

April 25, 2013

**Via Electronic Mail**

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

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

Ms. Murphy:

We write on behalf of our client, ITG Inc. ("ITG"), to ask that the Securities and Exchange Commission (the "SEC" or the "Commission") exercise its authority under Section 19(b)(2)(A)(i)(I) or (II)<sup>1</sup> of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and either disapprove the above-referenced proposed rule change (the "SLD Proposal" or the "Proposed Rule") or initiate proceedings to determine whether the Proposed Rule should be disapproved.

In the alternative, we ask that the Commission exercise its authority under Section 19(b)(2)(A)(ii)(I) of Exchange Act<sup>2</sup> and extend by forty-five days the date by which the SEC must take action on the SLD Proposal.<sup>3</sup> By copy of this letter, and in the event that the Commission does not extend its time to act on the SLD Proposal, we ask that the National Securities Clearing Corporation ("NSCC") voluntarily extend by forty-five days the time period

---

<sup>1</sup> See 15 USC § 78s(b)(2)(A)(i)(I) and (II).

<sup>2</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>3</sup> Securities Exchange Act Release No. 34-69313 (April 4, 2013), 78 FR 21487 (April 10, 2013) (SR-NSCC-2013-02). We note that the Advance Notice required under Section 806(e)(1)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") has not yet been published for public comment.

April 25, 2013

Page 2

by which the Commission must act on the SLD Proposal.<sup>4</sup> We believe that additional time is necessary to enable interested persons to adequately evaluate the potential impact of the Proposed Rule and provide the Commission with meaningful comment.

### The SLD Proposal

The SLD Proposal is submitted by the NSCC in an effort to comply with Rule 17Ad-22(b)(3) of the Exchange Act. Rule 17Ad-22(b)(3), which was adopted pursuant to Section 805 of Dodd-Frank, 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. Rule 17Ad-22(b)(3) does not prescribe the means by which a CCP must maintain sufficient financial resources. 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 what could be a massive supplemental liquidity deposit.

The SLD Proposal has two primary components, (1) the requirement that certain firms provide supplemental liquidity deposits in cash, and (2) a provision whereby certain NSCC member firms (“Members”) may avoid or reduce such deposits by contributing to a committed credit facility among NSCC, the Depository Trust Company (DTC), the lender parties thereto (“Lenders”), and JPMorgan Chase Bank, N.A. as administrative agent (the “Credit Facility”).<sup>5</sup>

### The Proposed Rule is Deficient with Respect to its Assessment of Burdens on Competition

Section 19(b)(2)(C)(i) of the Exchange Act requires that a proposed rule change of a self-regulatory organization (“SRO”) be consistent with “the requirements of this chapter and the rules and regulations issued under this chapter that are applicable to such organization.” Among the applicable standards of the Exchange Act is Section 17A(b)(3)(I), 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.”

In its statement regarding the Proposed Rule’s burden on competition, NSCC provides nothing more than boilerplate language regarding the burden on competition. Instead of

---

<sup>4</sup> Pursuant to Section 19(b)(2)(A)(ii)(II) of the Exchange Act, a self-regulatory organization that filed a proposed rule change may voluntarily extend the deadline for Commission action by up to forty-five days. See 15 USC § 78s(b)(2)(A)(ii)(II).

<sup>5</sup> See SR-NSCC-2013-803 seeking SEC approval for the Credit Facility.

April 25, 2013

Page 3

discussing the Proposed Rule's burden on competition, NSCC discusses the perceived benefits of the Proposed Rule. Specifically, NSCC states that the Proposed Rule will "ensure that NSCC's Members fairly and equitably contribute to NSCC's liquidity resources for settlement" and that it will "contribute to the goal of financial stability in the event of Member default." NSCC merely asserts 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."

In addition to the express statutory standards, the instructions to Form 19b-4 require SROs to provide detailed responses regarding impact on competition and provides that "[t]he statement concerning burdens on competition should be 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 further directed that NSCC "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."

NSCC provided no such detail. Rather, it merely alleges that any burden on competition will not be unreasonable or inappropriate. NSCC has not furnished any evidence that it seriously considered the potential impact on competition. Notably, NSCC did not even informally consult with ITG, or, upon information and belief, any other Independent Members (as defined below) prior to submitting the SLD Proposal to the Commission. Among other things, NSCC does not appear to have considered the impact on competition if certain of NSCC's thirty (30) largest members are unable to make the supplemental liquidity deposit and are forced to surrender their NSCC membership.

The size and scope of the supplemental liquidity deposit is highly likely to create liquidity concentration effects by pushing smaller self-clearing Members either out of business or into correspondent clearing relationships with a very small number of large financial institutions. NSCC does not address the likely effects on competition of Members jostling for position within or around the top thirty (30) to avoid or reduce their depository requirements and whether attendant trading behaviors will have anti-competitive effects in the marketplace. NSCC also fails to account for its differential treatment of Independent Members vis-à-vis the Credit Facility (see discussion below). In sum, the NSCC's totally unsupported assertion, in the absence of any evidence that the NSCC has actually considered the Proposed Rule's potential impact on competition, is insufficient and cannot constitute the basis upon which the Commission determines to approve the Proposed Rule.

#### The Credit Facility

As discussed above, the Credit Facility is an important part of the SLD Proposal. However, the Proposed Rule is deficient both in form and substance with respect to how the Credit Facility interacts with the supplemental depository requirement. First, the terms of the

April 25, 2013

Page 4

Credit Facility are confidential to the public and have not been made available to NSCC Members who are not potential Lenders thereunder. This deprives interested parties from having access to a critical element of the SLD Proposal. The Commission should require that the terms of the Credit Facility are finalized and made public before the Commission takes any action on the SLD Proposal. We further request that interested parties receive additional time to comment following the date upon which this information is made public.

Second, NSCC has failed to address the competitive and other affects of establishing a nexus between a regulatory supplemental liquidity deposit requirement and a commercial lending agreement that will necessarily discriminate against Members who do not have an affiliated banking institution ("Independent Members"). Under the Proposed Rule, Members that provide commitments as Lenders under the Credit Facility receive dollar-for-dollar credit for those commitments against their required supplemental deposit. However, access to the Credit Facility may be limited—either by the terms of the Credit Facility itself (whether currently or in the future) or for practical reasons—to Members that are affiliated with banking institutions. Independent Members may be required to identify alternative forms of financing to meet their supplemental deposit requirement and/or, if possible, participate in the Credit Facility. Furthermore, even if Independent Members are able to identify such alternatives, it is unclear whether the SLD Proposal would allow Independent Members to receive a credit against their supplemental depository requirements should they exercise such alternatives. In fact, the Proposed Rule as written would not allow any Member to receive credit for commitments made as a Lender at any time following the proposed effective date of the Credit Facility, which is May 14, 2013.

#### Additional Time is Required to Evaluate the SLD Proposal

We believe that the SLD Proposal will have a profound impact on Members and, as a result, the securities markets at large. Interested parties have not had sufficient time to adequately evaluate the potential impact of the SLD Proposal or to provide NSCC or the Commission with suitable alternatives. Indeed, in addition to the regulatory deficiencies cited above, affected firms have little or no clarity about the likely size of deposits that may be required, having received numerous and conflicting indications from NSCC.

Among other issues, funds deposited pursuant to the Proposed Rule may not be withdrawn for extended periods of time—in some cases for six (6) months or longer. Member firms have not been given adequate time to evaluate the potential impact to regulatory capital of the SLD Proposal, including financing arrangements in the event that the deposited funds are not treated as allowable assets for regulatory capital purposes. Furthermore, NSCC has not made any comment or provided any guidance to FINRA or other interested parties as to how such supplemental deposits should be viewed for these purposes.

April 25, 2013

Page 5

At a minimum, Member firms will require additional time to ascertain and establish a source of depository funds. Given the potential size of the required deposits, some firms may be forced to surrender their NSCC membership and make alternate arrangements for clearing. NSCC has made no provision in the SLD Proposal for an orderly transition into the proposed supplemental depository framework or an orderly transition out of NSCC membership, should a Member decide that this is the only feasible course of action. Indeed, it appears from the SLD Proposal that NSCC could make the first massive depository call within ten (10) days of the Commission approving the rule,<sup>6</sup> which could cause chaos both for the Members themselves and other institutions—buy-side and sell-side—that depend on such Members for trading and clearing services.

Given the potential impact of the SLD Proposal, in addition to the requests for extensions set forth above, we also ask that the Commission require NSCC to consider less disruptive alternatives to the Proposed Rule.

ITG intends to submit a substantive comment letter on the SLD Proposal in which it will discuss in greater detail the deficiencies noted above, as well as propose alternative approaches to address NSCC's perceived need for additional liquidity. In the interim, ITG would welcome the opportunity to meet with members of the Commission's staff and/or the NSCC to discuss the SLD Proposal.

If you have any questions, please call me at (212) 508-6142, or my colleague, David Sieradzki, at (202) 828-5826.

Sincerely,



Julian Rainero  
Bracewell & Giuliani LLP

cc: The Honorable Mary Jo White, Chairman  
The Honorable Elisse B. Walter, Commissioner  
The Honorable Luis A. Aguilar, Commissioner  
The Honorable Troy A. Paredes, Commissioner

---

<sup>6</sup> SR-NSCC-2013-02 provides that "Members will be provided not less than ten (10) days' notice of the first date on which Supplemental Deposits will be payable.

April 25, 2013

Page 6

The Honorable Daniel M. Gallagher, Commissioner

Robert Druskin, Executive Chairman, DTCC  
Michael C. Bodson, Board Member, DTCC  
Robert L.D. Colby, Board Member, DTCC  
Paul H. Compton, Board Member, DTCC  
Christopher Concannon, Board Member, DTCC  
David C. Crawford, Board Member, DTCC  
Stephen C. Daffron, Board Member, DTCC  
Suni P. Harford, Board Member, DTCC  
Darryll Hendricks, Board Member, DTCC  
Jonathan W. Hitchen, Board Member, DTCC  
Lori Hricik, Board Member, DTCC  
Mark D. Linsz, Board Member, DTCC  
Cynthia Meyn, Board Member, DTCC  
John C. Parker, Board Member, DTCC  
Louis G. Pastina, Board Member, DTCC  
Derek A. Ross, Board Member, DTCC  
Brian T. Shea, Board Member, DTCC  
Gary H. Stern, Board Member, DTCC  
Robin A. Vince, Board Member, DTCC