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May 1, 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")[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 member of 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")[2].

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[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 advisors through Schwab Advisor Services.

[2] On April 25, 2013, in Release Number 34-69451; File Number SR-NSCC-2013-802 (the "April 25th Release") the Commission requested comments on NSCC's submission of an advance notice under Section 806(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, P.L. 111-203 (July 21, 2010) ("Dodd-Frank") with respect to the Rule Proposal (the "Advance Notice"). The Advance Notice appears to have been submitted on March 21, 2013 as part of NSCC's Rule 19b-4 submission for the Rule Proposal. The Rule 19b-4 submission for the Rule Proposal was published in the Federal Register

While we believe NSCC should have the resources it needs to be a source of systemic strength, for the reasons set forth below, we believe that the Commission should disapprove the Rule Proposal pursuant to Section 19(b)(2)(A)(i)(I) of the Exchange Act.

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on April 10, 2013 without any reference to the Advance notice, and, today, the Advance Notice was published separately in the Federal Register.

In Release 34-67286, published in the Federal Register on July 13, 2012 at pages 41602 et seq (the "July 13, 2012 Release") the Commission adopted amendments to Rule 19b-4 to address, among other matters, the advance notice requirements contained in Section 806(e) of Dodd-Frank. In that Release, the Commission noted, in Section II F., at page 41626, that the requirements of Section 19 of the Exchange Act and Section 806(e) of Dodd-Frank were different and that the "…filing requirements of…Section 806(e) and Exchange Act Section 19(b) are distinct from each other subject to different statutory standard for Commission review...." The Commission further stated that when a clearing agency submits a rule filing for more than one purpose "…the Commission will endeavor to evaluate such filings in tandem as part of a parallel process…." The Commission added, at page 41626, "[H]owever, each of the…processes will remain distinct from the other processes. Each proposed rule change…and Advance Notice will be reviewed and evaluated independently by the Commission in accordance with the applicable statute and regulatory authority…."

Based on the Commission's statements in the July 13, 2012 Release, any comment period triggered by the April 25 Release, which relates solely to Section 806(e) of Dodd-Frank, should not affect the comment period for the April 10, 2013 Release, which relates solely to NSCC's filing under Section 19b of the Exchange Act. Today, however, one of our representatives was informed by an Assistant Director in the Commission's Division of Trading and Markets that the comment period provided for in the April 25 Release could be used as an extension of the comment period applicable to the April 10, 2013 Release.

Due to the lack of clarity about whether the Commission has, in effect, extended the period for comment under the April 10, 2013 Release, we are submitting this comment today, within the original comment period provided in the April 10, 2013 Release, despite the insufficiencies of the Rule Proposal contained in that Release.

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…."

Under the Rule Proposal, NSCC would satisfy the requirements of Rule 17Ad-22(b)(3) by adding a supplemental liquidity deposit requirement to NSCC's rules (the "SLDR"). The SLDR would be implemented by (i) identifying the NSCC member or family of affiliated members ("Affiliated Family") whose default would generate the largest aggregate payment obligations to NSCC in stressed conditions and determining the amount of that payment obligation, (ii) identifying the 30 NSCC members and Affiliated Families that generate the largest liquidity needs (the "Supplemental Liquidity Providers") in each of regular settlement cycles and options expiration settlement cycles, (iii) imposing supplemental clearing deposit requirements on each group of Supplemental Liquidity Providers in proportion to the liquidity risks they present in each type of settlement cycle and (iv) reducing the supplemental clearing deposit requirements for any Supplemental Liquidity Provider by the amount by which any of its

affiliates participates in a committed credit facility in favor of NSCC (the "Credit Facility").

We have been constrained in our ability to provide meaningful comment on the Rule Proposal by its deficiencies, which we drew to the attention of the Commission in a letter submitted on April 22, 2013. As a result of those deficiencies, we have based our comments on one or more of the following assumptions regarding the Rule Proposal: (i) NSCC did not consider 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 did not consider working with the Commission 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) members and Affiliated Families will not be able to determine whether or why they may be included in one of the groups of Supplemental Liquidity Providers, as defined below; (v) members and Affiliated Families will not be able to determine the amount of their supplemental clearing deposit requirements but can expect their supplemental clearing deposit requirements to be an additional two to three times their current clearing deposit requirements; (vi) 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, on a decision by a bank affiliated with an NSCC member or Affiliated Family to participate in the Credit Facility; (vii) NSCC has not obtained the Commission's views on the treatment of members' and

Affiliated Families' supplemental clearing deposits under the Commission's net capital rules; (viii) NSCC has not considered the effects on members and Affiliated Families of requirements that may be imposed by other registered clearing agencies that are subject to Rule 17Ad-22(b)(3); and (ix) in determining the NSCC members and Affiliated Families whose default would generate the largest payment obligations to NSCC, NSCC has not included payment obligations of those entities to NSCC resulting from NSCC's interfaces with other clearing agencies.

Compliance with the Requirements of Section 19(b)(1) of the Act.

The Rule Proposal does not satisfy the requirements of Section 19(b)(1) of the Exchange Act. Under Section 19(b)(1) the Rule Proposal is required to comply with the Commission's rules adopted pursuant to that Section. Those rules, Rule 19b-4 and Form 19b-4, require that a rule proposal 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 does neither.

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. While NSCC must comply with the requirements of Rule 17Ad-22(b)(3) regarding the level of financial resources NSCC maintains, under Section 19(b)(2) of the Exchange Act the Commission may not approve a rule of a self-regulatory organization unless the

Commission finds that the rule is consistent with the requirements of the Exchange Act. As to clearing agencies, those requirements are contained in Sections 17A(a)(1) and (2) of the Exchange Act. The particular standards contained in Sections 17A(a)(1) and (2) of the Exchange Act that are most pertinent to NSCC and the Rule Proposal are:

> "…increasing the protection of investors and persons facilitating transactions by and acting on behalf of investors…" and
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> "…having due regard for … the protection of investors, the safeguarding of funds and securities and the maintenance of fair competition among brokers and dealers, clearing agencies…."

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

Both the Rule Proposal and the Notice allude to competition by stating 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…." However, this standard is applicable to the registration of clearing agencies and not to approvals of clearing agency rules by the Commission.[3] The applicable standard requires the Commission's approval of a rule change to have "…due regard for…the maintenance of competition among brokers and dealers…."[4] Maintaining "fair competition among brokers and dealers" is a qualitatively different standard from "not imposing any burden

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[3] *See* Section 17A(b)(3)(I) of the Exchange Act.

[4] *See* Section 19(b)(2) and Section 17A(a)(2) of the Exchange Act.

on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act."

By failing to correctly identify or clearly articulate the applicable standards for review or explain how the SLDR would comport with those standards, the Rule Proposal does not comply with the requirements of Section 19(b)(1) of the Exchange Act and of Rule and Form 19b-4 and should be disapproved for that reason alone.

Increasing the Protection of Investors and Persons Facilitating Transactions on Behalf of Investors.

We have assumed that one of the principal purposes of NSCC is to protect its members, and through its members investors, against the risk of default by a member. To that end, Sections 17(A)(a)(1) and (2) of the Exchange Act state that a purpose of regulating clearing agencies is to increase the protection of investors and persons facilitating transactions by and acting on behalf of investors. By not addressing the risks that the Rule Proposal poses for NSCC's members and for clearing agencies, the Rule Proposal fails to satisfy the requirement of protecting investors and persons facilitating transactions on behalf of investors, instead focusing exclusively on providing liquidity to NSCC.

Lack of Predictability. The Rule Proposal explains in general terms how the two member and Affiliated Family universes of Supplemental Liquidity Providers will be determined and at what intervals the determinations would be made. The Rule

Proposal does not, however, describe the computational process in sufficient detail to enable a member to measure its own aggregate liquidity obligation or identify the variables that could be changed to reduce the amount of the member's liquidity obligation. Additionally, there is no method, short of inquiring of NSCC, for a member or Affiliated Family to determine whether it is in one or both of the Supplemental Liquidity Provider groups.

A member that is not within one of the two groups at a particular time but is thrust into the Supplemental Liquidity Provider category at one of the six-month intervals (which could occur as a result of changes in the businesses of existing Supplemental Liquidity Providers), may be confronted with having to quickly make difficult decisions about obtaining funding for a supplemental deposit, changing its activities or exiting the self-clearing business. These are decisions that require advance planning and typically will involve interaction with third parties such as investors and banks.

The Rule Proposal should include enough detail about NSCC's computations to enable a member to perform them and a mechanism for a member to learn well in advance of any six-month computation event where the member will be in the liquidity obligation hierarchy. Absent these features, the SLDR will be a potentially disruptive source of uncertainty and an impediment to business and financial planning by members and Affiliated Families.

Regulatory Capital Treatment. The Rule Proposal provides no information to enable a commenter to estimate the probable size of the supplemental liquidity deposit an NSCC member or Affiliated Family would be required to make under the SLDR. It appears likely, however, that our required supplemental liquidity deposit will be two to three times the size of our existing clearing deposit. An increase of that magnitude would be significant for many clearing brokers and could consume a significant portion of their regulatory capital. Currently, clearing deposits at NSCC are treated as broker and dealer assets under the Commission's net capital rule. If, as appears to be the case, the SLDR requirements are to be substantial, NSCC should obtain assurances from the Commission that the supplemental clearing deposits will receive the same treatment as current clearing deposits. If not, the likely contractions in the universe of self-clearing firms that the SLDR can be expected to cause, which are discussed in more detail below, will be accelerated.

Parity of Treatment. The Rule Proposal envisions disparate treatment of NSCC members and Affiliated Families. Those members and Affiliated Families that are advised by NSCC that their activities will put them in one or both of the two groups of 30 will be exposed to the risk of NSCC's activities at an amount that is two or three times greater than the amount to which members and Affiliated Families that are not included in the two groups are exposed. Putting aside the inability of NSCC members or others to judge whether the standards NSCC intends to use in determining Supplemental Liquidity Providers are fair or reasonable, there is no apparent justification for the disparate treatment incorporated in the SLDR.

We believe NSCC should have the resources it needs to be a source of systemic strength. We believe also that those resources should not be extracted from the two groups of 30 identified in the Rule Proposal. Both the burden of increasing the resources available to NSCC and the exposure for a member's default beyond the member's own assets should be shared equitably among all NSCC members and Affiliated Families. In addition, neither the cost associated with strengthening NSCC nor the exposure to a default should be affected by whether a member or Affiliated Family has an affiliated bank willing and able to participate in the Credit Facility.

Types of Clearing Deposits. The Rule Proposal contemplates an SLDR under which supplemental liquidity deposits would be made in cash. We believe that any supplemental liquidity requirement should permit alternative arrangements so that the impact on members and Affiliated Families will be more manageable. In particular, if a supplemental liquidity requirement is adopted we recommend that demand notes secured by specified types of assets, collateralized letters of credit issued by unaffiliated banks, insurance policies and regional credit arrangements backed by appropriate collateral be considered as options for meeting the supplemental liquidity requirement.

Protection of Investors and the National Clearing and Settlement System.

Concentration of Risk and Liquidity. The amounts required to be deposited under the SLDR seem likely to be sufficiently large in the case of the Supplemental

Liquidity Providers to compel some of them to withdraw from the self-clearing business. Self-clearing has experienced a contraction over the last decade which would be accelerated by the SLDR. The result would be less competition in the provision of clearing services and fewer options for introducing brokers. In addition, by concentrating self-clearing activities in fewer firms, the SLDR would increase the potential for systemic disruption caused by the failure of any of the remaining self-clearing firms.

The same requirements of Rule 17Ad-22(b)(3) that impel NSCC to propose the SLDR apply to a number of other registered clearing agencies, including other subsidiaries of NSCC's parent, the Depository Trust and Clearing Corporation ("DTCC"). The likely effect of the adoption of similar rules to cover clearing corporation exposures to large participants will be to intensify the need for increased capital at self-clearing firms and to further accelerate the trend towards concentration among those firms and the systemic risk associated with that concentration.

Another related risk posed by the SLDR and any similar requirements adopted by other registered clearing agencies is the concentration of self-clearing firm liquidity at NSCC, and other registered clearing agencies, in the form of supplemental liquidity deposits. Once deposited at NSCC, the liquidity captured by the SLDR is not available for other purposes, such as funding continuing operations in the face of delays and losses resulting from technology failures, customer defaults or failures of client

counterparties. The potential effects of this liquidity constraint may be undesirable or may create unnecessary systemic brittleness.

The Linking of Clearing Risk and Bank Affiliates. The Rule Proposal's linkage of member and Affiliated Family supplemental clearing deposit requirements and the participation of affiliated banks will potentially limit self-clearing to firms that have bank affiliates that are able to participate in the Credit Facility. As described below, the bank affiliates will be able to participate in the Credit Facility by issuing unfunded commitments that will reduce the self-clearing affiliates' SLDR cash deposit obligations dollar for dollar by the commitment amounts. The economic advantage of this arrangement to members and Affiliated Families that have bank affiliates will be overwhelming and will lead to a clearing and settlement regime whose supplemental liquidity is predominantly based on unfunded bank commitments.

Unaddressed SLDR Risk. The SLDR does not appear to address two significant risks. The first is measuring and accounting for any risks that a member or Affiliated Family may pose to NSCC because of activity at other registered clearing agencies, such as The Options Clearing Corporation, that are interfaced with NSCC. The extent of these risks, including whether they are mitigated by the interface mechanism itself or by steps the interfacing registered clearing agency has taken under Rule 17Ad-22(b)(3), should be discussed and addressed.

The second is the risk that appears to be present in the Credit Facility. There, the participating banks appear to be providing little more than a promise to perform. Based merely on their promise to perform, a member or Affiliated Family would receive a dollar for dollar offset of an SLDR cash deposit obligation. In contrast, members and Affiliated Families not affiliated with a bank, or affiliated with a bank that does not participate in the credit facility, must make a cash deposit with NSCC. If the supplemental protection NSCC is seeking in the Rule Proposal is to be effective, any reliance on the Credit Facility as a substitute for SLDR deposits should be based on a collateralization of the banks' obligations to NSCC under the Credit Facility.

Due Regard for the Maintenance of Competition Among Brokers and Dealers and Clearing Agencies.

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 or analysis of any other possible effect of the SLDR on competition, either generally or between brokers and dealers and between clearing agencies.

Competition Between NSCC Members. By imposing the cost of NSCC's supplemental liquidity solely on Supplemental Liquidity Providers, the Rule Proposal will provide NSCC members and Affiliated Families that are not Supplemental Liquidity Providers a competitive advantage over members and Affiliated Families that are. The consequences of creating a structure with this inherent competitive advantage will be to drive a number of Supplemental Liquidity Providers out of the self-clearing business.

Competition Between Supplemental Liquidity Providers. Within the group of Supplemental Liquidity Providers, those that are affiliated with a bank that is eligible to participate in the Credit Facility will have a potentially insurmountable advantage over other NSCC members that do not have such an affiliate. This advantage will be particularly significant because the obligations of Credit Facility participants do not appear to be nearly as onerous as the requirements under the SLDR for members and Affiliated Families to make cash clearing deposits. As a result, entities that do not have eligible bank affiliates will be under pressure to leave the self-clearing business, as will members and Affiliated Families that do not have a bank affiliate and become Supplemental Liquidity Providers as other entities leave the business. Over time, the universe of self-clearing brokers and dealers will be substantially diminished due to the perverse competitive advantage created by the Rule Proposal's linkage of Supplemental Liquidity Providers and banks.

Competition Between Clearing Agencies. The Rule Proposal does not address either (i) the effects that the Dodd-Frank sourced Rule 17Ab-22(b)(3) requirements may have on clearing agencies and (ii) the possibility that the sharply increased liquidity members and Affiliated Families are required to keep at NSCC under the SLDR may adversely affect the ability of other clearing agencies to obtain the liquidity they may need to continue in operation. In addition, the Rule Proposal does not discuss inter-relationships between the SLDR and various interfaces between NSCC and other clearing agencies used by members and Affiliated Families.

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,

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