Scott G. Monson
Attorney at Law

February 10, 2022

Filed via electronic mail to:
rule-comments@sec.gov

Vanessa Countryman,
Office of the Secretary
U. S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: File No. SR-NSCC-2021-016
Comment Letter to SEC Release No. 34-93856

Dear Ms. Countryman:

I represent an introducing broker dealer which provides brokerage services in large part to holders of microcap or Over-the-Counter ("OTC") stock and a stock transfer agency which maintains records for many issuers of microcap or OTC stock. My clients occupy a unique niche in the securities business. Few introducing brokers or clearing firms are willing to service the needs of early round investors and founders of microcap companies because of the intense regulatory scrutiny and labor-intensive processes that are required. My client prides itself in its ability to provide its customer base with an avenue to deposit and liquidate microcap securities and OTC stocks, and make market in those same securities. The transfer agent client likewise provides transfer services to those companies which are emerging because of the Jumpstart Our Business Startups Act of 2012 or "JOBS Act," a law intended to encourage funding of United States small businesses by easing various securities regulations.

I submit this comment letter in response the National Securities Clearing Corporation's ("NSCC") proposed rule change seeking extraordinary increased capital requirements for its broker-dealer members (the "Proposed Rule Change"). The Proposed Rule Change, if implemented, would have the direct effect of eliminating small clearing firms, especially those that service emerging markets such as microcap and OTC, from NSCC's membership rolls. Its implementation will also adversely affect broker dealers and transfer agents which provide brokerage services, emerging public companies and the public who invest in these growing startups.

I have read the comment letters previously submitted on behalf of LEK, Alpine, STANDY, Wilson Davis & Company and "Kevin." I concur with each of them. The Proposed Rule Change is blatantly discriminatory against smaller broker dealers, particularly those whose business emphasis is in microcap stock and small businesses. I would like to reiterate several arguments against the Proposed Rule Change that have been capably presented in other comment letters previously submitted to the Commission. As cited in the Alpine comment letter, Congress has explicitly noted that "it is in the public interest to assure . . . fair competition among brokers and dealers, among markets and between exchange markets and over-the-counter markets." [S. Rep. 94-75 (1975)].

The proposed Rule, if implemented, would do the exact opposite. The Proposed Rule Change would have the direct effect of eliminating small clearing firms and smaller broker dealers, especially those that provide brokerage services to customers who own OTC and microcap stock. The proposed increased capital requirements are "discriminatory and anticompetitive because, as designed, they have a disproportionate impact on small broker-dealers and the markets they serve. And it must be recognized that DTCC's board is comprised of representatives affiliated with large banking and brokerage firms, which clearly factors into the types of policy choices and rules passed by NSCC." See Alpine comment letter @ page 5.

NSCC's assertion that the increased capital requirements will better ensure that members have "sufficient capital to sustain unexpected and/or sustained increases in the margin requirements" is a circular argument in that the purported raised risk to NSCC is essentially created by NSCC's overbearing illiquidity charges that imposes on clearing firms and self-clearing members on microcap transactions. "NSCC claims that it needs to impose onerous increases to minimum capital requirements to guard against a risk NSCC itself has created through onerous charges NSCC imposes on trading. NSCC's rationale is also unsupported by citation to any evidence that any member, under the current membership capital requirements, lacked the capital to post the margin for a trade, that any lack of capital created actual exposure to NSCC, or that NSCC's existing monitoring, rules and procedures for ensuring that members meet the margin requirements for trading are insufficient to guard against the purported risk." See Alpine comment letter @ page 8.

Many of the comment letters pointed out the surest way to alleviate risk to NSCC and to the markets – to shorten the settlement period to Trade Date + 1 or Trade Date + 0. "In its February 2021 white paper, DTCC acknowledged that "the most logical way to reduce the risks that drive margin requirements is to shorten the settlement cycle," and indicated that its goal to move the United States to at least a T+1 settlement by 2023, and even shorter thereafter.24 It is notable that NSCC is trying to get approval of these new capital requirements before it takes the more appropriate step of shortening the settlement period; undoubtedly it will not, after it

accomplishes that change, then acknowledge a reduced risk and lower these spiraling charges." See Alpine comment letter @ page 9. See also Wilson-Davis & Company comment letter @ pages 4-6. See also STANY comment letter @ page 5.

The hypothetical firm failures NSCC is attempting to protect against are not a reality and the "what if" scenarios posed do not justify the proposed increase. "NSCC's other stated risks do not make the Proposed Rule Change any more necessary. NSCC argues that the enhanced capital requirements will help mitigate against legal, operational, and cyber risks posed by members. However, NSCC's descriptions of these risks are worryingly vague to justify increasing minimum capital requirements by up to 1000%. Every business in the world faces legal, operational, and cyber risks, and NSCC makes no effort to describe or quantify these risks beyond referring to generalized categories. NSCC fails also to analyze and articulate the impact of these possible risks upon NSCC's credit exposure to its members or to identify how increasing the capital requirements for members would mitigate this risk, beyond its conclusory statement that better capitalized firms have more financial resources to weather risks. Most troubling, NSCC identifies no evidence in its Proposed Rule Change that the generalized legal, operational, or cyber risks have ever materialized into broker-dealer members being unable to, or in danger of being unable to, meet their margin or other obligations to NSCC or creating any actual exposure to NSCC." See Wilson-Davis & Company comment letter @ page 4.

STANY expressed "concerns about the proposal are exacerbated by the NSCC's failure to demonstrate that current margin requirements are insufficient to cover credit risks. On the contrary, we question NSCC's rationale that the Proposed Changes are needed to mitigate its "risk" as a central counterparty since the NSCC has claimed within the past year that increases in the Required Fund Deposit gave it a "confidence" level well in excess of 99%. A year ago, NSCC increased elements of its Require Fund Deposit significantly increasing margin charges for microcap and OTC securities, including the volatility charge, the margin differential charge, the coverage component and backtesting charge. NSCC is already protected against credit risk from member trading and market volatility, many times over via transactional margin charges and offers no explanation for why the margin charges, already imposed on trading are not more than sufficient to cover its central counterparty risk. See STANDY comment letter @ pages 3-4.

I respectfully request that the Commission disapprove the Proposed Rule Change for the reasons stated above.

/s/ Scott G. Monson
Scott G. Monson
Attorney at Law