WILSON-DAVIS & CO., INC.

April 14, 2022

VIA EMAIL
rule-comments@sec.gov

Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

RE: File Number S7-05-22
Release Nos. 34-94196, IA-5957
Letter in Support of SEC Proposed Rule to Shorten the Securities Transaction Cycle and in Opposition of NSCC Proposal to Increase Excess Net Capital Requirements

Dear Secretary:

Wilson-Davis & Co., Inc. ("WDCO") submits these comments in support of the proposed rule (the "Proposed Rule") by the U.S. Securities and Exchange Commission (the "SEC") to shorten the standard settlement cycle (the "Cycle") from two business days after the trade date ("T+2") to one business day after the trade date ("T+1"). In particular, WDCO agrees with the SEC that a T+1 Cycle could reduce risk, improve capital efficiency, increase competition among clearing firms, and benefit businesses and investors.

However, WDCO opposes the National Securities Clearing Corporation's (the "NSCC") proposal (the "NSCC Proposal") to increase excess net capital ("ENC") requirements on its member firms because the NSCC Proposal will undermine the benefits of T+1 and uses a flawed method for calculating ENC.

Therefore, WDCO urges the SEC to implement the Proposed Rule but deny the NSCC Proposal, or at least delay the implementation of the NSCC's Proposal until the impacts of the Proposed Rule on the NSCC's actual risk exposure can be properly measured.

I. BACKGROUND OF THE NSCC PROPOSAL

The NSCC Proposal will increase member firms' ENC requirements by between 200% and 1,000%.[1] In WDCO's case, as a firm that clears for others, the increase would be from $1,000,000 to $10,000,000, since its "value-at-risk" ("VaR") tier exceeds $500,000.[2]

[1] NATIONAL SECURITIES CLEARING CORPORATION, Notice of Filing of Proposed Rule Change to Enhance Capital Requirements and Make Other Changes, Release No. 34-93856, File No. SR-NSCC-2021-016, at 17–18 (Dec. 22, 2021) [hereinafter "NSCC Proposal"].
[2] Id.

The NSCC Proposal will increase risk in financial markets, decrease capital efficiency, decrease competition among clearing firms, and injure businesses and investors. Furthermore, the NSCC Proposal violates various is unnecessary and discriminatory towards smaller firms.

Therefore, WDCO urges the SEC to consider the following ways in which the NSCC Proposal will undermine the SEC's Proposed Rule and harm U.S. financial markets and market participants.

II. THE PROPOSED RULE MAY HAVE MULTIPLE BENEFITS THAT WOULD BE UNDERMINED BY THE NSCC PROPOSAL

The many benefits that the Proposed Rule may have on the financial system and its participants are the reasons for which WDCO is both supportive of the Proposed Rule and opposed to the NSCC Proposal. Furthermore, the NSCC Proposal also violates the legal requirements relating to NSCC rules, which must be designed to remove impediments to and perfect the mechanism of a national clearance and settlement system, and to protect investors and the public interest.[3] Further, NSCC rules may not be unnecessary, cause an inappropriate burden on competition, or permit unfair discrimination.[4] In determining whether NSCC rules are necessary and in the public interest, the SEC is required to consider whether the rule will promote "efficiency, competition, and capital formation."[5] The NSCC Proposal would violate all of these requirements and, in doing so, undermine the Proposed Rule.

The Proposed Rule May Reduce Risk in U.S. Markets while the NSCC Proposal Will *Increase* Risk

As the SEC, industry members, investors, and the Depository Trust Clearing Corporation (the "DTCC") have stated, a T+1 Cycle would reduce risk in the U.S. settlement system.[6] Reduced risk benefits the entire U.S. financial system, including investors, clearing firms, and the NSCC. However, the NSCC Proposal's heightening of ENC requirements would increase risk in U.S. financial systems, thereby undermining a primary purpose of the Proposed Rule.

As noted by the SEC and Chairman Gensler, shortening the Cycle can reduce risks in our markets.[7] Likewise, as the SEC Staff stated in a report published in 2021 following the volatile trading of "meme" stocks in December 2020 and January 2021, "[o]ne method to mitigate the systemic risk posed…to the clearinghouse and other participants is to shorten the settlement cycle."[8] Additionally, DTCC has also stated

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[3] 15 U.S. Code § 78q–1(b)(3)(F).
[4] 15 U.S. Code § 78q–1(b)(3)(I), (F).
[5] 15 U.S. Code § 78c(f).
[6] See, e.g., SECURITIES & EXCHANGE COMMISSION, Shortening the Securities Transaction Cycle, File Number S7-05-22, Release Nos. 34-94196, IA-5957, at 9 (Feb. 9, 2021) [hereinafter "Proposed Rule"].
[7] Id. See also Chair Gary Gensler, Testimony Before the House Committee on Financial Services (May 6, 2021), available at https://www.sec.gov/news/testimony/gensler-testimony-20210505 [hereinafter "Gensler Testimony"].
[8] STAFF OF THE U.S. SECURITIES & EXCHANGE COMMISSION, Staff Report on Equity and Options Market Structure Conditions in Early 2021 (Oct. 14, 2021), at 44 [hereinafter "SEC Staff Report"].

that T+1 would lead to the "[r]eduction of risk, particularly during periods of high volume and volatility."[9] WDCO fully supports the Proposed Rule for the same reason: shortening the Cycle will reduce risk in the settlement of securities.

However, the risk in the settlement system will not fall if the SEC approves the NSCC Proposal because a higher ENC requirement will subject clearing firms to greater risk. The NSCC asserts that its enhanced ENC requirements will ensure that members have "sufficient capital to sustain unexpected and/or sustained increases" in margin requirements.[10] However, the NSCC's margin requirements–which are disconnected from brokers' transaction flow and the risk to which the NSCC is genuinely exposed–are often astronomical and must be met within hours of demand. Moreover, although NSCC claims theoretical price volatility for two days and holds member capital deposits for three days, transactions frequently settle on a T+1 basis, thereby eliminating NSCC's exposure after one day.

As demonstrated by the GameStop events in January 2021, firms (like Robinhood) may at time be more at risk from failing meet the margin requirements imposed by the NSCC than from any underlying transactional risk. In short, the NSCC's margin requirements can create the very problem they seek to mitigate. These flaws in the NSCC's margin requirements were identified by the SEC Staff as a causal factor in the Robinhood/GameStop saga:

> A number of clearing brokers experienced intraday margin calls from [NSCC]. In reaction, some broker-dealers decided to restrict trading in a limited number of individual stocks in a way that some investors may not have anticipated. This episode highlights the integral role clearing plays in risk management for equity trading, but **raises questions about the possible effects of acute margin calls** on more thinly-capitalized broker-dealers and other means of reducing their risks.[11]

Thus, at the heart of the instability surrounding the GameStop events was the strain of the NSCC's margin calls on member firms, rather than the ability of firms to cover the actual risk of the transactions entered into by their customers.

Despite the negative impact of its margin calls, the NSCC is now proposing up to a ten-fold increase in ENC requirements that are far above any underlying transactional risk. Thus, regardless of the potential benefits of T+1, the NSCC Proposal creates a real risk that small firms will be unable to meet the new ENC requirements. It will be particularly challenging for firms to meet the ENC requirements given that the Proposed Rule would not allow a firm to include the value of its Clearing Fund in calculating the firm's ENC.

[9] SIFMA, ICI, DTCC & DELOITTE & TOUCHE LLP, Accelerating the U.S. Securities Settlement Cycle to T+1, version 1.0, at 37 (Dec. 1, 2021), available at https://www.dtcc.com/-/media/Files/PDFs/T2/Accelerating-the-US-Securities-Settlement-Cycle-to-T1-December-1-2021.pdf [hereinafter "DTCC Report"].
[10] NSCC Proposal at 46.
[11] SEC Staff Report at 43–44 (emphasis added).

The Proposed Rule Will Benefit Investors while the NSCC Proposal Will *Harm* Investors

The Proposed Rule may benefit investors by reducing risk, shortening the time in which an investor's transaction will be completed, and providing greater clarity regarding the timeframes in which an investor can expect to provide or receive funds or securities.[12] However, the benefit of T+1 on investors will be undermined if investors are deterred from investing in securities because there are no longer any small firms to provide investors with their only means for exiting an investment.

Smaller firms like WDCO serve customers that invest in and provide direct financing to numerous innovative, startup, and early-stage development businesses that sell microcap securities via over-the-counter ("OTC") markets. The ability of investors to invest in such companies reflects the U.S. federal government's commitment to encouraging widespread participation in the nation's capital markets, including the microcap and OTC markets. Congressional committees and the SEC leadership have reiterated this investor-focused principle in the wake of the GameStop saga, condemning limitations on customers' ability to engage in certain trades.[13]

Major national stock exchange member firms, online discount firms, and clearing firms for exchange-traded securities do not serve the OTC markets. Rather, small firms like WDCO are the only remaining broker-dealers that fully service the critical microcap and OTC markets. The NSCC's Proposal directly opposes the central principle of open participation by crushing smaller firms that serve so many retail investors. If the only firms that service retail investors and main street businesses are unable to meet the NSCC's heightened ENC requirements, investors holding microcap stock will be unable to liquidate their investments. Therefore, the NSCC Proposal would harm investors–and thus, the wider financial markets–while also violating the NSCC's obligation to protect investors.

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[12] SECURITIES AND EXCHANGE COMMISSION INVESTOR ADVISORY COMMITTEE, Recommendation of the Investor Advisory Committee: Shortening the Trade Settlement Cycle in U.S. Financial Markets (February 12, 2015), available at Recommendation of the Investor Advisory Committee: Shortening the Trade Settlement Cycle in U.S. Financial Markets (February 12, 2015) (sec.gov).

[13] See, e.g., HOUSE OF REP. COMMITTEE ON FINANCIAL SERVICES, Virtual Hearing - Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide (Feb. 18, 2021), available at https://financialservices.house.gov/events/eventsingle.aspx?EventID=407107; HOUSE OF REP. COMMITTEE ON FINANCIAL SERVICES, Virtual Hearing - Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part II (Mar. 17, 2021), available at https://financialservices.house.gov/events/eventsingle.aspx?EventID=406268; HOUSE OF REP. COMMITTEE ON FINANCIAL SERVICES, Virtual Hearing - Game Stopped? Who Wins and Loses When Short Sellers, Social Media, and Retail Investors Collide, Part III (May 6, 2021), available at https://financialservices.house.gov/events/eventsingle.aspx?EventID=407748; SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, Who Wins on Wall Street? GameStop, Robinhood, and the State of Retail Investing (Mar. 9, 2021), available at https://www.banking.senate.gov/hearings/who-wins-on-wall-street-gamestop-robinhood-and-the-state-of-retail-investing; Gensler Testimony.

The Proposed Rule May Improve Capital Efficiency while the NSCC Proposal will *Decrease* Capital Efficiency

A T+1 Cycle could potentially improve the efficient deployment of capital by reducing the risk to which the NSCC is exposed. However, capital efficiency will not improve if the NSCC continues to increase its margin and ENC requirements.

The SEC states that "[h]olding liquid assets solely for the purpose of mitigating counterparty risk or liquidity needs that arise as part of the settlement process could represent an allocative inefficiency."[14] The SEC further notes that a shorter standard settlement cycle would "reduce the amount of time that collateral must be held for a given trade, thus freeing the collateral to be used elsewhere."[15] The reduction in collateral requirements, which may be up to $25 million per year, will improve capital efficiency and thereby "promote capital formation" and lead to "a larger amount of financial activity" in U.S. securities markets.[16] Chairman Gensler has also previously noted that "shortening the standard settlement cycle could reduce costs…in our markets," while DTCC has stated that T+1 will lead to a reduction in liquidity and margin requirements and "allow broker-dealers to….better utilize their available capital." [17]

WDCO agrees that T+1 and the removal of unnecessary costs on market participants could improve capital efficiency, which is a principle that underpins the U.S. economy. However, the efficiency benefits of lower margin requirements will be undermined if the NSCC increases its capital requirements and thereby reduces the amount of capital that firms can allocate to financial activity.

In practice, the NSCC's ENC requirements will have real-world impacts on the businesses that form the backbone of the U.S. economy. Microcap and OTC markets represent the core of the U.S. economy and jobs, allowing for the sale and purchase of twice the number of companies as those listed on national exchanges.[18] The aggregate value of OTCQX, OTCQB, and Pink securities was approximately $375.2 billion in 2018, and WDCO alone facilitates tens of millions of dollars of capital liquidity for small business

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[14] Proposed Rule at 170.
[15] Id. at 196.
[16] Id. at 195–196. The $25 million estimate was provided by the Boston Consulting Group ("BCG") but cited by the SEC. See id. at 175, 197–198.
[17] Gensler Testimony; DTCC REPORT at 8–9, 37; see also DTCC CONNECTION STAFF, Evolution to an Accelerated Settlement Cycle (June 21, 2020), available at https://www.dtcc.com/dtcc-connection/articles/2021/june/21/evolution-to-an-accelerated-settlement-cycle (noting the impact of the T+0 on reduced settlement and margin requirements); MICHAEL C. BODSON (President & CEO of DTCC), Accelerating Settlement: Why T+1 is the Right Approach at this Time (Aug. 20, 2021), available at https://www.dtcc.com/dtcc-connection/articles/2021/august/20/accelerating-settlement-why-t1-settlement-is-right-approach-at-this-time. Notable, although DTCC suggests that a move to T+0 would impose a disproportionate burden on small to medium-sized firms because of their lower "financial and technical resources," it is not clear that DTCC consulted smaller firms on this alleged impact, and notably it is NSCC's unnecessary rule change that could jeopardize small firms by reducing the capital available to them.
[18] OTC MARKETS GROUP INC., OTC Markets Group Reports 2018 Trading Statistics and Highlights (Jan. 17, 2019), available at https://www.prnewswire.com/news-releases/otc-markets-group-reports-2018-trading-statistics-and-highlights-300779908.html.

each month through its deposit, clearance, and liquidation services.[19] The microcap market is critical for the creation, capitalization, and survival of small businesses, which are the lifeblood of the U.S. economy, create two-thirds of net new jobs, and drive U.S. innovation and competitiveness.[20]

However, despite the importance of small issuers in the wider national economy, these small companies are under the radar of more prominent financial institutions and investors. As smaller firms like WDCO have already been squeezed by heightened margin requirements, the NSCC Proposal will leave firms with even less capital to support the activity and liquidity in microcap and OTC markets. When investors become dissuaded from investing in smaller businesses because there are no small firms like WDCO to provide an exit for them, smaller issuers will be faced with additional barriers to raising money.

Thus, the NSCC Proposal would not only harm smaller firms like WDCO but the small businesses that would be unable to raise money, contribute to the U.S. economy, and provide jobs to fellow Americans. This would undermine the SEC's goal of improving efficiency while violating the NSCC's obligation to protect the public interest and create rules that promote "efficiency, competition, and capital formation."[21]

The Proposed Rule May Increase Competition while the NSCC Proposal Will *Decrease* Competition among Clearing Firms

The SEC states that a shorter Cycle would reduce clearing fund requirements, which in turn could encourage financial firms to become clearing members themselves.[22] This would promote competition among NSCC clearing members and improve liquidity in the markets, while also reflecting Congressional support for "fair competition among brokers and dealers."[23] WDCO appreciates the importance of competition in financial systems but notes that the bar for entry as a clearing firm is consistently raised beyond the reach of most prospective brokers. Thus, the NSCC Proposal would not only undermine the Proposed Rule but also violate the NSCC's obligation to not impose unnecessary or inappropriate burdens on competition.[24]

Over the past decade, the NSCC's increases in margin requirements have forced most smaller firms out of the industry, leaving WDCO and only a few other smaller corresponding clearing firms. The NSCC's Proposal to increase ENC requirements by up to 1,000% may push the barrier beyond the reach of any broker that is not already a major institutional firm. In fact, the NSCC even concedes that its proposal "could

[19] *Id.*
[20] U.S. SMALL BUSINESS ADMINISTRATION OFFICE OF ADVOCACY, Small Businesses Generate 44 Percent Of U.S. Economic Activity, Release No. 19-1 ADV (Jan. 30, 2019), available at https://advocacy.sba.gov/2019/01/30/small-businesses-generate-44-percent-of-u-s-economic-activity/.
[21] 15 U.S. Code § 78c(f).
[22] Proposed Rule at 194.
[23] S. Rep. 94-75, at 8 (1975) (stating that "it is in the public interest to assure….fair competition among brokers and dealers, among markets and between exchange markets and over-the-counter markets."); 15 U.S. Code § 78k–1 (stating the same).
[24] 15 U.S. Code § 78q–1(b)(3)(I), (F).

have an impact on competition because some BD members could be required to maintain capital in excess of their current capital levels."[25]

For competition to increase among clearing firms, there must be firms to compete. However, the NSCC Proposal follows a series of rules that have increased money demands by up to 2,500%, resulting in the closure of smaller firms.[26] Therefore, the NSCC Proposal's to increase the ENC bar to entry undermines the SEC's goal of improving competition among clearing firms.

III. THE NSCC PROPOSAL IS UNNECESSARY

Although the NSCC is prohibited from passing rules that are not necessary, the NSCC Proposal does not provide any valid, risk-based evidence or justification for its increase of ENC requirements.[27]

The NSCC is already protected from the risk of potential counterparty failure. The value-at-risk ("VaR") tiers that the NSCC proposes to use to calculate the enhanced capital requirements stem directly from the volatility component of the Required Fund Deposit.[28] The Required Fund Deposit applies to a member's trading activity and specifically weighs the NSCC's calculation of market volatility. Indeed, NSCC admits that the purported risk is already covered by margin charges.[29] Therefore, the NSCC would be double counting its asserted risk: first, at the transactional level where NSCC already collects margin that commonly exceeds the value of the position to be cleared, and second in the proposed enhancements to broker-dealer excess net capital requirements.

Furthermore, the NSCC does not provide any evidence that it is any less able to meet its obligations as a central counterparty or under the Exchange Act than it was in May 2021, when it increased the minimum Required Fund Deposit by 2,500% to "enhance NSCC's ability to….enhance its ability to maintain sufficient financial resources to cover its credit exposure to each Member fully with a high degree

[25] NSCC Proposal at 43.
[26] See, e.g., Notice of Filing of Partial Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendment No. 1, to Increase the National Securities Clearing Corporation's Minimum Required Fund Deposit, Release No. 34-92640, File No. SR-NSCC-2021-005 (Aug. 11, 2015) (increasing minimum Required Fund Deposit from $10,000 to $250,000); Notice of Filing of Proposed Rule Change to Enhance National Securities Clearing Corporation's Haircut-Based Volatility Charge Applicable to Illiquid Securities and UITs and Make Certain Other Changes to Procedure XV, Release No. 34-88474, File No. SR-NSCC-2020-003 (Mar. 31, 2020) (amending the Clearing Fund formula to account for "illiquid securities"); Notice of Filing of Proposed Rule Change to Increase the National Securities Clearing Corporation's Minimum Required Fund Deposit, Release No. 34-91809; File No. SR-NSCC-2021-005 (May 10, 2021) (increasing the minimum Required Fund Deposit by up to 2,500%) [hereinafter "May 2021 Proposal"].
[27] 15 U.S. Code § 78q–1(b)(3)(I).
[28] The NSCC Proposal only states that "The VaR Tier in the table . . . is based on the daily volatility component of a Member's Net Unsettled Positions calculated as of the start of each Business Day pursuant to Procedure XV of the Rules as part of the Member's daily Required Fund Deposit." NSCC Proposal at 19 (footnotes omitted).
[29] See NSCC Proposal at 46 (noting that ". . . NSCC does collect margin from its members to help address [trading activity and market volatility risk]").

of confidence."[30] The NSCC does not claim that its analysis in the May 2021 was incorrect or that any intervening circumstances have arisen that undermine its 99% confidence in its ability to meet its obligations.[31] By its own analysis and admission in May of 2021, the NSCC already has "sufficient financial resources to cover its credit exposure to participants fully with a high degree of confidence".[32]

Moreover, the NSCC is not currently, and has not been for a long time, exposed to any heightened risk that would justify the proposed increased capital requirements. The NSCC Proposal does not cite any instance in which any member, under the current membership capital requirements, lacked the capital to post the margin for a trade or any instance in which any lack of capital has created actual exposure to NSCC. Furthermore, although the Proposed Rule recognizes that the NSCC would be required to deliver securities in the event of a member default, the vast majority of trading is conducted on a long, not short, basis. Indeed, WDCO only engages in liquidating transactions in which it is long the stock. Since the Depository Trust Corporation holds most stock in street name on behalf of firms anyway, there is little risk that the NSCC will be unable to provide a buyer with a security owed to that buyer.

IV. THE NSCC PROPOSAL IS DISCRIMINATORY AND THE DTCC'S COMMENT LETTER REGARDING THE NSCC PROPOSAL IS FLAWED ON KEY MATTERS

The NSCC Proposal violates the NSCC's obligation to not permit unfair discrimination, and DTCC's comment letter of March 10, 2022, in support of the NSCC Proposal, is flawed on key matters.[33]

The NSCC Proposal is Discriminatory and DTCC's Arguments Claiming Otherwise are Inaccurate

DTCC claims that the NSCC Proposal cannot be discriminatory toward small firms because the ENC requirements would apply to "almost all members" and uses a "tiering system that considers the risk presented by the Member's activity, as determined by NSCC's VaR model and associated charges."[34] In addition, DTCC states that "only a few" BD Members currently fall short of the proposed requirement and that a compliance date of one year from approval of the NSCC Proposal would help such firms come into compliance before the compliance deadline.[35] Thus, according to DTCC, the argument of smaller firms that the NSCC Proposal would be discriminatory are "inaccurate or overstated."[36] DTCC's arguments are flawed and inaccurate.

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[30] May 2021 Proposal at 12–13.
[31] A "high degree of confidence" is a confidence level of at least 99%. See 17 C.F.R. § 240.17Ad-22(a)(13).
[32] May 2021 Proposal at 12, 16.
[33] 15 U.S. Code § 78q–1(b)(3)(I), (F).
[34] DEPOSITORY TRUST & CLEARING CORPORATION, Response Comment Letter to Proposed Rule Change SR-NSCC-2021-016, at 4–5 (Mar. 10, 2022). WDCO notes that DTCC states that the NSCC Proposal is not discriminatory towards "U.S. BD Members," even though WDCO's issue was specifically related to *small* brokerage firms.
[35] Id. at 5.
[36] Id. at 4–5.

First, although DTCC states that smaller firms with lower ENC present a greater relative risk to the NSCC, there is vast difference in *actual* risk between small and larger firms.[37] For example, a firm with ENC of $5 million poses significantly less actual risk to the NSCC compared to a firm with ENC of over $500 million. The severity of the impact on our financial system from a firm that fails to cover its daily trades would be determined by the *actual* VaR of a firm, not any relative risk posed by a firm. For example, it is unhelpful to assume that the impact that a small firm's collapse would have on U.S. financial markets would be the same as the impact from the collapse of a firm with ENC of over $500 million.

Second, the premise that the NSCC Proposal is not discriminatory because it uses a tiering system that considers the risk posed by various members is inaccurate. DTCC claims that the NSCC Proposal is "agnostic as to the size of the applicable Member" because it "would consider the risk exposure that the U.S. BD Member's activity presents to NSCC as part of the proposed tiering structure."[38] In reality, the NSCC Proposal provides only three tiers: VaR of less than $100,000; VaR of $100,000-500,000; and VaR of over $500,000.[39] NSCC gives no justification for what appear to be arbitrary tiers. Moreover, WDCO expects that firms with VaR of less than $500,000 are likely dormant firms that are seeking to maintain their membership with the NSCC but not consistently engaged in providing brokerage services. Therefore, the NSCC Proposal will really impose the top ENC requirement on almost all, if not all, functioning firms, even though the actual VaR of smaller firms is significantly less than that of larger firms. For example, WDCO undoubtedly poses lower actual risk to U.S. financial markets than billion-dollar investment banks, despite the fact that the NSCC Proposal would subject WDCO to the same ENC requirements as global institutions. As a result, only smaller firms will struggle to meet the new ENC requirements.

Third, the NSCC's compliance deadline of one year fails to account for industry and business realities. Smaller firms do not have limitless resources and will likely need to find outside investors to meet the 1,000% required increase in ENC. Finding outside investors and negotiating acceptable terms is a long process that frequently lasts more than one year. Moreover, even if outside investment is found, firms would need to undergo a detailed (and frequently very lengthy) application process to receive approval of the deal from the Financial Industry Regulatory Authority. Firms like WDCO are not "overstating" the problems posed by the NSCC Proposal when the one-year timeline does not account for the regulatory and business obstacles that firms would have to overcome to secure funds equal to ten times their current ENC.

WDCO urges the SEC to assess the NSCC's flawed method for calculating ENC requirements and the impact those requirements will have on smaller firms. Additionally, WDCO asks that the NSCC release (after redaction of firm names) the information regarding the impact of the requirements on small firms that it included in a confidential Exhibit 3 to the SEC.

[37] Id. at 2–3.
[38] Id. at 5.
[39] NSCC Proposal at 18.

The NSCC Proposal Does Not Account for Existing Protections against Legal, Operational, and Cyber Risks on which the DTCC Focuses

DTCC defends the NSCC Proposal by stating that the ENC requirements are designed to mitigate against the credit risk posed by a firm, including legal, operational, and cyber risks. For example, the DTCC points to a firm's inability to meet margin requirements due to a cyber-attack. However, applicable regulations already exist that account for these risks, and firms take burdensome steps and incur significant costs and expenses to ensure that they are protected against such risks. Furthermore, the impact of operational and cyber security risks increases as the size of a firm increases; a cyber-attack that prevents WDCO from operating will have less of an impact on the U.S. financial markets than a cyber-attack that prevents a multi-billion-dollar firm from operating. Again, though, the NSCC Proposal does not factor this difference into its ENC requirements.

DTCC Supports the NSCC Proposal by Highlighting its Inability to Unilaterally Move to a T+1 Cycle

DTCC states that the "NSCC cannot unilaterally shorten the settlement cycle" and that a shortened Cycle would not remove the need for the ENC requirements, even if it a shorter Cycle could reduce margin requirements. It is unclear why DTCC's inability to unilaterally shorten the Cycle makes the NSCC Proposal worth approving.

V. CONCLUSION

WDCO fully supports the SEC's Proposed Rule and the goals it seeks to achieve. However, WDCO urges the SEC to consider how these goals will be undermined if the NSCC moves forward with its unnecessary, harmful and discriminatory proposal to increase ENC requirements. Despite the NSCC failing to mention next- or same-day settlement in its 55-page NSCC Proposal, the Proposed Rule would provide a solution to the NSCC's risk exposure that is simpler, less risky, and less damaging to smaller firms, businesses and investors. Furthermore, the NSCC Proposal violates the NSCC's numerous statutory obligations, including its duty to not pass any rules that are unfairly discriminatory or that impose unnecessary burdens on competition, as well as its obligation to act in the interest of investors.

For the reasons provided in this comment letter, WDCO urges the SEC to approve the Proposed Rule but disapprove the NSCC Proposal. However, at a minimum, WDCO urges the SEC to delay approval of the NSCC Proposal until the impacts of T+1 on the NSCC's actual risk exposure can be properly measured, and to review the NSCC's methods for calculating both ENC and margin requirements.

Respectfully submitted,

WILSON-DAVIS & CO., INC.

Robert McBey
Chief Executive Officer