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May 2, 2013

**Via Electronic Mail**

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

Re: **SR-NSCC-2013-02**

Ms. Murphy:

ConvergEx Execution Solutions LLC (“ConvergEx”) respectfully requests that the Securities and Exchange Commission (the “SEC” or the “Commission”) exercise its authority under Section 19(b)(2)(A)(ii)(I) of Exchange Act<sup>1</sup> and extend by forty-five days the date by which the SEC must take action on the above-referenced proposed rule change<sup>2</sup> (the “SLD Proposal” or the “Proposed Rule”). The SLD Proposal will require certain National Securities Clearing Corporation (“NSCC”) members to make what could be massive supplemental liquidity deposits.<sup>3</sup> Given the complexity of the Proposed Rule, interested persons, including members of the NSCC, require additional time to evaluate the potential impact of the Proposed Rule and provide meaningful comment to the Commission.<sup>4</sup>

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<sup>1</sup> Pursuant to Section 19(b)(2)(B)(ii)(I) of the Exchange Act, the Commission may extend the deadline for Commission action by up to forty-five days if it determines that a longer time period is appropriate. See 15 USC § 78s(b)(2)(A)(ii)(I).

<sup>2</sup> Securities Exchange Act Release No. 34-69313 (April 4, 2013), 78 FR 21487 (April 10, 2013) (SR-NSCC-2013-02).

<sup>3</sup> The Proposed rule was submitted by the NSCC in connection with its effort to comply with Rule 17Ad-22(b)(3) of the Exchange Act. Rule 17Ad-22(b)(3) requires entities performing central counterparty (“CCP”) services to maintain sufficient financial resources to withstand the default of a participant family to which it has the largest exposure in extreme but plausible market conditions.

<sup>4</sup> In making this request, ConvergEx notes that the NSCC did not solicit comment from its membership prior to filing the Proposed Rule with the SEC. While ConvergEx recognizes that NSCC is not required to solicit comment from its membership prior to filing a rule proposal with the SEC, given the complexity of the Proposed

As a preliminary matter, we note that ConvergEx generally supports NSCC's goal in ensuring that it has access to sufficient liquidity in the event that its largest participant fails. Given NSCC's critical role as a CCP, ConvergEx understands that NSCC must have access to adequate capital. In its current form, however, the Proposed Rule will have a disproportionately negative impact on NSCC members that are not affiliated with banking institutions ("Independent Members") as these members are unlikely to be able to fund these deposits in a cost-effective manner, if at all. Further, the size of the deposit, along with the potential for NSCC members with bank affiliates to participate in a Credit Facility (defined below) to decrease the size of their required deposit, is anticompetitive on its face and will serve as a barrier to entry for new firms seeking to become NSCC members. Finally, the Commission should not take any action on the Proposed Rule without first requiring the NSCC to provide an analysis of the Proposed Rule's impact on competition.

#### The SLD Proposal Inappropriately Disadvantages Independent Members

In its current form, the SLD Proposal requires the top thirty NSCC members (measured by gross settlement debits) to provide supplemental liquidity to the NSCC in the form of a cash deposit. These cash deposits, however, can be offset dollar-for-dollar if the member participates in the committed liquidity facility (the "Credit Facility") that is referenced in the Proposed Rule.<sup>5</sup> However, access to the Credit Facility is limited to NSCC members that are affiliated with banking institutions. As a result, members affiliated with banks that would arguably be able to fund this supplemental liquidity deposit will not be obligated to do so while Independent Members that do not have access to the balance sheet of an affiliated bank will be required to deposit cash with NSCC. Although the amount of the deposit that each member in the top thirty will be required to make is not yet finalized, ConvergEx understands that the deposit will be hundreds of millions of dollars. Certainly, at least some Independent Members will be unable to either make this deposit from available cash or secure financing and will have no choice but to forfeit their NSCC membership and enter into alternative clearing arrangements.

#### NSCC Did Not Adequately Assess the Proposed Rule's Impact on Competition

Interested parties require additional time to evaluate the Proposed Rule's potential impact on competition. It is clear from the NSCC's proposed rule change that they have not conducted any such analysis. In its filing with the SEC, NSCC provides nothing more than standard boilerplate language stating that "the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act." NSCC goes on to discuss the perceived benefits of the Proposed Rule without ever addressing what the potential impact on competition may be. NSCC states that the Proposed Rule will "ensure that NSCC's Members fairly and equitably contribute to NSCC's liquidity resources for

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Rule and its potential impact, it would have been reasonable for the NSCC to have done so. ConvergEx also notes that the Advance Notice for this proposed rule change (SR-NSCC-2013-802) has not yet been published for comment in the Federal Register.

<sup>5</sup> See SR-NSCC-2013-803 in which the NSCC provides advance notice of its intent to seek the Commission's approval to renew its end-of-day line of credit.

settlement” and that it will “contribute to the goal of financial stability in the event of Member default.” NSCC completes its “analysis” by making the self-serving statement that the benefits of the Proposed Rule will “render not unreasonable or inappropriate any burden on competition that the changes could be regarded as imposing.”

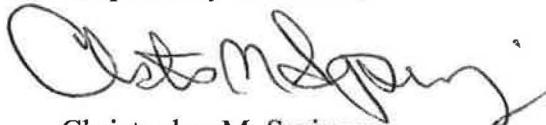
These unsupported statements do not meet the statutory standard in Section 17A(b)(3)(I) of the Act, that the rules of a clearing agency “not pose any burden on competition not necessary or appropriate in furtherance of the purposes of this title.” The NSCC does not appear to have conducted any analysis to evaluate what the impact of the Proposed Rule may be. In completing Form 19b-4, the NSCC did not provide detailed responses to certain questions relating to impact on competition. Specifically, the NSCC did not “specify the particular categories of persons and kinds of businesses on which any burden will be imposed and the ways in which the proposed rule change will affect them.” For example, the size of the deposits required to be made under the Proposed Rule arguably serve to increase significantly the amount of regulatory capital required to become a significant NSCC member. It does not appear that the NSCC has performed any analysis regarding the potential barrier to entry imposed by the Proposed Rule. Given the lack of any analysis, the NSCC was also unable to adequately “[e]xplain why any burden on competition is necessary or appropriate in furtherance of the purposes of the Act.” The NSCC’s statements regarding the Proposed Rule’s impact on completion do not satisfy these requirements.

### Conclusion

Given the potential impact of the SLD Proposal on NSCC members, particularly Independent Members, and the defects in the NSCC’s filing with the Commission, we respectfully request that the Commission delay taking action on the Proposed Rule to give interested parties an opportunity to comment. We also ask that the Commission require the NSCC to provide an analysis of the impact that the Proposed Rule will have on competition.

If you have any questions, please contact me at 212-468-7560 or  
[cspringer@convergex.com](mailto:cspringer@convergex.com).

Respectfully submitted,



Christopher M. Springer  
Chief Financial Officer & Executive  
Managing Director

cc: The Honorable Mary Jo White, Chairman  
The Honorable Elissee B. Walter, Commissioner  
The Honorable Luis A. Aquilar, Commissioner  
The Honorable Troy A. Paredes, Commissioner  
The Honorable Daniel M. Gallagher, Commissioner