



September 10, 2020

Via Electronic Submission

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
rule-comments@sec.gov

Re: Release No. 34-89558; File No. SR-NSCC-2020-016

OTC Markets Group¹ submits this comment letter in response to the National Securities Clearing Corporation's ("NSCC") above-referenced proposed rule change to enhance the Clearing Fund Methodology filed with the Securities and Exchange Commission ("SEC" or the "Commission") on July 30, 2020 (the "July Proposal"), and subsequently amended on August 13, 2020 and August 27, 2020.²

The July Proposal seeks to enhance the NSCC's Clearing Fund Methodology by (1) introducing a new Margin Liquidity Adjustment ("MLA") charge and (2) enhancing the calculation of the existing VaR charge by including a bid-ask spread risk charge. The MLA charge would supplement the existing volatility charge and apply to certain asset groups with similar risk profiles, including equities, as segmented by market cap, Illiquid Securities, UITs, Municipal Bonds and Corporate Bonds. The bid-ask spread risk charge would apply as a haircut to equities, segmented by market cap, and ETPs. As we understand it, the two new charges presented in the July Proposal are designed to address the costs incurred by NSCC when liquidating a defaulting members' Net Unsettled Positions in certain asset classes.

As a threshold matter, the July Proposal appears to address the same concerns, and have a similar impact on member firms, as an earlier rule proposal filed by NSCC on March 20, 2020 that is designed to enhance the calculation of certain components of NSCC's Clearing Fund

¹ [OTC Markets Group Inc.](#) operates the OTCQX[®] Best Market, the OTCQB[®] Venture Market and the Pink[®] Open Market for 11,000 U.S. and global securities. Through OTC Link[®] ATS and OTC Link ECN, we connect a diverse network of broker-dealers that provide liquidity and execution services. We enable investors to easily trade through the broker of their choice and empower companies to improve the quality of information available for investors. OTC Link ATS and OTC Link ECN are SEC regulated ATSs, operated by OTC Link LLC, member FINRA/SIPC.

² Amendment No. 1, filed on August 13, 2020, and Amendment No. 2, filed on August 27, 2020, include partial amendments to this File No. SR-NSCC-2020-016 as well as File No. SR-NSCC-2020-804, a related notice filed pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Amendments Nos. 1 and 2 are available at: <https://www.sec.gov/comments/sr-nsc-2020-016/srnsc2020016.htm>.

formula (the “March Proposal”).³ Both the March Proposal and the July Proposal seek to impose additional margin requirements for firms processing transactions in smaller and less liquid securities, and each proposal acknowledges it would disproportionately impact member firms with “lower operating margins or higher costs of capital”. Six comment letters were filed expressing concern over the March Proposal.⁴ On June 24, 2020, the Commission issued an order instituting proceedings to determine whether to approve or disapprove the March Proposal, identifying the grounds for disapproval under consideration and seeking comments.⁵ Two additional comment letters were filed in response to the Commission’s Order.⁶ To our knowledge, NSCC has not publicly filed a rebuttal to the comments received and the Commission has not yet approved or disapproved the March Proposal.

It is impossible to readily determine the impact of the July Proposal without certainty on the status of the March Proposal. For example, it is unclear whether the new MLA charge would apply to Illiquid Securities under the existing definition or the definition proposed in the March Proposal. NSCC should not be permitted to abandon a contested rule proposal and file a substantially similar one under a different name. **Before any determination can be made on the July Proposal, the March Proposal should be withdrawn or consolidated with the July Proposal and the Commission should extend the period for comments pursuant to Section 19(b)(2)(A)(ii) of the Securities Exchange Act of 1934.**

Notwithstanding the procedural obfuscation of the two outstanding proposals, neither contains sufficient detail to enable market participants to evaluate the necessity and impact of the proposed fees. The NSCC’s most recent July Proposal provides no explanation as to why the current Clearing Fund formula is inadequate or how the proposed methodology would limit NSCC’s exposure in the event of a member default. As with the March Proposal, the July Proposal’s statement of purpose, statutory basis and statement on burden on competition are entirely devoid of detail and context and do not meet the requirements for clearing firm rulemaking. **Unless the NSCC provides additional insight into the relevant risks involved in processing certain types of securities, and the coverage required to mitigate these risks, the Commission must disapprove both the March Proposal and the July Proposal.**

³ The March Proposal aims to enable NSCC to better limit its exposure in the event of a member default by (i) clarifying and enhancing the methodology for identifying securities as illiquid by revising the definition of “Illiquid Securities”, (ii) applying an enhanced haircut-based volatility charge to Illiquid Securities and UITs, (iii) eliminating the existing “Illiquid Charge”, and (iv) making other conforming changes. See Release No. 34-88474; File No. SR-NSCC-2020-003, (Mar. 25, 2020) available at: <https://www.sec.gov/rules/sro/nsc/2020/34-88474.pdf>.

⁴ Comments to Release No. No. 34-88474, File No. SR-NSCC-2020-003, available at <https://www.sec.gov/comments/sr-nsc-2020-003/srnsc2020003.htm>.

⁵ Release No. 34-89145; File No. SR-NSCC-2020-003 (Jun. 24, 2020), available at: <https://www.sec.gov/rules/sro/nsc/2020/34-89145.pdf>.

⁶ OTC Markets Group Inc. and Wilson-Davis & Co., Inc. filed supplementary comments letters in response to the Commission’s Order on July 21, 2020, and July 29, 2020, respectively, each of which is available at <https://www.sec.gov/comments/sr-nsc-2020-003/srnsc2020003.htm>.

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We welcome the opportunity to discuss our comments with the Commission. Please contact Cass Sanford, Associate General Counsel (cass@otcmarkets.com) or Dan Zinn, General Counsel (dan@otcmarkets.com), with any questions or to request additional information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Cass Sanford". The signature is written in a cursive, flowing style.

Cass Sanford
Associate General Counsel