clearing Fund. NSCC concludes by opining that it would not be appropriate to have the remaining members bear the exposure resulting from the liquidity needs of the Supplemental Liquidity Providers even though all the members

currently are required to participate in the NSCC Clearing Fund and to bear the cost of the Credit Facility on a basis currently deemed appropriate.

NSCC's statement raises two questions. Why is NSCC departing from its current cost and risk exposure allocation methodologies in the case of liquidity risk? Why is the existence of anti-competitive effects identified in the comments submitted to date not a sufficient reason for NSCC to adopt a different approach?

Competition Between Two Classes of NSCC Members. As we stated in our previous comment letters, by imposing the cost of NSCC's supplemental liquidity solely on Supplemental Liquidity Providers, the Rule Proposal will provide NSCC members and Affiliated Families that are not Supplemental Liquidity Providers a competitive advantage over members and Affiliated Families that are. Indeed, the Amended Proposal effectively creates without explanation or justification two classes of membership: (i) a class of members affiliated with commercial banks that can make business decisions based on evaluating the costs and the benefits of the options available to them for satisfying the SLDR (e.g., participation in the Credit Facility, making a cash deposit, etc.); and (ii) a class of members that are at the mercy of the first class of members in determining whether to either (a) post a supplemental deposit in an amount to be determined by the business decisions of the first class of members or (b) obtain at their own cost and expense the participation of a non-affiliated third party bank in the Credit Facility.

It seems clear that creating this de facto class distinction would not be necessary if NSCC were offering or willing to pay competitive, market-based terms to attract participants to the Credit Facility. It is also clear that the consequences of creating a structure with this inherent competitive advantage will be to drive a number of smaller Supplemental Liquidity Providers out of the self-clearing business. Yet, from discussions we have had with NSCC's senior leadership, NSCC does not appear to be troubled by this issue and its leadership has no answer or solution to the inherently discriminatory two class system that the Amended Proposal creates.

Competition Between Supplemental Liquidity Providers. Within the group of Supplemental Liquidity Providers, those that are affiliated with a bank that is eligible to participate in the Credit Facility and thus can benefit from the Rule Proposal's Credit Facility contributor – Supplemental Liquidity Provider linkage will have a potentially insurmountable advantage over other NSCC members that do not have such an affiliate. The bank affiliates will be able to participate in the Credit Facility by issuing unfunded commitments that will reduce the self-clearing affiliates' SLDR cash deposit obligations dollar for dollar by the commitment amounts. This arrangement is particularly significant because the obligations of Credit Facility participants will not be nearly as onerous as the requirements under the SLDR for members and Affiliated Families to make cash clearing deposits. As a result, entities that do not have eligible bank affiliates will be under pressure to leave the self-clearing business, as will members and Affiliated Families that do not have a bank affiliate and become Supplemental Liquidity Providers as other entities leave the business.

In general, NSCC has not adequately identified and evaluated the anti-competitive effects of either the Credit Facility contributor - Supplemental Liquidity Provider linkage or the regulatory capital effects on smaller Supplemental Liquidity Providers. Instead, NSCC has treated the issues as if they do not exist. This dismissiveness is particularly odd given that NSCC in the July Amendment clearly states that the General Information requirements of Form 19b-4 obligate NSCC (i) to state whether the Amended Proposal will have an impact on competition, and if so, whether it will impose any burden or relieve any burden on or otherwise promote competition, (ii) to specify the particular categories of persons or kinds of businesses on which the burden will be imposed and the way in which the Amended Proposal will affect them and (iii) to explain why any impact on competition is not believed to be a significant burden on competition or why the burden on competition is necessary or appropriate in furtherance of the Exchange Act. Because NSCC has made no effort to quantify the anti-competitive effects of the Amended Proposal, NSCC has not explained why the effects on competition are not significant or why permitting those effects is necessary or appropriate in furtherance of the Exchange Act.

Increasing the Protection of Investors and Persons
Facilitating Transactions on Behalf of Investors.

Our comment letters and the comment letters of others raised a number of systemic risks created by the Original Proposal and, in the case of SIFMA's comment letter, by the Amended Proposal. Those risks have not been addressed in the July

Amendment, and as a result, the Amended Proposal continues to fail to satisfy the requirement of protecting investors and persons facilitating transactions on behalf of investors and, instead, focuses on providing liquidity to NSCC regardless of the ancillary risks and costs involved.

Parity of Treatment. We believe NSCC should have the resources it needs to be a source of strength for the national clearing and settlement system. We believe also that those resources should not be extracted from the two groups of Supplemental Liquidity Providers identified in the Amended Proposal. Both the burden of increasing the resources available to NSCC and the exposure for a member's default beyond the member's own assets should be shared equitably among all NSCC members and Affiliated Families. In addition, neither the cost associated with strengthening NSCC nor exposure to a default should be affected by whether a member or Affiliated Family has an affiliated bank willing and able to participate in the Credit Facility.

Types of Clearing Deposits. The Rule Proposal continues to contemplate an SLDR under which any required supplemental liquidity deposits would be made in cash. We continue to believe that any supplemental liquidity requirement should permit alternative arrangements so that the impact on members and Affiliated Families will be more manageable. In particular, if a SLDR is adopted we recommend that demand notes secured by specified types of assets, collateralized letters of credit issued by unaffiliated banks, insurance policies and collective credit arrangements backed by appropriate collateral be considered as options for meeting the SLDR. The July

Amendment does not acknowledge this issue or address why alternative types of assets would not be appropriate.

Concentration of Risk and Liquidity. As we noted in our comment letters, the amounts required to be deposited under the SLDR seem likely to be sufficiently large in the case of the Supplemental Liquidity Providers to compel some of them to withdraw from the self-clearing business. If this occurs, there would be less competition in the provision of clearing services and fewer options for introducing brokers. In addition, by concentrating self-clearing activities in fewer firms, the SLDR would increase the potential for systemic disruption caused by the failure of any of the remaining self-clearing firms. In the July Amendment, NSCC suggests that any firm designated as a Supplemental Liquidity Provider that withdraws from self-clearing due to the amount of its SLDR would otherwise be creating inappropriate risk for other NSCC members. Assuming existing NSCC members and Affiliated Families currently have capital levels appropriate for their activities, as NSCC has in the past suggested that they do, why should NSCC now impose a requirement that would curtail those activities?

The same requirements of Rule 17Ad-22(b)(3) that impel NSCC to propose the SLDR apply to a number of other registered clearing agencies, including other subsidiaries of NSCC's parent, the Depository Trust and Clearing Corporation ("DTCC"). As we indicated in our comment letters and as other commenters have stated, the likely effect of the adoption of similar rules to cover clearing corporation exposures to large participants will be to intensify the need for increased capital at self-

clearing firms and to further accelerate the trend towards concentration among those firms and the systemic risk associated with that concentration. The July Amendment does not address this issue.

As we stated in our earlier comment letters, another related risk posed by the SLDR and any similar requirements adopted by other registered clearing agencies is the concentration of self-clearing firm liquidity at NSCC, and other registered clearing agencies, in the form of supplemental liquidity deposits. Once deposited at NSCC, the liquidity captured by the SLDR is not available for other purposes, such as funding continuing operations in the face of delays and losses resulting from technology failures, customer defaults or failures of client counterparties. Although we and others have pointed out that the potential effects of this liquidity constraint may be undesirable or may create unnecessary systemic weakness, NSCC has not addressed this issue in the July Amendment.

Omissions

Regulatory Capital Treatment. The Amended Proposal continues to provide no information to enable a commenter to estimate the probable treatment under the Commission's net capital rule of deposits an NSCC member or Affiliated Family would be required to make under the SLDR. An increase of that magnitude in the deployment of a broker-dealer's assets as a clearing deposit would be significant for many Supplemental Liquidity Providers and could consume a significant portion of their

regulatory capital. Currently, clearing deposits at NSCC are treated as broker and dealer assets under the Commission's net capital rule. If, as appears to be the case, the SLDR requirements are to be substantial, NSCC should obtain assurances from the Commission that the supplemental clearing deposits will receive the same treatment as current clearing deposits. Without those assurances, the possible effects of the Amended Proposal on competition and the size of the clearing broker universe must be viewed negatively.

Unaddressed SLDR Risk. The most significant risk presented by the Amended Proposal is in the Credit Facility itself. There, the participating banks appear to be providing little more than a promise to perform, and based on nothing more than that promise, a member or Affiliated Family would receive a dollar for dollar offset of an SLDR cash deposit obligation. In contrast, members and Affiliated Families not affiliated with a bank, or affiliated with a bank that does not participate in the Credit Facility, must make a cash deposit with NSCC. If the supplemental protection NSCC is seeking in the Rule Proposal is to be effective, any reliance on the Credit Facility as a substitute for SLDR deposits should be based on a collateralization of the banks' obligations to NSCC under the Credit Facility. Although we have raised this issue in two comment letters and others have made the same observation, NSCC has not addressed it in the July Amendment.

Requested Actions and Suggested Alternatives

Notwithstanding the changes made by NSCC in the July Amendment, the Amended Proposal does not respond to a large number of significant issues, including modifying the Credit Facility to increase its attractiveness to lenders, developing supplemental credit support arrangements, exploring the issuance of debt securities and expanding the composition of NSCC Clearing Fund deposits.[5] By failing to address these issues and to provide analytical or factual support for the Amended Proposal, NSCC has failed to create a record demonstrating how the Amended Proposal is consistent with the requirements of Section 19(b)(2) of the Exchange Act. As a result, we do not believe NSCC has provided a basis for the Commission to approve the Rule Proposal without disregarding its obligations under the Exchange Act.

As indicated at the outset of this letter, we believe that NSCC should withdraw the Amended Proposal or request additional time from the Commission to modify it. In

[5] By augmenting its liquidity through the issuance of long-term debt, NSCC would be moving in a direction that the Board of Governors of the Federal Reserve System appears to favor as indicated in the following testimony by Governor Daniel K. Tarullo:

> "Successful execution by the FDIC of its preferred [single-point-of-entry] approach in [the Orderly Liquidation Authority]depends on the availability of a sufficient combined amount of equity and loss-absorbing debt at the parent holding company of the failed firm. Accordingly, in consultation with the FDIC, the Federal Reserve is working on a regulatory proposal that requires the largest, most complex U.S. banking firms to maintain a minimum amount of outstanding long-term unsecured debt on top of their regulatory capital requirements. Such a requirement could have a number of public policy benefits. Most notably, it would increase the prospects for an orderly resolution under [the Orderly Liquidation Authority] by ensuring that shareholders and long-term debt holders of a systemic financial firm can bear potential future losses at the firm and sufficiently capitalize a bridge holding company in resolution. In addition, by increasing the credibility of [the Orderly Liquidation Authority], a minimum long-term debt requirement could help counteract the moral hazard arising from taxpayer bailouts and improve market discipline of systemic firms."

Testimony of Daniel K. Tarullo, Governor, Board of Governors of the Federal Reserve System, before the Committee on Banking, Housing and Urban Affairs, U.S. Senate (July 13, 2013).

either case, NSCC should then (i) engage in a thorough analysis of the issues that have been surfaced during the comment process and have been either not addressed or glossed over, (ii) develop in conjunction with a broadly based committee of NSCC members one or more modified or alternative approaches to dealing with the requirements of Rule 17Ad-22(b)(3), (iii) submit the modified or alternative approaches to NSCC's membership for comment and (iv) present the results of this process to the Commission for approval. Alternatively, if NSCC does not withdraw the Amended Proposal or request additional time from the Commission to modify it, the Commission should disapprove the Amended Proposal as inconsistent with the requirements of Section 19(b)(2) of the Exchange Act.

Should NSCC withdraw or request additional time from the Commission to modify the Amended Proposal, we believe that establishing a broadly based committee of NSCC members would be an important first step toward developing an alternative approach to dealing with NSCC's liquidity needs. Such a committee could assist NSCC in evaluating such issues as competition among Supplemental Liquidity Providers that have a bank affiliate able to participate in the Credit Facility, Supplemental Liquidity Providers that do not have a bank affiliate that is able to participate in the Credit Facility and Supplemental Liquidity Providers that do not have a bank affiliate; competition between Supplemental Liquidity providers and other NSCC members; the risks of a Credit Facility supported by unsecured commitments; the risks of concentrating excessive cash deposits at NSCC; and the effects of the Amended Proposal on the clearing and settlement universe generally. The results of such comprehensive

evaluation of the issues would guide the process toward a more effective, pro-competitive and risk-abating alternative to the Rule Proposal.

Thank you very much for the opportunity to provide this comment. If you have any questions, please do not hesitate to contact me at 415-667-0958 or peter.morgan@schwab.com.

Very truly yours,

Peter Morgan
Senior Vice President & Deputy General Counsel
Charles Schwab & Co., Inc.

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