

September 11, 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”)<sup>1</sup>, 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”). The rule proposal was originally submitted to the Commission by NSCC on March 21, 2013 (as submitted initially, the “Original SLD Proposal”) and amended on April 19, 2013 and again on June 11, 2013 (as amended, the “Amended SLD Proposal”).

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<sup>1</sup> 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 SLD Proposal as subsequently amended was intended to augment NSCC's liquidity sources by imposing a number of supplemental liquidity deposit (SLD) requirements, including a "Regular Activity Liquidity Obligation" and a "Special Activity Liquidity Obligation." However, both Original SLD Proposal and the Amended SLD Proposal, as noted by virtually every comment letter filed with the Commission, have failed to satisfy the requirements to preserve competition among NSCC participants due to the anti-competitive effects of the SLD requirement's operation.

On August 20, 2013 NSCC filed a letter with the Commission (the "NSCC Rebuttal Letter") purporting to respond to comments filed with the Commission in connection with the proceedings instituted by the Commission on July 9, 2013, pursuant to Section 19(b)(2) of the Exchange Act (the "Proceedings") to approve or disapprove the above-referenced rule proposal. Schwab objects to this letter as an improper attempt to further amend the above-referenced rule proposal in circumvention of Section 19(b)(2) of the Exchange Act and the Commission's Rules. For the reasons described below, the NSCC Rebuttal Letter has effectively and significantly amended the rule proposal.

By its terms, the NSCC Rebuttal Letter amends the Amended SLD Proposal by suspending the Regular Activity Liquidity Obligation pending review of its operation by a newly-formed Clearing Agency Liquidity Council ("CALC") and until "a subsequent filing . . . considering the application of the Regular Activity Liquidity Obligation is approved by the Commission." In other words, NSCC is eliminating one of the centerpieces of the

Amended SLD Proposal and will re-submit a new rule proposal for Commission approval after an opportunity to consult with industry representatives.

Schwab has been forced to conclude that NSCC has pursued this course of action with respect to the rule proposal in order to maintain leverage over its members as a negotiating tactic with banks as it begins to work on next year's renewal of its committed credit facility (the "Credit Facility"). Schwab objects to NSCC's misuse of the Commission's procedures and to the Commission's acquiescence in the resulting circumvention of Section 19(b)(2) of the Exchange Act and the Commission's rules permitting NSCC to further amend its Original SLD Proposal without making an appropriate filing with the Commission. NSCC's new proposal should be submitted to the Commission as an amendment to the Amended SLD Proposal and should fully explain how the Amended SLD Proposal as further amended by the NSCC Rebuttal Letter (the "Further Amended SLD Proposal") would operate; in addition the Commission should establish a new comment period for affected NSCC participants to provide their views on the Further Amended SLD Proposal.

We recognize that, by postponing the implementation of a Regular Activity Liquidity Obligation, the changes in the Amended SLD Proposal made by the Further Amended SLD Proposal would reduce the immediate economic impact of the Amended SLD Proposal on affected NSCC participants. Also, by providing for the establishment of the CALC, the Further Amended SLD Proposal appears to include the type of focused outreach to NSCC participants that should have preceded NSCC's filing of the

Original SLD Proposal and which NSCC belatedly recognizes needs to occur before the Further Amended SLD Proposal, or something like it, is implemented.<sup>2</sup> Nevertheless, the fundamental deficiencies in the Amended SLD Proposal persist in the Further Amended SLD Proposal and should be addressed by NSCC in the context of the changes proposed by the Further Amended SLD Proposal and exposed to comment from NSCC participants and others before any version of a supplemental liquidity deposit requirement is approved by the Commission.

In the absence of the Commission's treatment of the Further Amended SLD Proposal as an amendment to the Amended SLD Proposal, Schwab believes that the proposed provisions for supplemental liquidity deposits should be disapproved. As set forth in our previous comments, whether as the Amended SLD Proposal or as the Further Amended SLD Proposal, what the Commission is being asked to approve fails to satisfy the requirements to preserve competition among NSCC participants due to the anti-competitive effects of (i) permitting NSCC participants with affiliated banks to treat the bank's participation in NSCC's Credit Facility as an offset of the participant's obligation to make special liquidity deposits and (ii) imposing the special liquidity deposit requirement only on the 30 NSCC participants that have the greatest special liquidity requirements. Also, because banks that participate in the Credit Facility will not be required to collateralize their obligations to NSCC, the effect of the dollar-for-dollar

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<sup>2</sup> There is a certain perverse irony to NSCC's convening the CALC to provide input on the Regular Activity Liquidity Obligation. NSCC has steadfastly maintained since it filed the Original SLD Proposal that the rule proposal is a product of substantial industry input, though only one commenter has stepped forward in support of the Original Rule Proposed or the Amended Rule Proposal. (See letter dated June 26, 2013 from Scott C. Goebel, Deputy General Counsel, Fidelity Investment). Yet now it claims that it cannot proceed without obtaining input through the CALC.

offset permitted to an NSCC participant with an affiliated bank, or that has been able to buy the agreement of an unaffiliated bank to be a “Designated Lender” of the NSCC participant, against the clearing fund cash deposit that the NSCC participant would otherwise be required to make will be to diminish the liquidity of the clearing fund and potentially increase systemic risk.

If the Amended SLD Proposal is not re-proposed as the Further Amended SLD Proposal, the status of the following matters will continue to be unclear and potentially inconsistent with the findings the Commission is obligated to make if the Further Amended SLD Proposal is to be approved: (i) NSCC has not completed consideration of 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 has not completed working with the Commission’s staff 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) 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 participant to participate in the Credit Facility; (v) NSCC has not obtained the Commission’s views on the treatment of NSCC participants’ supplemental clearing deposits under the Commission’s net capital rules; (vi) NSCC has not considered the effects on NSCC participants of requirements that may be imposed by other registered clearing agencies

that are subject to Rule 17Ad-22(b)(3) adopted by the Commission pursuant to the Exchange Act.

A proposed rule that is anti-competitive and contains significant elements of systemic risk is not purged of those defects merely by forming a committee and restricting the scope of the proposed rule's application. Had the Further Amended SLD Proposal been presented initially, or even at the time of the June 11, 2013 amendment that produced the Amended SLD Proposal, the Further Amended SLD Proposal would have required disapproval by the Commission for the same reasons that the Original SLD Proposal, the Amended SLD Proposal and, now, the Further Amended SLD Proposal require disapproval.

As stated in our earlier comments, 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 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 the costs of other alternatives. Unfortunately, the Amended SLD Proposal did not provide an alternative that addressed our concerns, and the NSCC Rebuttal Letter neither alleviates them nor, in our view, provides a sufficient basis under the Exchange Act for the Commission to approve any of the supplemental liquidity deposit requirements discussed in the Amended SLD Proposal or the Further Amended SLD Proposal.

We believe it is important that the Commission receive and consider this comment and respectfully request that it be included in the record of the Proceedings. If you have any questions, please do not hesitate to contact me at 415-667-0958 or [peter.morgan@schwab.com](mailto:peter.morgan@schwab.com).

Very truly yours,

A handwritten signature in black ink that reads "Peter J. Morgan III". The signature is written in a cursive, flowing style with a prominent "P" and "M".

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

cc: The Honorable Mary Jo White, Chair  
The Honorable Luis A. Aguilar, Commissioner  
The Honorable Daniel M. Gallagher, Commissioner  
The Honorable Kara M. Stein, Commissioner  
The Honorable Michael Piwowar, Commissioner