

exceptions in the rule to allow dealer consent to changes in authorizing documents are limited in nature so as to protect existing bond holders, while addressing concerns of issuers about obtaining consents to amendments of their authorizing documents in certain situations. In addition, the Commission believes that the proposed rule change will enhance transparency regarding the practice of obtaining bond owner consents from dealers.

At the same time, the Commission notes that the MSRB has represented that the proposed rule change does not grant an affirmative right to dealers to provide consents to changes to authorizing documents and does not alter the dealer's obligations applicable under other MSRB rules, including its fair dealing obligations under Rule G-17. Accordingly, dealers may not simply rely on the exceptions prescribed in the rule but rather are obligated to consider and comply with their Rule G-17 obligations in seeking to provide consents to amendments in authorizing documents at the request of an issuer in accordance with the exceptions provided.

For these reasons, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and in particular, Section 15B(b)(2)(C) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-MSRB-2013-08) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71000; File No. SR-NSCC-2013-802]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of No Objection To Advance Notice Filing, as Modified by Amendment Nos. 1, 2, and 3, To Institute Supplemental Liquidity Deposits to Its Clearing Fund Designed To Increase Liquidity Resources To Meet Its Liquidity Needs

December 5, 2013.

I. Introduction

On March 21, 2013, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 806(e) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"),¹ entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act" or "Title VIII") and Rule 19b-4(n) of the Securities Exchange Act of 1934 ("Exchange Act"),² advance notice SR-NSCC-2013-802 ("Advance Notice") to institute supplemental liquidity deposits to NSCC's Clearing Fund designed to increase liquidity resources to meet NSCC's liquidity needs ("SLD Proposal").³

On April 19, 2013, NSCC filed with the Commission Amendment No. 1 to the Advance Notice.⁴ On May 1, 2013,

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b-4.

³ NSCC also filed the SLD Proposal contained in the Advance Notice as proposed rule change SR-NSCC-2013-02 ("Proposed Rule Change"). Release No. 34-69313 (Apr. 4, 2013), 78 FR 21487 (Apr. 10, 2013). On April 19, 2013, NSCC filed with the Commission Amendment No. 1 to the Proposed Rule Change. Release No. 34-69620 (May 22, 2013), 78 FR 32292 (May 29, 2013). On June 11, 2013, NSCC filed with the Commission Amendment No. 2 to the Proposed Rule Change, as previously modified by Amendment No. 1. Release No. 34-69951 (Jul. 9, 2013), 78 FR 42140 (Jul. 15, 2013). On October 7, 2013, NSCC filed Amendment No. 3 to the Proposed Rule Change, as previously modified by Amendment Nos. 1 and 2. Release No. 34-70688 (Oct. 15, 2013), 78 FR 62846 (Oct. 22, 2013). On December 5, 2013, the Commission issued an Order Approving the Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, to Institute Supplemental Liquidity Deposits to Its Clearing Fund Designed to Increase Liquidity Resources to Meet Its Liquidity Needs. Release No. 34-70999.

⁴ NSCC filed Amendment No. 1 to the Advance Notice and Proposed Rule Change filings to include as Exhibit 2 a comment letter from National Financial Services ("NFS"), a Fidelity Investments ("Fidelity") company, to NSCC, dated March 19, 2013, regarding the SLD Proposal prior to NSCC filing the SLD Proposal with the Commission ("NFS Letter"). See Release No. 34-69451 (Apr. 25, 2013), 78 FR 25496 (May 1, 2013) ("Notice") and see

the Commission published notice of the Advance Notice, as modified by Amendment No. 1, for comment in the **Federal Register**.⁵ On May 24, 2013, the Commission published notice of its extension of its review period of the Advance Notice, as modified by Amendment No. 1.⁶ The Commission received 12 comment letters, including the NFS Letter, to the SLD Proposal as initially filed and as modified by Amendment No. 1.⁷

On June 11, 2013, NSCC filed with the Commission Amendment No. 2 to the Advance Notice, as previously modified by Amendment No. 1 ("Amended SLD Proposal"), which the Commission published for comment in the **Federal Register** on July 15, 2013.⁸ The Commission received nine comment letters to Amendment No. 2.⁹

Exhibit 2 to File No. SR-NSCC-2013-802, <http://www.sec.gov/rules/sro/nsc/2013/34-69451-ex2.pdf>.

⁵ See Notice, 78 FR 25496.

⁶ Release No. 34-69605 (May 20, 2013), 78 FR 31616 (May 24, 2013) ("Notice of Amendment No. 1").

⁷ See NFS Letter. See letters to Elizabeth M. Murphy, Secretary, Commission from: John C. Nagel, Esq., Managing Director and General Counsel, Citadel Securities ("Citadel"), dated April 18, 2013 ("Citadel Letter I") and June 13, 2013 ("Citadel Letter II"); Peter Morgan, Senior Vice President & Deputy General Counsel, Charles Schwab & Co., Inc. ("Charles Schwab"), dated April 22, 2013 ("Charles Schwab Letter I") and May 1, 2013 ("Charles Schwab Letter II"); Thomas Price, Managing Director, Operations, Technology & BCP, Securities Industry and Financial Markets Association ("SIFMA"), dated April 23, 2013 ("SIFMA Letter I"); Julian Rainero, Bracewell & Giuliani LLP, on behalf of Investment Technology Group Inc. ("ITG"), dated April 25, 2013 ("ITG Letter I"); Matthew S. Levine, Managing Director, Co-Chief Compliance Officer, Knight Capital Americas LLC ("Knight Capital"), dated April 25, 2013 ("Knight Capital Letter"); Giovanni Favretti, CFA, Managing Director, Deutsche Bank, dated April 25, 2013 ("Deutsche Bank Letter"); Scott C. Goebel, Senior Vice President, General Counsel, Fidelity, dated April 25, 2013 ("Fidelity Letter I"); and Chief Financial Officer & Executive Managing Director, ConvergEx Execution Solutions LLC ("ConvergEx"), dated May 2, 2013 ("ConvergEx Letter I") and May 22, 2013 ("ConvergEx Letter II").

⁸ Release No. 34-69954 (Jul. 9, 2013), 78 FR 42127 (Jul. 15, 2013) ("Notice of Amendment No. 2").

⁹ See letters to Elizabeth M. Murphy, Secretary, Commission from: Thomas Price, Managing Director, Operations, Technology & BCP, SIFMA, dated June 24, 2013 ("SIFMA Letter II") and August 7, 2013 ("SIFMA Letter III"); Scott C. Goebel, Senior Vice President, General Counsel, Fidelity, dated June 26, 2013 ("Fidelity Letter II"); Peter Morgan, Senior Vice President & Deputy General Counsel, Charles Schwab, dated August 5, 2013 ("Charles Schwab Letter III") and September 11, 2013 ("Charles Schwab Letter IV"); Paul T. Clark and Anthony C.J. Nuland, Seward & Kissel, LLP (representing Charles Schwab), dated August 5, 2013 ("Charles Schwab Letter V"); John C. Nagel, Esq., Managing Director and General Counsel, Citadel, dated August 5, 2013 ("Citadel Letter III") and September 5, 2013 ("Citadel Letter IV"); and Mark Solomon, Managing Director and Deputy General Counsel, ITG, dated August 5, 2013 ("ITG Letter II").

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

On October 4, 2013, NSCC filed Amendment No. 3 to the Advance Notice (“Final SLD Proposal”), as previously modified by Amendment Nos. 1 and 2, which the Commission published for comment on October 15, 2013.¹⁰ The Commission received two comment letters to the Final SLD Proposal (i.e., Amendment No. 3).¹¹

This publication serves as notice of no objection to the Advance Notice, as modified by Amendment Nos. 1, 2, and 3.

II. Background

A. Purpose of the SLD Proposal

NSCC filed the SLD Proposal to ensure that it would maintain sufficient liquid financial resources to withstand, at a minimum, a default by its single clearing member or clearing member family (“Clearing Member”) to which it has the largest exposure (“Cover One”), in compliance with Commission Rule 17Ad-22(b)(3)¹² and a long-standing NSCC policy.

B. Development of the SLD Proposal

As originally filed, the SLD Proposal would have created two related funding obligations: (1) For the 30 Clearing Members that presented NSCC with the largest peak liquidity requirements on days that did not coincide with quarterly options expiration periods (“Regular Periods”), a liquidity deposit calculated based on the Clearing Member’s pro rata portion of NSCC’s aggregate liquidity requirements from the 30 Clearing Members during Regular Periods (“Regular SLD”); and (2) for a subset of the 30 Clearing Members that present NSCC with a peak liquidity requirement above NSCC’s total liquidity resources on days that coincide with quarterly options expiration periods (“Special Periods”), a liquidity deposit calculated based on each Clearing Member’s individual contribution to NSCC’s liquidity requirement above its liquidity resources during Special Periods (“Special SLD”).¹³

Regular SLD would have been satisfied in cash only; however, a Clearing Member would have received a dollar-for-dollar reduction of its Regular SLD funding obligation to the extent

that it contributed to NSCC’s line-of-credit (“Credit Facility”).¹⁴ Special SLD could only be satisfied with cash.¹⁵

On June 11, 2013, in response to comments received, NSCC filed the Amended SLD Proposal so that, in summary: (1) Special Periods were expanded to include monthly options expirations periods along with quarterly options expiration periods; (2) Clearing Members could designate a commercial lender to commit to the Credit Facility on the Clearing Member’s behalf, enabling the Clearing Member to receive the dollar-for-dollar reduction of its Regular SLD; (3) any commitments to the Credit Facility made in excess of a Clearing Member’s Regular SLD would be allocated ratably among all 30 Clearing Members that would be required to make a Regular SLD funding obligation; and (4) “liquidity exposure reports” would be provided to all NSCC members, so that members, particularly Clearing Members, could better assess their liquidity exposure to NSCC.¹⁶

On October 4 and 7, 2013, in response to further comments received, NSCC filed the Final SLD Proposal.¹⁷ Among other things, the Final SLD Proposal eliminated the Regular SLD funding obligation.

III. Description of the Final SLD Proposal

The Final SLD Proposal would add Rule 4A to NSCC’s Rules and Procedures¹⁸ to establish a supplemental liquidity funding obligation designed to cover the liquidity exposure attributable to those Clearing Members that regularly incur the largest gross settlement debits over a settlement cycle during times of increased trading and settlement activity that arise around Special Periods. More specifically, the obligation applies to a subset of the 30 Clearing Members that present NSCC with historic peak liquidity needs on days that coincide with Special Periods above NSCC’s current total liquidity resources. For this subset, NSCC will require a liquidity deposit based on the proportion of the historic peak liquidity exposure that is presented by each Clearing Member in excess of NSCC’s then-available total liquidity resources. NSCC will hold deposits made in satisfaction of a Special SLD funding

obligation in its Clearing Fund for a period of seven days after the end of the Special Period.

Additionally, if a Clearing Member believes its current trading activity will present a liquidity need to NSCC above NSCC’s total liquidity resources, it may voluntarily deposit funds with NSCC to cover the shortfall (“Prefund Deposit”). NSCC will hold Prefund Deposit funds for a period of seven days after the end of the Special Period. If a Clearing Member presents NSCC with a liquidity need above total liquidity resources that is not funded by a Special SLD funding obligation or a Prefund Deposit, the Final SLD Proposal will empower NSCC to call from that Clearing Member the amount of the shortfall, or that Clearing Member’s share if caused by more than one Clearing Member, and hold it for 90 days (“Call Deposit”).

IV. Summary of Comments Received and NSCC’s Responses

The Commission received 23 comment letters to the SLD Proposal¹⁹ from eight commenters,²⁰ including the NFS Letter.²¹ Commenters include bank affiliated and non-bank affiliated NSCC members, as well as one industry trade group, SIFMA.²² NSCC also submitted two responses to comment letters received.²³ The Commission has reviewed and taken into full consideration all of the comments received.

All eight commenters express support for NSCC’s overall goal of maintaining sufficient financial resources to

¹⁹ Since the SLD Proposal was filed as both the Proposed Rule Change and the Advance Notice, the Commission considered all public comments received on the proposal, regardless of whether the comments were submitted to the Proposed Rule Change or the Advance Notice. See NFS Letter, Citadel Letter I, Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, ITG Letter III, Knight Capital Letter, Deutsche Bank Letter, Fidelity Letter I, Fidelity Letter II, Fidelity Letter III, ConvergEx Letter I, and ConvergEx Letter II.

²⁰ See Comments to the Advance Notice (File No. SR-NSCC-2013-802), <http://sec.gov/comments/sr-nsc-2013-802/nsc2013802.shtml> and the Proposed Rule Change (File No. SR-NSCC-2013-02), <http://sec.gov/comments/sr-nsc-2013-02/nsc201302.shtml> (“Comments Received”). For purposes of discussion, the Commission considers the comment submitted by Seward & Kissel on behalf of Charles Schwab as a Charles Schwab comment, see Charles Schwab Letter V, *supra* note 9, and the NFS Letter as a Fidelity comment. See NFS Letter.

²¹ See NFS Letter.

²² See Comments Received, *supra* note 20.

²³ See letters to Elizabeth M. Murphy, Secretary, Commission from Larry E. Thompson, Managing Director and DTCC General Counsel, dated June 10, 2013 (“NSCC Letter I”) and August 20, 2013 (“NSCC Letter II”).

¹⁰ Release No. 34-70689 (Oct. 15, 2013), 78 FR 62893 (Oct. 22, 2013) (“Notice of Amendment No. 3”).

¹¹ See letters to Elizabeth M. Murphy, Secretary, Commission from: Managing Director and Deputy General Counsel, ITG, dated November 1, 2013 (“ITG Letter III”); and Scott C. Goebel, Senior Vice President, General Counsel, Fidelity, dated November 5, 2013 (“Fidelity Letter III”).

¹² 17 CFR 240.17Ad-22(b)(3).

¹³ See Notice, 78 FR at 25496.

¹⁴ *Id.* at 25498.

¹⁵ *Id.*

¹⁶ See Notice of Amendment No. 2, 78 FR 42127.

¹⁷ NSCC filed the Amendment No. 3 to the Proposed Rule Change on October 7, 2013, three days after the Final Advance Notice.

¹⁸ See Exhibit 5 to File No. SR-NSCC-2013-802, <http://www.sec.gov/rules/sro/nsc/2013/34-70689-ex5.pdf>.

withstand a default by a Clearing Member (i.e., Cover One).²⁴ One commenter, who previously supported approval of the Amended SLD Proposal, supports approval of the Final SLD Proposal.²⁵ The remaining seven commenters oppose the original SLD Proposal and the Amended SLD Proposal, as discussed in more detail below.²⁶ One of those seven commenters submitted the sole comment letter in opposition to the Final SLD Proposal.²⁷

A. Comments Expressing Support for the Provision of Adequate Liquidity at NSCC

As mentioned above, all eight commenters to the SLD Proposal agreed that NSCC must have access to sufficient liquidity and capital to meet the Cover One standard, and some stated NSCC's critical role as a national clearance and settlement system.²⁸ For example, one commenter states "that a clearing agency performing central counterparty services is essential to the proper functioning of the capital markets, and that ensuring the clearing agency is well capitalized and financially sound serves to benefit both the clearing agency's members and the capital markets as a whole."²⁹ The commenter goes on to state that it "appreciates the need for the NSCC, both as a central counterparty and as a financial market utility that has been designated by the Financial Stability Oversight Council as systemically important, to maintain sufficient financial resources to withstand a default by the NSCC member or family of affiliated members to which the NSCC has the largest exposure . . . [and] also understands the NSCC's desire to broaden the base of support for its liquidity needs beyond the small group of firms that has historically supported these needs through participation in the NSCC's revolving credit facility, and believes it is

important to enable all of the NSCC's members to help the NSCC maintain sufficient financial resources."³⁰ Another commenter notes that "NSCC should have the resources it needs to be a source of strength for the national clearing and settlement system. . . ." ³¹ Additionally, another commenter states that it "appreciates the importance of NSCC's critical role as a [c]entral [c]ounterparty . . . and supports NSCC's goal in ensuring that it has access to sufficient capital in the event that is largest participant fails."³²

B. Opposing Comments Received Prior to the Final SLD Proposal

1. Comments Inapplicable to the Final SLD Proposal

The seven commenters opposed to approval of the SLD Proposal objected to the SLD Proposal for various reasons, as discussed below.³³ Additionally, five of the seven commenters that oppose the SLD Proposal, as well as the commenter in support of the Final SLD Proposal, suggested potential alternative mechanisms for NSCC to satisfy its liquidity needs.³⁴

Many of the commenters opposed to the original SLD Proposal and Amended SLD Proposal raised concerns with a component of the proposal that NSCC eliminated in the Final SLD Proposal.³⁵ Those comments included concerns about: (1) The anticipated costs for Clearing Members as a result of implementation of Regular SLD funding obligation, including costs imposed by a

³⁰ *Id.*

³¹ See Charles Schwab Letter III, Charles Schwab Letter V.

³² See ConvergEx Letter II.

³³ See Citadel Letter I, Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, ITG Letter III, Knight Capital Letter, Deutsche Bank Letter, ConvergEx Letter I, and ConvergEx Letter II.

³⁴ Alternatives included, but were not limited to: NSCC should issue long-term debt to increase its liquidity resources; NSCC should increase intra-day margin calls; NSCC should increase Clearing Member fees; NSCC should reduce the settlement cycle; NSCC should reduce the volume of unsettled trades; NSCC should establish a bilateral third-party bank committed facility; and NSCC should change its capital structure. See NFS Letter, Citadel Letter II, Citadel Letter III, Charles Schwab Letter II, Charles Schwab Letter III, SIFMA Letter II, SIFMA Letter III, ITG Letter II, Fidelity Letter II, Fidelity Letter III, and ConvergEx Letter II. The Commission notes that these comments are beyond the subject of the Final SLD Proposal by NSCC.

³⁵ See Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, Knight Capital Letter, Deutsche Bank Letter, ConvergEx Letter I, ConvergEx Letter II.

quick implementation period;³⁶ (2) Clearing Members' inability to accurately predict or control their funding obligation and the effects thereof, including broker-dealers' inability to plan for funding and liquidity risks as provided in FINRA Reg. Notice 10-57;³⁷ (3) distributional effects associated with implementation of the Regular SLD funding obligation, manifested in particular by an anti-competitive and disparate impact on non-bank affiliated Clearing Members compared to bank affiliated Clearing Members with regard to the offsetting commitments to the Credit Facility;³⁸ and (4) perceived mechanical flaws with the application of the Regular SLD funding obligation.³⁹

Since NSCC has eliminated the aspect of the SLD Proposal to which these comments were made, the Commission believes these comments are not relevant for its determination on the Final SLD Proposal.

2. Comments Applicable to the Final SLD Proposal and NSCC's Responses Thereto

Seven of the eight commenters raised concerns with the SLD Proposal that, while not necessarily directly associated with the Special SLD funding obligation, could apply to elements of the Special SLD funding obligation and thus are relevant for the Commission's consideration of the Final SLD Proposal.⁴⁰ Four commenters argued that the SLD Proposal is arbitrary and capricious because it applies to no more than 30 Clearing Members.⁴¹ Six

³⁶ See, e.g., ITG Letter I, ITG Letter II, Citadel Letter III.

³⁷ See Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter II, SIFMA Letter I, SIFMA Letter II, ITG Letter II, Knight Capital Letter, Deutsche Bank Letter, ConvergEx Letter II.

³⁸ See Citadel Letter II, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, Knight Capital Letter, ConvergEx Letter I, ConvergEx Letter II.

³⁹ See ITG Letter II.

⁴⁰ See Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, ITG Letter III, Knight Capital Letter, Deutsche Bank Letter, ConvergEx Letter I, ConvergEx Letter II.

⁴¹ See Citadel Letter II, ITG Letter I, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter III, ITG Letter II, ITG Letter III. All four commenters argue that the imposition of a funding obligation to no more than 30 Clearing Members was arbitrary and capricious referred to the Regular SLD funding obligation, in which a Regular SLD funding obligation is satisfied pro rata by 30 Clearing Members irrespective of whether each Clearing Member presented a peak liquidity need above NSCC total available liquidity resources. One of the four commenters claims that the same

²⁴ See NFS Letter, Citadel Letter III, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter V, SIFMA Letter II, SIFMA Letter III, Knight Capital Letter, Deutsche Bank Letter, Fidelity Letter I, Fidelity Letter II, ConvergEx Letter I, ConvergEx Letter II, ITG Letter II.

²⁵ See Fidelity Letter II, Fidelity Letter III.

²⁶ See NFS Letter, Citadel Letter I, Citadel Letter II, Citadel Letter III, Citadel Letter IV, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, ITG Letter III, Knight Capital Letter, Deutsche Bank Letter, Fidelity Letter I, ConvergEx Letter I, and ConvergEx Letter II.

²⁷ See ITG Letter III.

²⁸ See *supra* note 24.

²⁹ See SIFMA Letter II.

commenters argued that the SLD Proposal would have unintended consequences of forcing a number of Clearing Members to terminate their membership and thereby concentrating the broker clearing business in fewer Clearing Members, potentially increasing systemic risk.⁴² One commenter stated that historic peak liquidity needs, which would be used by NSCC to determine the liquidity need presented by each Clearing Member, is not necessarily predictive of future liquidity needs.⁴³ Three commenters argued that NSCC incorrectly calculates its liquidity needs in the SLD Proposal, either because the liquidity need is calculated using Clearing Member gross settlement debits instead of net settlement debits or because the settlement debits were aggregated over a four-day cycle.⁴⁴ Seven commenters stated that treatment of funds delivered to NSCC to satisfy a funding obligation under the SLD Proposal for Commission Rule 15c3-1 purposes was unclear.⁴⁵

In response to comments that imposition of a funding obligation is arbitrary and capricious, NSCC revised the SLD Proposal to eliminate the Regular SLD funding obligation component,⁴⁶ which would have: (i) Assigned a funding obligation to the 30 Clearing Members that presented NSCC with the largest peak liquidity needs irrespective of whether the peak liquidity need itself would have surpassed NSCC available liquidity resources, and (ii) allocated a funding obligation to each of those 30 Clearing Members driven substantially by the peak liquidity need presented to NSCC by the largest Clearing Member.⁴⁷ In response to comments regarding unintended consequences of the SLD Proposal, such as Clearing Members terminating their membership, NSCC stated that the Clearing Member is in the best position to monitor and manage the liquidity risks presented by its own activity.⁴⁸ Similarly, NSCC states that

argument persists for the Special SLD Funding Obligation; as such, the Commission will consider the comment here. *See* Charles Schwab Letter V.

⁴² *See* Citadel Letter II, Charles Schwab Letter II, Charles Schwab Letter III, SIFMA Letter I, SIFMA Letter II, SIFMA Letter III, ITG Letter I, ITG Letter II, Knight Capital Letter, ConvergEx Letter II.

⁴³ *See* ITG Letter II.

⁴⁴ *See* Citadel Letter III, ITG Letter II, ConvergEx Letter I, ConvergEx Letter II.

⁴⁵ *See* 17 CFR 240.15c3-1. *See, e.g.,* Citadel Letter II, Citadel Letter III, Charles Schwab Letter II, Charles Schwab Letter III, SIFMA Letter II, ITG Letter I, ITG Letter II, ITG Letter III, Knight Capital Letter, ConvergEx Letter II.

⁴⁶ *See* Notice of Amendment No. 3, 78 FR at 62894-95.

⁴⁷ *Id.* at 62894.

⁴⁸ NSCC Letter I.

the maintenance of adequate liquidity resources at NSCC is a key element in the reduction of systemic risk at a systemically-important financial market utility and also a key component of NSCC's ability to prevent the failure of a Clearing Member from having a cascading effect on other Clearing Members.⁴⁹

NSCC agreed that historic peak liquidity needs are not necessarily predictive of future liquidity needs, and as a result NSCC has proposed a mechanism whereby Clearing Members may voluntarily prefund liquidity needs that the Clearing Member anticipates will surpass total liquidity resources available at NSCC through the Prefund Deposit.⁵⁰ Furthermore, in the event a Clearing Member does not elect to prefund potential liquidity needs but does present a liquidity need to NSCC above total liquidity resources that is not accounted for by a Special SLD funding obligation, NSCC has proposed a mechanism to require the Clearing Member to fund the liquidity need through the Call Deposit.⁵¹ With respect to comments that NSCC incorrectly calculates its liquidity need by using gross settlement debits instead of net settlement debits, NSCC responded that, as a central counterparty for its members, its risk exposure is reflected by the gross settlement debits presented to it, not net settlement debits, in the event of a Clearing Member default.⁵² Furthermore, NSCC stated that calculating liquidity obligations over a four-day settlement cycle is consistent with NSCC's practical liquidity obligation in the event of a Clearing Member default.⁵³ Finally, in response to comments that the treatment of funds posted in satisfaction of an SLD funding obligation for Rule 15c3-1 purposes is unclear, NSCC stated that it structured the SLD Proposal so that deposits made pursuant to an SLD funding obligation would constitute Clearing Fund deposits, which have clear regulatory capital treatment under Rule 15c3-1.⁵⁴

Six commenters stated that the SLD Proposal did not provide a sufficient evaluation of its burden on competition and lacked necessary detail so as to elicit meaningful comment.⁵⁵ Many of

⁴⁹ *See* NSCC Letter I.

⁵⁰ *See* Notice of Amendment No. 3, 78 FR at 62895.

⁵¹ *See* Notice, 78 FR at 25498.

⁵² *See* NSCC Letter I.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *See* Citadel Letter II, Charles Schwab Letter I, Charles Schwab Letter II, Charles Schwab Letter III, Charles Schwab Letter V, SIFMA Letter II, ITG Letter I, ITG Letter II, Knight Capital Letter, ConvergEx Letter I, ConvergEx Letter II.

these commenters argued that, while they supported NSCC's need for liquidity resources generally, NSCC did not demonstrate a specific need for additional liquidity in connection with the SLD Proposal.⁵⁶ Five commenters argued the SLD Proposal lacked sufficient Clearing Member input prior to submitting the proposal.⁵⁷ Three commenters argued that the SLD Proposal did not meet the standard required for an advance notice filing because it did not discuss expected effects on risks to NSCC's Clearing Members or NSCC's management of those risks.⁵⁸ Three commenters also argued that the SLD Proposal did not adequately protect investors.⁵⁹ One commenter argued that the fact that NSCC submitted the SLD Proposal without Clearing Member input is indicative of a lack of fair representation for Clearing Members in the governance of NSCC.⁶⁰ One commenter stated that NSCC did not take into account the potential impact of other central counterparties instituting similar liquidity provisions.⁶¹ Five commenters argued in opposition of cash being the only source by which a Clearing Member could satisfy a supplemental liquidity deposit.⁶²

In response to comments received regarding insufficient detail of the SLD Proposal, NSCC provided detail regarding: the specific need for liquidity resources,⁶³ implementation timeframes for the SLD Proposal,⁶⁴ and a suite of

⁵⁶ *See* Citadel Letter II, Citadel Letter III, SIFMA Letter II, SIFMA Letter III, ITG Letter II, ITG Letter III, ConvergEx Letter II.

⁵⁷ *See* Citadel Letter III, Charles Schwab Letter I, ITG Letter I, ITG Letter II, Knight Capital Letter, Deutsche Bank Letter.

⁵⁸ *See* Citadel Letter II, Charles Schwab Letter II, Charles Schwab Letter III, ConvergEx Letter II.

⁵⁹ *See* Deutsche Bank Letter, Charles Schwab Letter II, Charles Schwab Letter IV, Charles Schwab Letter V, SIFMA Letter II.

⁶⁰ *See* Citadel Letter III.

⁶¹ *See* Charles Schwab Letter II, Charles Schwab Letter III. Additionally, one commenter argued that NSCC attempted to improperly amend the SLD Proposal through a response to comments. *See* Charles Schwab Letter V. The Commission notes that NSCC filed the Final SLD Proposal subsequent to the Commission's receipt of this comment in accordance with the rule filing process. *See* Notice of Amendment No. 3, 78 FR 62893.

⁶² *See* NFS Letter, Charles Schwab Letter II, Charles Schwab Letter III, Citadel Letter II, Citadel Letter III, SIFMA Letter I, Fidelity Letter II, ITG Letter II.

⁶³ *See* NSCC Letter II (stating that "NSCC has seen continued increases in potential liquidity needs, driven by consolidation in the industry, developments in trading techniques (including a rise in high frequency trading), and a reduction in volatility from the post-[2008] crisis highs which result in reduced Clearing Fund requirements").

⁶⁴ *See* Notice of Amendment No. 3, 78 FR 62893 (stating that the Final SLD Proposal would be implemented on February 1, 2014).

tools, such as monthly and daily reports, to enable Clearing Members to more accurately predict a potential Regular SLD funding obligation.⁶⁵ NSCC stated that it would work with Clearing Members to help them understand and develop tools to forecast liquidity exposure and mitigate their peak liquidity exposure.⁶⁶ NSCC also stated that it would provide monthly and daily reports to Clearing Members that would show liquidity exposure during relevant periods.⁶⁷ NSCC also stated that fluctuating peak activity recently has exceeded NSCC available total liquidity resources.⁶⁸ NSCC believes these liquidity needs are largely driven by industry consolidation, developments in trading techniques, including an increased use of high frequency trading, and a reduction in volatility from post-2008 financial crisis levels, generally resulting in a reduction in Clearing Fund requirements.⁶⁹ In response to comments received regarding insufficient analysis of the burden on competition that might ensue from implementation of the SLD Proposal, NSCC substantially revised the SLD Proposal twice to expand its analysis of the burden on competition to include, for example, individual subsections specifically addressing competition concerns raised by commenters,⁷⁰ and to reduce any disparate impact on Clearing Members stemming from implementation of the SLD Proposal, first to provide a mechanism by which non-bank affiliated Clearing Members could contribute to Credit Facility, and second to eliminate the Regular SLD from the Final SLD Proposal.⁷¹

In response to comments regarding the lack of Clearing Member input in the SLD Proposal and that the development of the SLD Proposal without Clearing Member input was indicative of a lack of fair representation of all Clearing Members at NSCC, NSCC stated that it engaged in discussions with Clearing Members likely to be impacted by the SLD Proposal, including more than 100

meetings with Clearing Members to enhance Clearing Members' understanding of liquidity risks presented to NSCC and the SLD Proposal generally.⁷² The Advance Notice and subsequent amendments were published for comment three times, so Clearing Members had an opportunity to comment, and NSCC also substantially revised the SLD Proposal twice as a direct response to comments received on the SLD Proposal.⁷³ Finally, on September 18, 2013, NSCC announced to its membership that it was forming the Clearing Agency Liquidity Council ("CALC"), an advisory group to continue the dialogue between NSCC and its Clearing Members regarding liquidity issues in a formal setting.⁷⁴ According to NSCC, the CALC intends to explore additional liquidity resources in advance of the 2014 renewal of NSCC's Credit Facility, in order to address, for example, NSCC's liquidity needs outside of Special Periods and the refinancing risk associated with the annual renewal of the Credit Facility.⁷⁵ According to NSCC, twenty-four Clearing Members joined the CALC, including all eight commenters to the SLD Proposal, which has met on multiple occasions since its inception.

NSCC responded to comments that the SLD Proposal did not contain sufficient information by amending the SLD Proposal twice to further identify the potential impact of the SLD Proposal on Clearing Members and to make substantive revisions to the SLD Proposal to address those concerns.⁷⁶ NSCC responded to comments that the SLD Proposal did not protect investors by stating that the maintenance of adequate liquidity resources at NSCC, a designated systemically-important financial market utility⁷⁷ that plays a fundamental role in the United States cash equities market,⁷⁸ will protect against the transmission of systemic risk

among Clearing Members in the event of a failure of one Clearing Member, thereby promoting the prompt and accurate settlement of securities transactions and the protection of investors.⁷⁹ NSCC responded to the comment that it did not take into account other central counterparties imposing similar liquidity requirements by stating that such a concern was unlikely given the difference in liquidity risk between cash market central counterparties (i.e., NSCC), where potential liquidity needs typically are orders of magnitude greater than the market risk that their margin collections are designed to cover, and derivatives central counterparties, where liquidity needs generally are more closely aligned to market risk of members' portfolios and the members' margin requirements.⁸⁰ In response to comments opposed to cash being the sole funding source by which a Clearing Member could satisfy a supplemental liquidity deposit, NSCC eliminated Regular SLD, thereby eliminating concern relating to disparate treatment that might ensue by requiring Clearing Members that do not make a commitment to lend to NSCC through the Credit Facility to make their Regular SLD funding obligation in cash, and NSCC states that the CALC will evaluate potential alternative collateral approaches that could be used to fund a portion of a Clearing Member's funding obligation.⁸¹

C. Comments to the Final SLD Proposal

The Commission received two comments on the Final SLD Proposal. Both commenters supported NSCC's decision to eliminate the Regular SLD funding obligation from the SLD Proposal.⁸² One commenter argued for approval of the Final SLD Proposal, since the Final SLD Proposal "is a helpful development in the process of determining how best to increase NSCC's liquidity resources to meet its liquidity needs."⁸³ Moreover, the commenter believes that "NSCC has addressed the area of greatest [m]ember concern in removing provisions of the

⁷⁹ See NSCC Letter I, NSCC Letter II. Designation as systemically-important by FSOC means that a failure of or disruption to its functioning could create, or increase, the risk of significant credit or liquidity problems spreading among financial institutions or markets, thereby threatening financial stability. See 12 U.S.C. 5462(9). See also FSOC Designation, *supra* note 77.

⁸⁰ See NSCC Letter II.

⁸¹ *Id.* See also discussion below noting that any cash deposit is driven by the Clearing Member's own trading activity.

⁸² See ITG Letter III, Fidelity Letter III.

⁸³ See Fidelity Letter III.

⁷² See NSCC Letter I.

⁷³ See Notice of Amendment No. 2, 78 FR 42127; Notice of Amendment No. 3, 78 FR 62893. See also NSCC Letter II.

⁷⁴ DTCC Important Notice a7706, *Creation of DTCC Clearing Agency Liquidity Council and Nomination Process* (Sep. 18, 2013), http://dtcc.com/downloads/legal/imp_notices/2013/nsccl/a7706.pdf.

⁷⁵ See NSCC Letter II. See also Notice of Amendment No. 2, 78 FR 42127, Notice of Amendment No. 3, 78 FR 62893.

⁷⁶ See Notice of Amendment No. 2, 78 FR 42127; Notice of Amendment No. 3, 78 FR 62893. See also NSCC Letter II.

⁷⁷ Financial Stability Oversight Council ("FSOC") 2012 Annual Report, Appendix A, <http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf> ("FSOC Designation").

⁷⁸ See 12 U.S.C. 5462(9).

⁶⁵ See NSCC Letter I, NSCC Letter II, Notice of Amendment No. 2, 78 FR 42127, Notice of Amendment No. 3, 78 FR 62893.

⁶⁶ See NSCC Letter I.

⁶⁷ See NSCC Letter I, NSCC Letter II.

⁶⁸ See NSCC Letter II.

⁶⁹ *Id.*

⁷⁰ See Notice of Amendment No. 2, 78 FR 42127. See also NSCC Letter I. NSCC argued that the SLD Proposal would apply fairly across Clearing Members and, while recognizing potential competitive impacts on such members, believed the SLD Proposal addressed important financial resource requirements. NSCC also stated that it was revising the SLD Proposal to address competition concerns.

⁷¹ See Notice of Amendment No. 2, 78 FR 42127; Notice of Amendment No. 3, 78 FR 62893. See also NSCC Letter I, NSCC Letter II.

[SLD] Proposal that collectively deal with the imposition of the Regular [SLD].”⁸⁴ One commenter argued for disapproval of the Final SLD Proposal, stating that flawed concepts remain and approval would unnecessarily inhibit the development of ideas from NSCC’s CALC.⁸⁵ NSCC did not submit a response to comments received after submission of the Final SLD Proposal.

V. Discussion and Commission Findings

Although Title VIII does not specify a standard of review for an advance notice, the purpose of Title VIII is instructive.⁸⁶ The stated purpose of Title VIII is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for and strengthening the liquidity of systemically-important financial market utilities.⁸⁷

Section 805(a)(2) of the Clearing Supervision Act⁸⁸ authorizes the Commission to prescribe risk management standards for the payment, clearing, and settlement activities of designated clearing entities and financial institutions engaged in designated activities for which it is the supervisory agency or the appropriate financial regulator. Section 805(b) of the Clearing Supervision Act⁸⁹ states that the objectives and principles for the risk management standards prescribed under Section 805(a) shall be to:

- promote robust risk management;
- promote safety and soundness;
- reduce systemic risks; and
- support the stability of the broader financial system.

The Commission adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act on October 22, 2012, (“Clearing Agency Standards”).⁹⁰ The Clearing Agency Standards became effective on January 2, 2013, and require clearing agencies that perform central counterparty services to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.⁹¹ As

such, it is appropriate for the Commission to review advance notices against these risk management standards that the Commission promulgated under Section 805(a) and the objectives and principles of these risk management standards as described in Section 805(b). Commission Rule 17Ad-22(b)(3), adopted as part of the Clearing Agency Standards, requires a central counterparty to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions.⁹²

After carefully considering the Final SLD Proposal and the comments received⁹³ on the SLD Proposal and NSCC responses thereto, the Commission finds that NSCC has demonstrated that its Final SLD Proposal is in furtherance of the objectives and principles of Title VIII and the risk management standards prescribed thereunder by the Commission and accordingly it is appropriate for the Commission to issue a no-objection to the Final SLD Proposal.

The Commission recognizes that some commenters did not support certain aspects of the SLD Proposal. However, the Commission believes that the Final SLD Proposal eliminated most of the aspects of the SLD Proposal which concerns were raised, and no comments convinced the Commission that the Final SLD Proposal was not consistent with Title VIII. The Commission believes that, overall, the increased liquidity resources available to NSCC as a result of the Final SLD Proposal: (i)

governing the operations of systemically-important financial market utilities that are not clearing entities and financial institutions engaged in designated activities for which the Commission or the Commodity Futures Trading Commission is the Supervisory Agency. *See* Financial Market Utilities, 77 FR 49507 (Aug. 2, 2012).

⁹² 17 CFR 240.17Ad-22(b)(3).

⁹³ In its assessment of this advance notice of the Final SLD Proposal, the Commission assessed whether the issues raised by the commenters relate to the level or nature of risks presented by the Final SLD Proposal. Comments received that relate to issues that do not relate to the Final SLD Proposal’s effect on the level or nature of risks presented by NSCC are not considered within the context of his Notice of No Objection to the Advance Notice under Title VIII; rather, they are considered within an analysis of the Final SLD Proposal’s consistency with the Exchange Act and applicable rules and regulations thereunder, which the Commission has done in the Order Approving the Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3, to Institute Supplemental Liquidity Deposits to Its Clearing Fund Designed to Increase Liquidity Resources to Meet its Liquidity Needs. *See supra* note 3.

Will improve financial safety at NSCC by increasing its ability meet its liquidity needs; (ii) reduce systemic risks and support the stability of the broader financial system; and (iii) accordingly is reasonably designed to ensure NSCC maintains sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions. The Commission’s analysis of the comments applicable to the Final SLD Proposal and the Final SLD Proposal’s consistency with Title VIII of the Dodd-Frank Act and risk management standards prescribed thereunder by the Commission are discussed below.

As stated above, several commenters argued that the original SLD Proposal suffered from certain defects, such as a failure of NSCC to consult with Clearing Members prior to submitted the SLD Proposal,⁹⁴ that the SLD Proposal did not adequately address items required by Title VIII,⁹⁵ and that NSCC did not demonstrate a specific need for additional liquidity in connection with the SLD Proposal.⁹⁶ The Commission believes that the Final SLD Proposal is consistent with Title VIII. NSCC made substantial revisions to the SLD Proposal directly responsive to comments raised during the comment period, the creation of the CALC to continue the dialogue between NSCC and Clearing Members regarding liquidity generally, and a more robust description of the SLD Proposal and its potential effects on the competition between Clearing Members. The Commission notes the stated intention of the CALC to revisit and further impose NSCC’s practices with respect to liquidity risk management as also being relevant in this respect.

The Commission notes that all commenters supported NSCC’s objective of maintaining sufficient financial resources to withstand a default by a Clearing Member and acknowledged that NSCC must have sufficient liquidity for these purposes. The Commission agrees with commenters and with NSCC that the maintenance of sufficient liquidity resources at NSCC is of

⁹⁴ *See* Citadel Letter III, Charles Schwab Letter I, ITG Letter I, ITG Letter II, Knight Capital Letter, Deutsche Bank Letter, Fidelity Letter I.

⁹⁵ *See* Citadel Letter II, Charles Schwab Letter II, Charles Schwab Letter III, ConverEx Letter II.

⁹⁶ *See* Citadel Letter II, Citadel Letter III, SIFMA Letter II, SIFMA Letter III, ITG Letter II, ITG Letter III, ConverEx Letter II. With respect to the comments described above about NSCC requiring cash be deposited as collateral, the Commission believes that NSCC has addressed these comments and has stated that the CALC will evaluate potential alternative collateral approaches.

⁸⁴ *Id.*

⁸⁵ *See* ITG Letter III.

⁸⁶ 12 U.S.C. 5461(b).

⁸⁷ *Id.* *See also* FSOC Designation, *supra* note 77.

⁸⁸ 12 U.S.C. 5464(a)(2).

⁸⁹ 12 U.S.C. 5464(b).

⁹⁰ Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219 (Nov. 2, 2012).

⁹¹ The Clearing Agency Standards are substantially similar to the risk management standards established by the Board of Governors

paramount importance to promote safety and soundness and support the broader stability of the financial system. This is underscored by NSCC's designation as a systemically-important financial market utility for which a failure or disruption of its operations would create or increase risk of significant credit or liquidity problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the U.S.⁹⁷

The Commission also notes that NSCC has stated that fluctuating peak liquidity needs presented to NSCC have exceeded total liquidity resources available to NSCC, emphasizing the need for NSCC to develop a mechanism to help ensure that it maintains adequate liquidity as soon as possible.⁹⁸ These liquidity needs are driven by Clearing Members' trading activity, and the Final SLD Proposal is designed as a mechanism to allocate a funding obligation to those Clearing Members with peak liquidity needs that surpass NSCC available liquidity resources.

The Commission takes specific note of comments arguing that implementation of the SLD Proposal could result in an increase of systemic risk by concentrating clearing services into fewer firms if Clearing Members opt to terminate their NSCC membership instead of meeting a Special SLD funding obligation. The Commission has carefully considered those comments, but does not believe a risk of increased concentration is a significant risk under the Final SLD Proposal for several reasons. First, since a Special SLD funding obligation is correlated directly to the liquidity need presented to NSCC as a result of Clearing Members' own⁹⁹ trading activity, the Special SLD funding obligation is not an unexpected cost for which the Clearing Member is incapable of controlling. Second, the Special SLD funding obligation applies only in the case where a Clearing Member presents a liquidity need that surpasses the then-current total available liquidity resources, based on a two-year look-back period of the Clearing Member's trading activity. These liquidity resources include the Clearing Fund and the Credit Facility, and historically these liquidity resources have provided NSCC with adequate liquidity resources a substantial portion of the time. While the Commission believes the Final SLD

Proposal is important for NSCC to ensure that it has a mechanism to maintain adequate liquidity resources at all times, the Commission also expects based on the representations of NSCC that a Special SLD funding obligation will be required in only a small number of cases and from a select few Clearing Members with trading activity that is substantial enough to create a liquidity need above NSCC's total liquidity resources. Finally, the Commission notes that the Final SLD Proposal would enable a Clearing Member to avoid a Special SLD funding obligation by either managing its own trading activity to avoid such an obligation or using the Prefund Deposit, which would likely avoid a Call Deposit that would enable NSCC to hold the deposited funds for 90 days, so that the Clearing Member has options other than termination of membership available to it to manage its potential liquidity funding obligation.

For the reasons stated above, the Commission believes that the Final SLD Proposal is: (i) Consistent with Commission regulations and risk management standards in Section 805(b) of the Clearing Supervision Act because it promotes robust risk management and improves safety and soundness at NSCC, while reducing systemic risks to the financial system more generally and (ii) consistent with Rule 17Ad-22 (b)(3) because it provides NSCC with a mechanism to maintain sufficient financial resources to withstand, at a minimum, a default by the Clearing Member to which NSCC has the largest exposure.

VI. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act,¹⁰⁰ that the Commission does not object to the proposed rule change described in the Advance Notice (File No. SR-NSCC-2013-802) and that NSCC be and hereby is authorized to implement the proposed rule change as of the date of this notice or the date of the "Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3 to Institute Supplemental Liquidity Deposits to [NSCC's] Clearing Fund Designed to Increase Liquidity Resources to Meet Its Liquidity Needs," SR-NSCC-2013-02, whichever is later.

By the Commission.

Kevin M. O'Neill,
Deputy Secretary.

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¹⁰⁰ 12 U.S.C. 5465(e)(1)(I).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70993; File No. SR-NYSEArca-2013-101]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change To List and Trade Shares of the WisdomTree Bloomberg U.S. Dollar Bullish Fund, WisdomTree Bloomberg U.S. Dollar Bearish Fund, and the WisdomTree Commodity Currency Bearish Fund Under NYSE Arca Equities Rule 8.600

December 5, 2013.

I. Introduction

On September 26, 2013, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares ("Shares") of WisdomTree Bloomberg U.S. Dollar Bullish Fund, WisdomTree Bloomberg U.S. Dollar Bearish Fund, and the WisdomTree Commodity Currency Bearish Fund of the WisdomTree Trust. The proposed rule change was published for comment in the **Federal Register** on October 22, 2013.³ The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the WisdomTree Bloomberg U.S. Dollar Bullish Fund ("DI Bull Fund"), WisdomTree Bloomberg U.S. Dollar Bearish Fund ("DI Bear Fund," and together with the DI Bull Fund, collectively, "DI Funds"), and the WisdomTree Commodity Currency Bearish Fund ("CC Bear Fund")⁴ under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the WisdomTree Trust ("Trust"), a Delaware statutory trust registered with the Commission as an investment company.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 70624 (October 8, 2013), 78 FR 62751 ("Notice").

⁴ The DI Funds and the CC Bear Fund are also individually referred to as "Fund" and collectively referred to as "Funds."

⁵ The Trust has filed a registration statement on Form N-1A ("Registration Statement") with the Commission on behalf of each of the Funds. See Post-Effective Amendment No. 216 (DI Bull Fund), No. 217 (DI Bear Fund), and No. 218 (CC Bear

⁹⁷ See 12 U.S.C. 5462(9).

⁹⁸ See NSCC Letter II.

⁹⁹ For these purposes, a Clearing Members' own trading activity includes trading activity from all clients of the Clearing Member.