

April 22, 2013

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

By Electronic Mail: rule-comments@sec.gov

Re: [File Number SR-NSCC-2013-02](#)

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 participant in the National Securities Clearing Corporation (“NSCC”), in response to the above-referenced rule proposal submitted by NSCC (the “Rule Proposal”) pursuant to Section 19(b) of the Exchange Act and Rule 19b-4 adopted thereunder and noticed in the Federal Register on April 10, 2013, at page 21487 (the “Notice”). This letter addresses deficiencies in the Rule Proposal, which we believe does not 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.

The Rule Proposal. The Rule 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....” The Rule Proposal purports to satisfy the requirements of Rule 17Ad-22(b)(3) by (i) identifying the NSCC participant family that has the largest default exposure to NSCC and the amount of that exposure, (ii) identifying the 30 NSCC participants or participant families that generate the largest liquidity needs in various circumstances (the “Supplemental Liquidity Providers”), (iii) imposing supplemental clearing

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 investment advisors through Schwab Advisor Services.

deposit requirements on the Supplemental Liquidity Providers in proportion to the liquidity risks they present and (iv) reducing the supplemental clearing deposit requirements for any Supplemental Liquidity Provider by the amount by which any of its eligible affiliates participates in a committed credit facility in favor of NSCC (the “Credit Facility”).

Requested Actions. We believe that the Rule Proposal does not satisfy the requirements of Rule and Form 19b-4 and has multiple deficiencies that preclude the submission of meaningful comment on the actions being proposed. As a result of these deficiencies, which are identified below, we believe the staff of the Division of Trading and Markets (the “Division”) should urge NSCC to (i) revise the Rule Proposal to address the deficiencies, (ii) circulate the revised Rule Proposal to NSCC members for comment and (iii) re-submit the Rule Proposal in a form that includes comments from NSCC’s members and otherwise complies with the objectives of Rule 19b-4. In addition, because of the complexity of the issues raised by the Rule Proposal, which we believe would become more apparent in a revised version, the staff of the Division should provide at least a 30-day comment period on the revised Rule Proposal.

Alternatively, if NSCC is unwilling to re-submit the Rule Proposal, we request that, in accordance with Section 806(e)(1)(A) of Dodd-Frank and Rule 19b-4(n) adopted thereunder and as contemplated by the Advance Notice portion of the Notice, the Commission treat the Rule Proposal as a proposed change to NSCC’s rules that could materially affect the nature or level of risks presented by NSCC.² We request also that, in reliance on the extended review periods afforded by Sections 806(e)(1)(A) and (H) of Dodd-Frank, the Commission (i) extend the comment period for the Rule Proposal by 39 days and (ii), on or before the expiration of the extended comment period, advise NSCC that because of the complexity of the issues raised by the Rule Proposal the period for the Commission’s review of the Rule Proposal will be extended for up to 60 days following the end of the extended comment period. We believe that these extensions would give Schwab and other NSCC participants adequate time to obtain information from NSCC and other sources upon which to provide meaningful comments on the Rule Proposal and the Commission adequate time to evaluate the issues raised by the comments.

Applicable Standard for Review. The “Regulatory Background” discussion at the outset of the Rule Proposal fails to reflect the requirement of the Exchange Act that the Rule Proposal must satisfy not only the requirements of Rule 17Ad-22(b)(3) but also the requirements of Section 19(b)(2) of the Exchange Act that any rule of a self-regulatory organization, such as NSCC, may not be approved by the Commission unless the Commission finds that the rule is consistent with the requirements of the Exchange Act. As to clearing agencies, these requirements are contained in Sections 17A(a)(1) and (2) of the Exchange Act. Accordingly, at the outset, the Rule Proposal does not inform potential commenters about the standards that it must satisfy, and this omission is not rectified later in the Rule Proposal.

² Under Section 806(e)(1)(A) of Dodd-Frank, which applies to NSCC as a “designated financial market utility” and to the Commission as NSCC’s “Supervisory Agency,” as those terms are defined in Dodd-Frank, the submission of the Advance Notice initiated a 60-day period for the Commission to review the Rule Proposal. Under Section 806(e)(1)(H) of Dodd-Frank, the Commission may extend the initial 60-day review period for an additional 60 days for a proposed rule change that raises novel or complex issues.

The particular standards contained in Sections 17A(a)(1) and (2) of the Exchange Act that relate 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 public interest, the protection of investors, the safeguarding of funds and securities and the maintenance of fair competition among brokers and dealers....”

The existence and applicability of these standards are not alluded to in the Rule Proposal or in the Notice, and the Rule Proposal’s satisfaction of the standards is not appropriately addressed in either document.

Both the Rule Proposal and the Notice state 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....” This standard is applicable pursuant to Section 17A(b)(3)(I) to the registration of clearing agencies. The relevant standard in a rule-making is stipulated in Section 19(b)(2) of the Exchange Act and incorporates the requirement of Section 17(A)(a)(2) of the Exchange Act that the Commission’s approval of a rule change have “...due regard for...the maintenance of competition among brokers and dealers....”

The Protection of Broker-Dealers. The Rule Proposal appears to be concerned solely with providing liquidity to NSCC and evidences little or no consideration of the impact of the proposal on “persons facilitating transactions by and acting on behalf of investors,” a category that includes NSCC broker-dealer participants, or on the financial system generally. In particular, what is the effect of the likely supplemental clearing deposits on the financial health of the Supplemental Liquidity Providers? Is there a difference in the ability to comply with (or survive implementation of) the Rule Proposal between Supplemental Liquidity Providers that have banking affiliates that are able to participate in the Credit Facility and those Supplemental Liquidity Providers that do not? Will recourse to the supplemental clearing fund in the event of a Supplemental Liquidity Provider’s default pull other Supplemental Liquidity Providers into a default vortex?

Information about the Credit Facility. Also, while the Credit Facility is referred to in the Rule Proposal, there is no adequate description of its operation, including what types of entitles are permitted to participate and whether or not the commitments of participants in the facility will be secured or unsecured, and, if unsecured, why reliance on unsecured commitments rather than on supplemental deposits would not present a significant risk to NSCC.

Entities Affected. The Rule Proposal does not explain how inclusion in the Supplemental Liquidity Providers category will be determined in sufficient detail for NSCC members to know whether and, if so, how they will be affected and what steps they might take to reduce any required amount of supplemental clearing deposits. Similarly, the Rule Proposal provides no guidance regarding the treatment of the supplemental clearing deposits for regulatory capital purposes.

The Maintenance of Fair Competition. The discussion of competition in the Rule Proposal deals solely with why the clearing deposit obligations of Supplemental Liquidity Providers are equitably calculated. There is no discussion of what, if any, other competition has been analyzed or of the effects of the Rule Proposal on competition between the Supplemental Liquidity Providers and the remaining NSCC members or between those Supplemental Liquidity Providers that have bank affiliates that are able to participate in the Credit Facility (assuming only banks can participate in the Credit Facility) and those of Supplemental Liquidity Providers that do not have bank affiliates that are able to participate in the Credit Facility or do not have any bank affiliates.

Failure to Obtain Comment from NSCC Members. Among the most disturbing aspects of the Rule Proposal is the statement that "...written comments have not yet been solicited or received..." For a Rule Proposal of this complexity and importance to not have the benefit of comment by NSCC participants before submission to the Commission pursuant to Rule 19b-4 is inappropriate, particularly when a decision at NSCC to take the approach followed in the Rule Proposal appears to have been made in late 2011.

For the foregoing reasons, we recommend that the staff of the Division request NSCC to re-submit the Rule Proposal, addressing the matters discussed above and provide the public a 30-day comment period to react to the re-submitted Rule Proposal. Alternatively, we request a 39-day extension of the comment period for the public (including NSCC members) to obtain from NSCC and others the information necessary for the public to provide meaningful comment on the Rule Proposal and a subsequent 60-day extension of the Commission's review period to facilitate a full exploration by the Commission of the issues the Rule Proposal and the comments raised.

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.

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