Via the SEC Portal

Ms. Vanessa Countryman
Office of the Secretary
U.S. Securities and Exchange Commission
100 F. Street NE
Washington, D.C. 20549

Re: Comment Letter to SEC Release No. 34-88474; File No. SR-NSCC-2020-003

Dear Ms. Countryman:

The Securities Industry Professional Association ("SIPA") hereby submits its comment letter to SEC Release No. 34-88474, File No. SR-NSCC-2020-003 (the "Proposed Rule").

Background of SIPA

The SIPA was formed in December 2007 in response to the proposed merger of NYSE and NASD. The organization is a membership organization that is largely an internet group of broker dealer and registered representatives and investment advisors. Currently we have approximately 1,200 owners of FINRA registered firms as members and 20,000 investment professionals who regularly receive updates, opinions and in many case solutions to complicated regulatory issues. In addition, the SIPA sponsors and endorses certain members to run for FINRA positions, often times on a contested basis. Since 2008, SIPA has put approximately 25 of its members on the FINRA board of Governors and National Adjudicatory Council Boards. Currently three members of the FINRA Board of Governors are members of the SIPA. The goal of SIPA has always been to be the voice of the small broker-dealer and to make sure they are not facing burdensome and expensive regulation. The SIPA and its members view things from a much different perspective than large firms and talk very bluntly because their very livelihood is affected. A few such examples are the expensive burdens placed on small firms (150 or fewer brokers) because of the sins and extravagant abuses of the large firms (600 or more brokers) on Wall Street. Due to accounting abuses of the largest firms, the SEC and FINRA instituted PCAOB accounting standards for all firms, which the SIPA has been fighting for relief from for over a decade. A yearly audit for a small firm quickly went from $3,000.00 to as much as $50,000.00 due to accounting scandals at the largest Wall Street brokerage firms and banks. E-mail archiving is another example of a burdensome and expensive regulation put on small firms because the largest Wall Street firms were destroying e-mails while they were endorsing stocks publicly, they were quietly liquidating their own internal positions. One former Solomon Smith Barney research analyst admitted that he was *"Putting lipstick on this pig"* so they could sell their stock before their clients. As a result of this small firms with one or two employees have to spend $5000 or more to archive all e-mails.

These are just a few of the dozens of examples of expensive burdens put on small firms for the sins of the large ones. However it is our view that the single largest expense put on small firms

is the lack of clearing firms available to conduct business and access to DTC/NSCC. As a former CEO of a correspondent clearing firm, I have witnessed the complete dismantling of the clearing industry into a precious few. Whereas years ago I would solicit introducing firms to consider using my firm's services, today there are little or no choices. Clearing deposits, minimums and fees have sky rocketed while the number of FINRA registered firms has been cut in half from over 6000 to under 3000 firms today and shrinking. The number one reason for this is the monopoly that has been created by DTC and its largest members. It's for this reason we would like to voice our concern and as always our solutions for the problems facing the small firm industry. However, I caution you that we voice our opinion in a much different way than lawyers and scholars. We call things like they are and are less concerned with hundreds of pages of legal opinions from people who have never owned a brokerage firm, written an order ticket or had to make payroll after the mountain of regulatory expenses are taken out of monthly commissions

Concerns over the Impact of the Volatility Charge

Regarding the Volatility charge, perhaps it is time we ask DTC/NSCC to explain why there is a need to have this charge when in fact DTC is a monopoly that can print money much like the U.S. Government is right now in response to the Chinese Corona virus that is destroying our current economy. DTC is a membership group that is controlled by the largest Wall Street banks and all decisions of DTC come from them, not the imaginary board of directors listed on their web page (https://www.dtcc.com/about/leadership/board) While the members of this board have an impressive and diverse background, they will not do anything unless the largest Wall Street Banks and Brokerages agree to it. How do I know I'm not speculating? Because if this was a truly independent board they would have kicked Merrill Lynch, Goldman Sachs, JP Morgan and others out of DTC membership after the debacle of 2008 when taxpayers had to ante up a trillion dollar loan to keep them afloat. This is not speculation, this is well documented fact. At one point Merrill Lynch/Bank America was 80 Billion under water, yet they remained DTC members in good standing. With over a trillion dollars spent to keep these firms afloat, DTC was never the less able to survive these losses and the volatility of the many derivatives of securities outstanding.

Somehow DTC was able to survive and thrive despite these incredible losses by its largest customers, but today they are incredibly concerned by the volatility of micro-cap securities? One would think that DTC's biggest concern would be the fact that the market has shed trillions of value in the last two months but we are to believe that calculations over a micro-cap stocks deposited and held as a long position is of the utmost importance in April 2020. DTC holds members funds and deposits and almost never takes a loss. In fact year after year they refund back to participants money they have made from various fees. DTC is literally indestructible due to the fact they have no competition in the United States. EuroClear is its closest competition but that is based in Brussels. In other words, DTC is a monopoly that has been allowed to prosper and flourish with no competition and is controlled by the largest banks and brokerages on Wall Street and are now considered an essential part of our economy and would be bailed out by the U.S. Treasury if the need for capital ever arose. In the opinion of the SIPA,

this is yet another attempt to add more expenses that they know will effect smaller firms, thus eliminating further competition to the top tier firms. In DTC's submission they state that the definition of an illiquid security is a "*security that is not listed on a specified exchange*". That would basically increase the monopoly of the largest firms who not only own and control DTC but also now own and control all of the major exchanges, like the NYSE. In addition DTC conveniently exempts Exchange traded funds and ADR's from illiquidity. This is also very convenient because the groups putting these exchange traded products together are the same group of Banks and Brokerages who control Wall Street and DTC. In 2008, Auction Rate Securities (ARS) were packaged by the same group, yet they were not deemed illiquid. These same ARS packages were literally frozen in place for over a year with no sales available.

It is the SIPA's opinion that there is significant bias in what is considered illiquid and what is not and that DTC is in no position to make that determination as we just outlined. The world is rapidly changing, especially with this pandemic, so the stock that barely traded today may surge tomorrow. The oil ETF with huge volume from two months ago will have little volume today. This DTC charge for Volatility is nothing more than sham in the SIPAs opinion and is directly aimed at destroying the micro-cap issuers and brokerage firms. If DTC is long the stock in its safekeeping, the volatility should not matter, thus we oppose this.

Concern over Calculation of Volatility Charge for Sub-penny Securities and the Destruction of Crowd Funding/the JOBS Act

The JOBS act of 2012 was passed to stimulate and grow our small businesses. Part of the JOBS act was the creation of '*crowd funding portals'* which allowed small businesses and small investors to pool money together. The SIPA praised this passage at the time, but after taking years to implement it and then looking at the costs associated with it we realized that DTC was killing this important piece of legislation without the authority of Congress. In a sense, DTC, controlled by the largest banks and brokerages has become powerful enough to crush a duly signed act by the U.S. Government because the largest banks don't want companies to fund themselves. They believe all investment banking must go through them and their coffers. To crush the JOBs act they have worked with DTC and regulators to make it incredibly expensive for firms to conduct this business and thus investors are being punished in ways they never imagined. Due to over regulation in the micro-cap equity business clearing firms, after years of being fined and suspended by the SEC and FINRA have either eliminated these securities or have made it so cost probative that only the very wealthiest of hedge funds or individuals may participate. The JOBS act was to allow investors with as little as $2000.00 to invest directly with issuers. Obviously in today's world a small family will not be getting allocations of an IPO for FaceBook or Uber from the largest Wall Street firms and reap the benefits of getting in on the ground floor, but they can reap the benefits on getting in on perhaps the next great Silicon Valley Application, or Life Science Company. I will illustrate for your understanding how the JOBS act has been crushed unconstitutionally by DTC:

An investor who meets the threshold for Crowd funding decides to invest $**2500.00** into a small business he read about through a portal. The business uses the money (combined with other investor funds) and launches its new design and product and begins to flourish. After a year or two the company announces they made requisite filings and disclosures and now has the stock symbol **JOBS**

The excited investor receives a stock certificate for **10,000 JOBS** and looks up the symbol and it's trading for $.25 cents per share on OTC Markets representing a market value on his shares of **$2500.00** or 25% above his original investment in short period of time. When he attempts to deposit his shares he discovers his online account won't take the stock certificate because it is a micro-cap stock. He finally finds a firm that will take the stock in to clear it for him however due to increased regulatory costs, the firm informs him of the following:

- $1500 deposit fee (sometimes more) to review the stock for possible AML or other legal requirements imposed by regulations.
- A new account opening fee
- A charge of 4.% commission to make the trade even viable for the introducing broker dealer
- A ticket charge placed on the transaction by the Clearing firm
- Execution charges from FINRA SEC and the market making firm
- He may face multiple ticket charges or restrictions because DTC is concerned the stock is illiquid or volatile and clearing firms pass this charge on.

When all is said and done our young investor who thought he made a 25% profit on his $2000.00 investment will be lucky if this liquidation nets him $**1200.00** when all fees are said and done. This is killing the small investor and in turn the small brokerage firms in the United States as well as the small businesses and the SIPA believes DTC is complicit in helping eliminate the JOBS act and or circumventing its usefulness. When a $500.00 profit turns into an $800 loss, we have a problem.

Concern over Calculation of Volatility Charge Model

In its request DTC references a complex VarCharge model that will be used to calculate the various restrictions they want to put in. They said it is based upon risk specific model, which already alarms the SIPA and its members. As we have seen recently with Covid -19, everyone has a "*mode*l" and claims theirs is the correct one to use. How do we know which one is correct, which one is bogus and which one is wrong? Currently 22 million Americans are out of work and many millions more will soon join them based on *'models'* that right now seem to have been highly flawed. DTC in its proposal to the commission, offered no proof that their '*model*' would be correct or efficient and quite frankly what it would accomplish. We are quite concerned that equations are not being offered for review and instead we are being told there

is a model and we intend to use it as we deem fit and just trust us that the calculations exist. Quite frankly, we would like to see EXACT mathematical equations put forth in simple easy to read and compute formula and THEN have DTC explain why this is the most important issue facing DTC in this incredible time we are all facing. We would urge the commission to reject these changes for being further harmful to businesses, investors and the few remaining brokerage firms or in the alternative consider an alternative solution from the SIPA and its members.

Solution

As we have outlined previously, we believe DTC is operating as monopoly. There are no alternatives to DTC in America today, you must use their services even if you don't want to. This is a violation of the Anti-Trust act but is even more disturbing when you consider the fact that they have little to no oversight and are controlled by a small number of the largest Wall Street Banks and Brokerages. The number of alternative options for investors and brokerage firms has shrunken significantly in the last ten years. The stock market until recently has gone from a DJIA of around 9,000 to a DJIA of nearly 30,000 a few short months ago. In any other industry we would see a plethora of new brokerage firms opening up to be part of this surge, yet the exact opposite has happened. Instead, our industry is being choked out by DTC and regulation and Correspondent clearing firms are squeezing small firms out of business by refusing to take them on as a correspondent or raising their deposits and monthly minimums to such extreme levels that they end up closing their door. We would ask the commission to consider two solutions:

1: Approve an Alternative clearance and settlement company that can compete with DTC and its companies.

There are many clearing firms that would be willing to form a new clearance and custodian group that can offer many if not all of the same services as DTC. It is now 2020 not 1990 and technology has changed so much that there is no longer this great mystery on how to clear stocks. It is high time we allow another company to be formed. There are many smaller members of DTC who would leave in a heartbeat if there was an alternative but currently there is not. DTC is a monopoly and we believe the Department of Justice should be looking into this for violations of anti-trust laws. In the alternative if the commission would approve an alternative then DTC would be free to make all rules, restrictions and '*models*' they want, but participants would have an alternative. It is quite obvious that DTC does not want micro-cap securities, so why not let another group handle micro-cap clearance. In some ways DTC is acting as a regulator and forcing firms and issuers out of business without any governmental oversite. Electric companies across the country are being told they cannot turn off electric for customers in arrears due to the corona virus and the fact that electric companies have government oversight. DTC however is putting issuers out of business, stomping all over the JOBS act without authority and doing it all without true government oversight. We believe the

commission should seek proposals for an alternative to DTC and allow groups like the SIPA to work with other groups to form this entity.

2: Approve additional correspondent and/or self-clearing firms

The shortage of correspondent clearing firms is glaring and the ability and power of correspondent clearing firms over introducing firms has hit its peak. There are few options left for small introducing brokers to consider and even when they do try to get an agreement with a Clearing firm they are often rejected because the few correspondent firms left have already corralled the largest broker firms into their stable, thus they do not need smaller firms. This once again hurts small investors who do not meet the minimum account opening requirements at the larger firms. As mentioned earlier, I was once CEO of a correspondent clearing firm in the early to mid-2000's. I spent considerable time jockeying with competition to get small FINRA broker dealers to use my service. Today there is a mere fraction of the number of correspondent clearing firms that I competed with. The time has come to approve more clearing firms and allow them to make their own decisions on the types of securities they want to transact in or clear. These same firms could then use DTC or an alternative to settle all transactions. Under this current monopoly, an introducing firm has perhaps one to two choices of where they can clear trades and all trades <u>must go through DTC rules and regulations</u>. This is anti-business and anti-American in our opinion. Now more than ever with businesses collapsing across America we need brokerage firms who can raise money from companies, clear transactions and not be restricted from unelected groups like DTC who are hindering the ability to trade in stocks that are following the laws established by the Securities and Exchange Commission. The SEC is a government entity and you are allowing DTC to unilaterally chill, freeze or add expenses based on their whim not on existing security laws.

We thank you for letting us respond and we would ask respectfully that you consider our solutions for additional alternatives to DTC and also our request for approval of more clearing firms. In the meantime we would ask that you respectfully put a hold on DTC's request.

Respectfully submitted,

John Busacca
Founder
The Securities Industry Professional Association