T 212 468 7500
800 828 5454
www.convergex.com

1633 Broadway, 48th Floor
New York, NY 10019

May 22, 2013

Via Electronic Mail

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

Re: **SR-NSCC-2013-802 and SR-NSCC-2013-02**

Ms. Murphy:

ConvergEx Execution Solutions LLC ("ConvergEx" or the "Firm")[1] appreciates this opportunity to supplement its May 1, 2013 comment letter regarding the above-referenced advance notice ("Advance Notice")[2] and companion proposed rule change filed by the NSCC (the "SLD Proposal" or the "Proposed Rule").[3] Regarding the Advance Notice, ConvergEx believes that the Securities and Exchange Commission (the "SEC" or the "Commission") must object to the Advance Notice because NSCC's filing fails to meet the requirements of rule 19b-4(n)(1) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). As discussed in greater detail below, the Advance Notice fails to describe the expected effects on risks to the NSCC and its participants, rendering the Advance Notice legally insufficient.

In the alternative, we ask that the SEC exercise its authority under Section 19(b)(2)(A)(i)(I) or (II)[4] of the Exchange Act and either disapprove the above-referenced

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[1] ConvergEx is a registered broker-dealer and member of the National Securities Clearing Corporation ("NSCC").

[2] Exchange Act Release No. 34-69451 (April 25, 2013); 78 FR 25496 (May 1, 2013) (SR-NSCC-2013-802).

[3] Exchange Act Release No. 34-69313 (April 4, 2013), 78 FR 21487 (April 10, 2013) (SR-NSCC-2013-02).

[4] See 15 USC § 78s(b)(2)(A)(i)(I) and (II).

proposed rule change or initiate proceedings to determine whether the Proposed Rule should be disapproved. As discussed below, the SLD Proposal is anticompetitive in that it will pose a disproportionate burden on NSCC member firms that are not affiliated with banking institutions ("Independent Members"). This burden on competition is not necessary or appropriate in furtherance of the purposes of the Exchange Act. Importantly, NSCC does not appear to have evaluated the burden on competition imposed by the SLD Proposal as drafted and has not examined the viability of other, less anticompetitive alternatives. Accordingly, the SLD Proposal is inconsistent with the requirements of the Exchange Act and must be disapproved.

We note that ConvergEx appreciates the importance of NSCC's critical role as a Central Counterparty ("CCP") and supports NSCC's goal in ensuring that it has access to sufficient capital in the event that its largest participant fails. We believe, however, that NSCC has not adequately considered the negative impact of the SLD Proposal will have on Independent Members and the resulting concentration of clearing services that will occur when many Independent Members are unable to make the required deposit. Further, the size of the deposit, along with the potential for bank-affiliated NSCC members to participate in a Credit Facility (defined below) to decrease the size of their required deposit or eliminate it entirely, 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 a detailed analysis of the Proposed Rule's impact on the market and on competition.

The SLD Proposal

The SLD Proposal reflects NSCC's attempt to satisfy the requirements of Rule 17Ad-22(b)(3) of the Exchange Act. Adopted 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) requires entities performing CCP services to maintain "sufficient financial resources to withstand, at a minimum, the default by the participant family to which [it] has the largest exposure in extreme but plausible market conditions...." Rule 17Ad-22(b)(3) does not require the NSCC to meet its obligations in the manner set forth in the Proposed Rule. The NSCC seeks to comply with Rule 17Ad-22(b)(3) by, among other things, imposing a requirement that the thirty (30) NSCC participants that generate the largest liquidity needs provide hundreds of millions of dollars in additional capital through a supplemental liquidity deposit. The required supplemental liquidity deposit is offset, however, to the extent that the member participates in a committed credit facility in favor of NSCC (the "Credit Facility").[5]

The Credit Facility is a critical component of the SLD Proposal. As indicated above, NSCC members can reduce or avoid entirely the supplemental liquidity deposit through participation in the Credit Facility. Members receive dollar-for-dollar credit against their required deposit to the extent that the member participates in the Credit Facility. Importantly, participation in the Credit Facility may not be available to all NSCC members. The terms of the

[5] 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.

Credit Facility are not finalized and have not been made broadly available to NSCC's membership for review and comment. It is our understanding, however, that participation in the Credit Facility may be limited to bank-affiliated members without regard for the capitalization or creditworthiness of any Independent Member.[6]

Finally, we also note that the term sheet for the Credit Facility requires NSCC members making commitments under the Credit Facility to also participate in a subfacility in The Depository Trust Company's favor. As far as we are aware, the proposed rule change for the subfacility has not yet been filed with the Commission. As a result, there are essential terms of participation in the Credit Facility that are not yet known to NSCC, NSCC members making commitments under the Credit Facility or the Commission. We respectfully suggest that consideration of the SLD Proposal be delayed until all Depository Trust & Clearing Corporation members know all of the essential terms of the Credit Facility, including any subfacility, and they have had a reasonable opportunity to review the terms and provide the Commission with meaningful comment.

The Advance Notice is Legally Insufficient

Rule 19b-4(n)(1) requires designated clearing agencies to provide an advance notice to the Commission for any proposed rule change that could have a material effect on risks presented by the clearing agency. The term "advance notice" is defined in rule 19b-4(a)(1) as "a notice required to be made by a designated clearing agency pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act."[7] Under Section 806(e)(1), an advance notice must describe "the nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market."[8] The advance notice must also describe "how the designated financial market utility plans to managed any identified risks."[9]

The NSCC's statement the regarding anticipated effect on management of risk in the SLD Proposal is insufficient. NSCC's statement is limited to a discussion of the risk that the SLD Proposal is designed to address, the risk that the NSCC would become insolvent as a result of the failure of a significant member. The statement relating to management of risk is limited to the following (capitalized terms used below and not defined herein are defined in the Advance Notice):

> As described above , NSCC believes that the proposed change to add a Supplemental Deposit , which NSCC believes is calculated so that NSCC has adequate liquidity resources to enable it to settle transactions during Regular Activity Periods and Options

[6] See SR-NSCC-2013-803 seeking SEC approval for the Credit Facility.

[7] See 17 CFR 240.19b-4(a)(1).

[8] See 12 USC § 5465(e)(1)(C).

[9] Id.

> Expiration Activity Periods when NSCC's liquidity need may increase, notwithstanding the default of the unaffiliated Member or Affiliated Family that would generate the largest aggregate liquidity need for NSCC over a four day settlement cycle in stressed market conditions, will enhance NSCC's ability to meet certain risk management standards, such as Rule 17Ad - 22(b)(3) and Principle 7 of the PMFI, described above.
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> By calculating unaffiliated Member's or Affiliated Family's Supplemental Deposit funding obligation in proportion to the liquidity needs that such entities present to NSCC, NSCC believe s that the proposed rule change will ensure that NSCC's Members fairly and equitably contribute to NSCC's liquidity resources for settlement, and also contribute to the goal of financial stability in the event of Member default.[10]

There is no evidence in its statement that the NSCC did anything to fulfill its statutory obligation to consider the effect that the SLD Proposal itself would have on risks to the NSCC, its participants or the market. It could not be the case that Congress intended a market participant that is required to file an advance notice to consider impact on risk management that the proposal is designed to address without ever considering what impact the proposal itself would have on risk management. That conclusion defies logic and yet, it appears that NSCC engaged in no such analysis. As far as ConvergEx is aware, NSCC did not make any attempt to reach out to its Independent Members to seek their input on the SLD Proposal prior to filing it with the Commission. Separately, Independent Members appear to have been shut out of the Credit Facility and presumably will be left to their own devices to attempt to fund the supplemental liquidity deposit on their own or be forced to give up their NSCC membership.

The SLD Proposal Will Increase Systemic Risk

Given the size of the deposits to be required, it is virtually certain that one result of the SLD Proposal will be that certain Independent Members have no choice but to forfeit their NSCC membership and make alternative clearing arrangements. To the extent that firms that are forced to give up their NSCC membership clear transactions for other broker-dealers, those broker-dealers will also have to find alternative clearing arrangements. As firms in the top thirty are forced to drop their memberships, other, presumably smaller, firms will replace them. It stands to reason that some of those firms will also be unable to meet the deposit requirement. In the end, the ultimate result of the SLD Proposal will be to limit membership in NSCC to larger bank-affiliated clearing firms that are able to utilize the Credit Facility to avoid making the supplemental liquidity deposit in cash. This concentration of NSCC clearing activity with a small number of very large clearing firms suppresses competition and innovation and increases overall systemic risk. Ironically, the very firms that the Credit Facility is designed to benefit are the firms that, by virtue of the businesses in which they are engaged, present the greatest risk of failure.

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[10] Exchange Act Release No. 34-69451, at pp. 13-14.

In addition, because the calculation regarding which firms are required to make supplemental liquidity deposits is based on gross settlement debits, the SLD Proposal vastly overstates the risk posed by agency-only broker-dealers that settle transactions on a delivery-versus-payment basis ("DVP"). DVP firms are inherently less risky than other firms. DVP firms do not engage in proprietary trading, do not make markets and do not depend on customer credit balances to fund margin-lending activities. This bias against DVP firms will act as a barrier to entry and serve to further concentrate risk with larger broker-dealers that are affiliated with banks. Clearly, there are other, less harmful ways for the NSCC to secure stand-by liquidity in the event that it was needed, but there is no evidence in the Advance Notice that the NSCC either identified the risk inherent in the SLD Proposal or that it considered less harmful alternatives.

The Analysis of the Burden on Competition in the SLD Proposal is Legally Insufficient

Rule filings submitted to the Commission must meet the requirements of Section 19 under the Exchange Act to be approved by the Commission. In particular, Section 19(b)(2)(C)(i) of the Exchange Act requires proposed rule changes to be consistent with "the requirements of this chapter and the rules and regulations issued under this chapter that are applicable to such organization."[11] Among the standards applicable to clearing agencies is Section 17A(b)(3)(I) of the Exchange Act, which requires 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."[12]

The NSCC's statement regarding the burden on competition posed by the SLD Proposal is a single, boilerplate paragraph that states, without any support at all, 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."[13] The NSCC goes on to state that it "believes that the proposed rule change contributes to the goal of financial stability in the event of Member default, rendering not unreasonable or inappropriate any burden on competition that the changes could be regarded as imposing."[14] Again, the NSCC relies upon stock language simply stating that the ends justify the means.

While ConvergEx agrees that the ends are reasonable, we strongly believe that the validity of the ends does not enable the NSCC to achieve those ends by any means. While we acknowledge that the Exchange Act generally, and, in particular, Section 17A(b)(3)(I) does not require the NSCC to use the *least* anticompetitive means when it submits a proposed rule to the Commission, it does require an actual analysis regarding whether any burden is posed by the proposed rule change. Where there is some burden imposed, self-regulatory organizations ("SROs") are clearly required to perform an analysis similar to a cost/benefit analysis to

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[11] See 15 USC § 78s(2)(C)(i).

[12] See 15 USC § 78q–1(b)(3)(I).

[13] Exchange Act Release No. 34-69313, at p. 13.

[14] Id.

determine whether the burden is necessary or appropriate in furtherance of the purposes of the Exchange Act. Totally unsupported summary statements regarding the burden on competition imposed by a proposed rule change cannot satisfy an SRO's obligations under Sections 17A and 19 of the Exchange Act.

The boilerplate language used by the NSCC in describing the burden on competition does not appear to satisfy the requirements of the instructions to Form 19b-4. Regarding the analysis of the burden on competition, the instructions to Form 19b-4 expressly require a statement that is "sufficiently detailed and specific to support a Commission finding that the proposed rule change does not impose any unnecessary or inappropriate burden on competition." The instructions also require an SRO to "specify the particular categories of person and kinds of businesses on which any burden will be imposed and the ways in which the proposed rule change will affect them." This standard was clearly not met in the SLD Proposal and, as a result, we do not believe that the Commission has a basis upon which it could make the findings regarding burden on competition required to approve the SLD Proposal.

The SLD Proposal Inappropriately Disadvantages Independent Members

As discussed above, as it is currently drafted, 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 Credit Facility. As far as we are aware, however, the Credit Facility is fully subscribed and access to the Credit Facility appears to have been 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 make a substantial cash deposit at 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 its deposit could 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.

The SLD Proposal will make it very difficult, if not impossible, for firms that are unable to participate in the Credit Facility to plan for their liquidity needs. This is particularly true for firms at or near the bottom of the top thirty and those that fall just outside of it. If the SLD Proposal is adopted as proposed, a member could find out at the end of any six-month period that it has just sixty days to deposit with NSCC an amount of cash that may be a multiple of its excess net capital and that must be left on deposit for 6 months or more. Additionally, even if a firm were to be able to somehow track its gross settlement debits such that it could have some degree of predictability regarding when it might be required to make a deposit, a single day of abnormally high trading volume could push a firm into the top thirty that did not anticipate being there. One logical solution would be for such firms to stop accepting customer orders during times of peak volume, further concentrating trading and clearing activity among the relatively few firms that can participate in the Credit Facility. Further, while we understand that discussions between NSCC and both FINRA and the SEC's Division of Trading and Markets are

ongoing, members do not yet know how these deposits will be treated from a net capital perspective, further complicating a member's ability to plan its liquidity needs. Members without access to the balance sheet of a banking institution cannot reasonably be expected to conduct their business in this manner and the Commission should not consider approving the SLD Proposal until these issues are resolved.

At a minimum, the SLD Proposal must be amended to provide any members that cannot make a required supplemental liquidity deposit sufficient time to surrender its membership without making any deposit. As the Commission is aware, sixty days is not a sufficient time period for a firm to negotiate a new clearing arrangement and transition to a new clearing platform.

The NSCC Has Not Considered Less Anticompetitive Alternatives

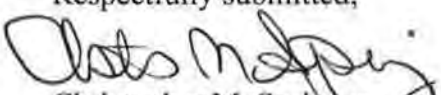
Given the unnecessary and inappropriate burden on competition imposed by the SLD Proposal, NSCC should be required to consider less anticompetitive alternatives to the rule as proposed. NSCC maintains existing, large, secured, revolving credit facilities to provide NSCC with liquidity in the event of a member's failure. NSCC members indirectly bear the cost of these facilities through NSCC membership fees. Despite being asked the question numerous times by various Independent Members, NSCC has never provided a cogent explanation of why NSCC would propose to establish a separate Supplemental Liquidity Deposit and related Credit Facility rather than simply increasing the size of existing liquidity facilities and passing through such costs in the form of increased fees to the same member firms that NSCC proposes to subject to the Proposed Rule. NSCC should provide a detailed explanation of the reason for this change, as this proposed alternative would similarly limit the costs of obtaining supplemental liquidity to the members whose gross settlement debits NSCC claims require such supplemental liquidity. Obtaining supplemental liquidity by increasing the size of existing credit facilities has many benefits over the Proposed Rule. Under the Proposed Rule, members subject to the supplemental liquidity deposit requirement must make a current cash deposit with NSCC, without regard to whether NSCC has any current need for the funds because it is pre-funded, unlike the Credit Facility. In addition, members subject to the Supplemental Liquidity Deposit do not receive any collateral that can be used by the members to finance the deposit. This is a serious flaw in the design of the Proposed Rule as it will require many members to borrow funds on an unsecured basis in order to provide liquidity that NSCC needs only on a revolving and secured basis, as demonstrated by NSCC's willingness to reduce a member's deposit requirement on a dollar-for-dollar basis for members participating in the credit facility, which is a revolving, secured facility. The NSCC has had such a facility in place for the last twelve years and has not, as far as we are aware, had any issue raising liquidity this way and NSCC would be able to more evenly spread the costs of the facility across its membership, avoiding the anticompetitive effect of the SLD Proposal.

Conclusion

For the reasons discussed above, we respectfully ask that the Commission either object to the Advance Notice or institute proceedings to determine whether the SLD Proposal should be disapproved.

If you have any questions, please contact me at 212-468-7560 or cspringer @convergex.com.

Respectfully submitted,



Christopher M. Springer
Chief Financial Officer and Executive Managing Director