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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90169; File No. SR-DTC-2020-801]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of an Advance Notice to Amend Rule 4

October 14, 2020.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act")[1] and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 ("Act"),[2] notice is hereby given that on September 9, 2020, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") advance notice SR-DTC-2020-801 ("Advance Notice") as described in Items I, II, and III below, which Items have been prepared by the clearing agency.[3] The Commission is publishing this notice to solicit comments on the Advance Notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

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1 12 U.S.C. 5465(e)(1).

2 17 CFR 240.19b-4(n)(1)(i).

3 On September 9, 2020, DTC filed the Advance Notice as a proposed rule change (SR-DTC-2020-011) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, 17 CFR 240.19b-4. A copy of the proposed rule change is available at http://www.dtcc.com/legal/sec-rule-filings.aspx.

This Advance Notice consists of amendments to the Rules, By-Laws and Organization Certificate of DTC ("Rules").[4] The proposed change would amend Rule 4 to provide expressly that the Participants Fund continues to be a liquidity resource that may be used by DTC to fund a settlement funding gap to complete settlement on a Business Day, whether the funding gap is the result of a Participant Default or otherwise. In addition, the proposed change would make other technical and clarifying amendments to Rule 4 to provide enhanced transparency with respect to use of the Participants Fund and other resources to complete settlement on a Business Day, as discussed below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the Advance Notice and discussed any comments it received on the Advance Notice. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A and B below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received from Members, Participants, or Others

Written comments relating to this proposal have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

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4 Each capitalized term not otherwise defined herein has its respective meaning as set forth in DTC's rules, including, but not limited to, the Rules and the DTC Settlement Service Guide (the "Settlement Guide"), available at http://www.dtcc.com/legal/rules-and-procedures.aspx. The Settlement Guide is a Procedure of DTC filed with the Commission that, among other things, operationalizes and supplements the DTC Rules that relate to settlement, including, but not limited to, Rule 4 (Participants Fund and Participants Investment).

(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

Description of Proposed Change

The proposed rule change would amend Rule 4 to provide expressly that the Participants Fund continues to be a liquidity resource that may be used by DTC to fund a settlement funding gap to complete settlement on a Business Day, whether the funding gap is the result of a Participant Default or otherwise. In addition, the proposed rule change would make other technical and clarifying amendments to Rule 4 to provide enhanced transparency with respect to use of the Participants Fund and other resources to complete settlement on a Business Day, as discussed below.

(i) Background

A. DTC Settlement on a Business Day

DTC is the central securities depository ("CSD") for substantially all corporate and municipal debt and equity securities available for trading in the United States. DTC plays a critical role in the national financial infrastructure.[5] As a CSD, DTC provides a central location in which securities may be immobilized, and interests in those securities are reflected in accounts maintained for its Participants, which are financial institutions such as brokers or banks.[6] As a CSD, DTC is structured to provide for the settlement of

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5 See Financial Stability Oversight Council ("FSOC") 2012 Annual Report, Appendix A at 166, available at https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Appendix%20A%20Designation%20of%20Systemically%20Important%20Market%20Utilities.pdf.

6 See, e.g., Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167, 45168 (October 3, 1983) (File No. 600-1) ("A securities depository is a "custodial" clearing agency that operates a centralized system for the handling of securities certificates. Depositories accept deposits of securities from broker-dealers, banks, and other financial institutions; credit those securities to the depositing participants accounts; and, pursuant to participant's instructions, effect

book-entry transfers and pledges of interests in securities between Participants, and for end-of-day net funds settlement on each Business Day.[7]

The DTC settlement system records money debits and credits to Participant settlement accounts throughout a Business Day. Credits to a Participant settlement account arise from deliveries versus payment, receipt of payment orders, principal and interest distributions in respect of securities held, intraday settlement progress payments and any other items or transactions that give rise to a credit. Debits to a Participant settlement account are primarily due to receives versus payment, as well as other types of charges to the account permitted under the Rules. As these debits and credits to a Participant's settlement account are recorded intraday, the Participant's settlement account will be in a net debit balance or net credit balance from time to time and, finally, at the end of a Business Day, a net debit, net credit or zero balance is determined. This final net debit or net credit balance determines whether the Participant has an obligation

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book-entry movements of securities. The physical securities deposited with a depository are held in a fungible bulk; each participant or pledgee having an interest in securities of a given issue credited to its account has a pro rata interest in the physical securities of the issue held in custody by the securities depository in its nominee name. Depositories collect and pay dividends and interest to participants for securities held on deposit. Depositories also provide facilities for payment by participants to other participants in connection with book-entry deliveries of securities. . . .").

7 See, e.g., Rule 9(A) (Transactions in Securities and Money Payments), Rule 9(B) (Transactions in Eligible Securities), Rule 9(C) (Transactions in MMI Securities), Rule 9(D) (Settling Banks), and Rule 9(E) (Clearing Agency Agreements), supra note 4, which provide the mechanism to achieve a "DVP Model 2 Deferred Net Settlement System" (as defined in Annex D of the Principles for Financial Market Infrastructures issued by the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions (April 2012), available at https://www.bis.org/cpmi/publ/d101a.pdf).

to pay or to be paid in the process of DTC completing settlement on that Business Day. A Participant with an end-of-day net debit balance has an obligation to pay DTC that amount; a Participant with an end-of-day net credit balance is entitled to receive a payment from DTC. When a Participant has an end-of-day zero net balance or an end-of-day net credit balance, it is deemed to have satisfied its settlement obligations for that Business Day, and securities processed for delivery versus payment for delivery to the Participant will be credited to its account. When a Participant with a net debit balance pays its settlement obligation, and DTC completes system-wide settlement, all securities processed for delivery versus payment to that Participant on that Business Day will be credited to its account and it will have paid for those deliveries. As to payments due to the Participant for its deliveries on that Business Day, the Participant will have been paid as well, because credits for those deliveries intraday have offset and reduced its other debit obligations, even though, on balance, it finished the Business Day with a settlement obligation. A Participant that defaults on its settlement obligations on a Business Day will not have paid for the securities processed for delivery versus payment, and the securities will not be credited to its account.

B. Settlement Gap on a Business Day

There may be circumstances in which the amount of settlement payments received or available to DTC on a Business Day is not sufficient to pay all Participants with an end-of-day net credit balance on that Business Day (a "settlement gap"). A settlement gap could occur on a Business Day as a result of, principally, a Participant Default, where a Participant fails to pay its settlement obligation (a "default gap"). A settlement gap could also occur on a Business Day as a result of causes other than a Participant Default (a "non-default gap"). For example, a non-default gap could occur if the funds required to complete settlement are not available to DTC, in whole or in part, due to an operational or data issue arising at DTC, a Participant or Settling Bank, or due to a cyber incident, or other technological business disruption.

The Rules and Procedures of DTC specify the extent of the obligation of DTC to achieve settlement on each Business Day, and, as DTC is not a central counterparty ("CCP"), do not guarantee settlement.[8] However, as a critical part of the national financial infrastructure, if DTC does not complete settlement on a given Business Day, there could be significant market-wide effects.[9] The Rules and Procedures of DTC are structured so that if there is a settlement gap on a Business Day, DTC has liquidity resources to mitigate the risks relating to a disruption to obligations settling at DTC on

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8 See, e.g., Rule 9(B), supra note 4 ("Each Participant and the Corporation shall settle the balance of the Settlement Account of the Participant on a daily basis in accordance with these Rules and the Procedures. Except as provided in the Procedures, the Corporation shall not be obligated to make any settlement payments to any Participants until the Corporation has received all of the settlement payments that Settling Banks and Participants are required to make to the Corporation.").

9 Supra note 5.

that Business Day. If there is any problem with the receipt or disbursement of funds for settlement, the issue would need to be addressed quickly. Access to liquidity resources needs to be optimized during the tight timeframe in which settlement must be completed on a Business Day, in order for DTC to quickly and effectively respond to and resolve any settlement gap, whether a default gap or non-default gap.

C. Participants Fund as a Liquidity Resource to Complete Settlement on a Business Day

The Participants Fund is designed to be one of the foundational liquidity resources available to DTC to fund a settlement gap to complete settlement on a Business Day. Rule 4 contains the key provisions of the Rules and Procedures specifying the rights, duties and obligations of Participants and DTC with respect to the Participants Fund. Every Participant is required to make at least a minimum deposit to the Participants Fund, and Participants with higher levels of activity that impose greater liquidity risk to the DTC settlement system have proportionally larger required deposits. The principal purpose of the Participants Fund is, and historically has been, to provide a mutualized liquidity resource to satisfy DTC losses and liabilities attributable to its business conducted for the benefit of its Participants.[10] Key among these is daily settlement on

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[10] See Settlement Guide at 48, supra note 4 ("The Participants Fund . . . provided in DTC Rule 4 create[s] liquidity and collateral resources to support the business of DTC and to cover losses and liabilities incident to that business."). The term "business" with respect to DTC means "the doing of all things in connection with or relating to the Corporation's performance of the services specified in the first and second paragraphs of Rule 6 or the cessation of such services." Rule 4, Section 1(f), supra note 4. The first two paragraphs of Rule 6 describe services provided by DTC, including settlement. Rule 6, supra note 4. DTC notes that, as early as 1975, the Rules provided that "[t]he Participants Fund may be used by the Corporation for the purposes of its business . . . ." See DTC CA-1 Application for Permanent Registration as a Clearing Agency, dated December 15, 1980 (File 600-1) at page 588. In addition, the range of permissible uses of a clearing or participants fund as covering "all losses and liabilities incident to clearance and

each Business Day, but also, historically, the Participants Fund was a resource to cover losses and other liabilities as well.[11] Prior to August 28, 2018, Rule 4 ("Previous Rule 4"), in particular Section 4 of Previous Rule 4, provided a unified set of provisions that addressed this application of the Participants Fund "in satisfaction of losses and liabilities of the Corporation incident to the business of DTC."

On August 28, 2018, the Commission approved a rule change filed by DTC with respect to Rule 4 ("Loss Allocation Rule Change").[12] A primary purpose of the Loss Allocation Rule Change was to harmonize the loss allocation provisions of the Rules of DTC with similar provisions of the rules of its two affiliated CCPs, National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC") (collectively, the "CCPs").

As part of the Loss Allocation Rule Change, Previous Rule 4 was restructured to provide separate and distinct provisions for (i) in Section 4 of Rule 4, the application of

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settlement activities" of the clearing agency was specifically noted in the 1983 order of the Commission granting DTC full registration as a clearing agency. Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983) (File No. 600-1). The concept was also in Rule 4 of Central Certificate Service, Inc., the predecessor of DTC, filed with the Commission in 1972. Securities Exchange Act Release No. 9849 (November 8, 1972), 37 FR 24795 (November 21, 1972) (As described by the Commission: "Rule 4. A participant's fund will require deposits by participants upon the basis of a formula established by CCS, Inc., based upon usage. The minimum contribution is $10,000. The fund is available for the uses specified in the rules including for the purposes of its business.").

11 See id.

12 See Securities Exchange Act Release No. 83969 (August 28, 2018), 83 FR 44955 (September 4, 2018) (SR-DTC-2017-022).

liquidity resources, including, but not limited to, the pro rata application of the Participants Fund, in order to complete settlement on a given Business Day when there is a settlement gap, and (ii) in Section 5 of Rule 4, the allocation of losses and liabilities of DTC arising out of Default Loss Events or Declared Non-Default Loss Events.[13] Revised Section 4 of Rule 4 was meant to retain the core principle of Previous Rule 4 for the application of the Participants Fund as a liquidity resource to complete settlement.[14] A new Section 5, consisting of loss allocation provisions that were revised for substantial conformity with revisions for the CCPs, was inserted into Rule 4 to provide a discrete loss allocation waterfall ("Loss Allocation Waterfall") more comparable to NSCC and FICC.

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[13] As a result, the main sections of Rule 4 relating to the Participants Fund are: Section 1, which focuses on Required Participants Fund Deposits and Actual Participants Fund Deposits, and briefly addresses the maintenance, permitted use and investment of the Participants Fund; Section 3, which provides for the application of a defaulting Participant's own Actual Participants Fund Deposit to its unpaid settlement obligations; and Section 4, which provides for, in relevant part, the pro rata application of the Actual Participants Fund Deposits of all Participants (except a defaulting Participant) to fund a settlement gap on a Business Day. DTC notes that Section 5 of Rule 4 does not provide for the direct application of the Participants Fund as part of the Loss Allocation Waterfall. The reference in Section 1(f) of Rule 4 to the use of the Actual Participants Fund Deposits "to satisfy losses and liabilities of the Corporation incident to the business of the Corporation, as provided in Section 5 of this Rule" refers to the application of the Actual Participants Fund Deposit of a Participant that fails to timely make its loss allocation payment under the Loss Allocation Waterfall, as provided for in Section 3 of Rule 4. Accordingly, this proposed rule change has no relationship to or effect on the Loss Allocation Waterfall. Nor do the proposed drafting changes to Section 4 of Rule 4 affect, in any degree, the likelihood of the occurrence of a Default Loss Event or Declared Non-Default Loss Event subject to Section 5.

[14] See infra note 16.

Nevertheless, as explained in more detail below, DTC now recognizes that certain of the provisions of amended Section 4 of Rule 4 might be read in a manner that conflicts with the stated, and historical, purpose of the Participants Fund.[15] Specifically, certain provisions might be construed to narrow the scope of use of the Participants Fund for settlement to a default gap only.[16] Therefore, because settlement is a critical service of DTC, and the Participants Fund is a critical liquidity resource to fund any settlement gap, DTC is proposing to amend certain provisions of Section 4 of Rule 4 to reflect expressly that the Participants Fund continues to be a liquidity resource that may be used by DTC to fund a settlement gap to complete settlement on a Business Day, whether the settlement gap is the result of a Participant Default, or otherwise.

(ii) Overview of Proposed Rule Change

A. Sections 3 and 4 of Rule 4

Currently, Sections 3 and 4 are the primary sections of Rule 4 that are relevant to the application of the Participants Fund to fund a settlement gap.

Section 3 of Rule 4 provides, in relevant part, that "[i]f a Participant is a Participant that is a Defaulting Participant pursuant to Rule 9(B) or is otherwise obligated to the Corporation pursuant to these Rules and the Procedures and fails to satisfy any such obligation (a "Participant Default") . . . the Corporation shall, to the extent necessary

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15 See supra note 10.

16 The rule filing for the Loss Allocation Rule Change did not mention any intention to narrow the scope of the permitted use of the Participants Fund under Rule 4. See Securities Exchange Act Release No. 83629 (July 13, 2018), 83 FR 34246, 34248 (July 19, 2018) (SR-DTC-2017-022) ("The proposed rule change would retain the core principles of [Previous] Rule 4 for both application of the Participants Fund as a liquidity resource to complete settlement and for loss allocation.").

to eliminate such obligation, apply some or all of the Actual Participants Fund Deposit of such Participant to such obligation to satisfy the Participant Default."[17]

Section 3 of Rule 4 is the basic provision of remedies if a Participant fails to satisfy an obligation to DTC.[18] In that case, DTC may apply the Actual Participants Fund Deposit of the responsible Participant to the extent necessary to satisfy its Participant Default. A Participant Default includes a situation where a Participant fails to pay its net debit balance at the end of a Business Day. If the amount of the Actual Participants Fund Deposit of the responsible Participant is insufficient to satisfy its net debit balance, DTC has recourse to the Actual Participants Fund Deposits of the other Participants, to be charged pro rata in accordance with Section 4 of Rule 4.

Section 4 of Rule 4 currently provides:

> The Participants Fund shall constitute a liquidity resource which may be applied by the Corporation in such amounts as the Corporation shall determine, in its sole discretion, to fund settlement if there is a Defaulting Participant and the amount charged to the Actual Participants Fund Deposit of the Defaulting Participant pursuant to Section 3 of this Rule is not sufficient to complete settlement. In that case, the Corporation may apply the Actual Participants Fund Deposits of Participants other than the Defaulting Participant (each, a "non-defaulting Participant") as provided in this Section and/or apply such other liquidity resources as may be available to the Corporation from time to time, including the End-of-Day Credit Facility.
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> If the Participants Fund is applied to complete settlement, the Corporation shall promptly after the event notify each Participant and the SEC of the amount applied and the reasons therefor ("Settlement Charge Notice"). Each non-defaulting Participant's pro rata share of such application of the Participants Fund (each, a "pro rata settlement charge") shall be equal to (i) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the Business Day of such application less its

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17 Supra note 4.

18 Therefore, Section 3 of Rule 4 does not apply to a situation where there is no Participant Default.

> Additional Participants Fund Deposit, if any, on that day, divided by (ii) the sum of the Required Participants Fund Deposits of all non-defaulting Participants, as such Required Participants Fund Deposits were fixed on that day, less the sum of the Additional Participants Fund Deposits, if any, of such non-defaulting Participants on that day.[19]

The above provisions of Section 4 of Rule 4 were drafted as part of the restructuring and revision of Rule 4 in connection to the Loss Allocation Rule Change. The intention was that these new provisions would track the historical principle of Section 4 of Previous Rule 4 that the Participants Fund may be applied to a loss or liability, including a settlement gap, that could not be satisfied by charging the Actual Participants Fund Deposit of a Participant pursuant to Section 3 of Rule 4. Nevertheless, because Section 4 of Rule 4 is now silent as to the use of the Participants Fund to complete settlement when there is a non-default gap, it could be construed as limiting the pro rata application of the Participants Fund to fund a settlement gap to default scenarios.

On each Business Day, settlement occurs during a tight timeframe, in conjunction with the Federal Reserve's National Settlement Service (NSS) and Fedwire.[20] If there is

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19 Supra note 4. The proposed rule change would not affect the balance of Section 4 of Rule 4. Section 4 of Rule 4 also provides, in part, that a Participant shall have a period of five Business Days following issuance of a Settlement Charge Notice to notify DTC of its election to terminate its business with DTC and thereby cap its maximum obligation with respect to other pro rata settlement charges ("Settlement Charge Cap"). If the Participant gives such notice, Section 4 of Rule 4 provides that DTC may still retain the entire amount of the Actual Participants Fund Deposit of a Participant subject to a pro rata settlement charge, up to the amount of the Participant's Settlement Charge Cap. Section 4 of Rule 4 also provides that if the Actual Participants Fund Deposit of a Participant is applied pursuant to Section 4 of Rule 4, and, as a result, the Actual Participants Fund Deposit of such Participant is less than its Required Participants Fund Deposit, the Participant must, upon the demand of DTC and within such time as DTC may require, deposit to the Participants Fund the amount in cash needed to eliminate any resulting deficiency in its Required Participants Fund Deposit.

20 See Settlement Guide at 19-20, supra note 4.

any problem with the receipt or disbursement of funds for settlement, it would need to be addressed quickly. The Participants Fund is designed as ready "cash on hand" for settlement and is, typically, the most available liquidity resource for settlement. If the scope of the permitted use of the Participants Fund to fund a settlement gap on a Business Day is not expressly stated in Rule 4, there is a possibility that DTC's ability on a Business Day to quickly and effectively respond to and resolve any settlement gap could be adversely affected. Use of the Participants Fund needs to be optimized during the tight timeframe because extensive settlement delays might cause significant market disruptive effects. The proposed rule change is designed to confirm, expressly, ready access to the Participants Fund for settlement purposes, whatever the settlement gap scenario.

In light of the foregoing, in order to facilitate timely action by DTC in connection with any settlement gap, DTC is proposing to amend Section 4 of Rule 4 to provide expressly for the use of the Participants Fund to fund settlement irrespective of whether the settlement gap is a default gap or a non-default gap.

B. Technical and Clarifying Changes

DTC believes that certain other amendments that were made pursuant to the Loss Allocation Rule Change may have impacted the transparency of Section 4 of Rule 4 with respect to use of the Participants Fund and other resources for settlement. Therefore, as described below, DTC is proposing to (i) clarify that a Participant's pro rata share of an application of the Participants Fund would be the same whether there is a default gap or a non-default gap, (ii) restore the express provision for the optional use of a discretionary amount of existing retained earnings of DTC to fund settlement, (iii) specifically state that DTC may apply its available resources to fund settlement, in such order and in such amounts as it determines, in its sole discretion, and (iv) make ministerial changes for conformity and readability.

(ii) Proposed Rule Change

A. Section 4 of Rule 4

Section 4 of Rule 4, Heading:

In order to reflect that Section 4 of Rule 4 would address the liquidity resources to fund settlement, including the application of the Participants Fund to fund settlement when there is a default gap or a non-default gap, DTC is proposing to replace the current heading of Section 4 of Rule 4 "Application of Participants Fund Deposits of Non-Defaulting Participants" with "Liquidity Resources to Fund Settlement; Application of Participants Fund."

Section 4 of Rule 4 (Proposed New First Paragraph):

DTC is proposing to add a new opening paragraph to Section 4 of Rule 4 that would reflect and summarize the purpose of the proposed Section 4 of Rule 4. Specifically, DTC is proposing to add the following paragraph: "This Section sets forth liquidity resources available to the Corporation to fund settlement on a Business Day, in the event of a Participant Default or otherwise."

Section 4 of Rule 4, First Paragraph (Proposed Second Paragraph):

DTC is proposing to:

1. Streamline the language referring to a settlement gap resulting from an

unsatisfied Participant Default[21] by revising the text to state that, "If, on a Business Day, there is a Participant Default which is not satisfied pursuant to Section 3 of this Rule by the application of the Actual Participants Fund Deposit of a Participant, . . . ";

2. Expressly address a non-default gap by adding the phrase " . . . or if Section 3 is not applicable, . . . " into the description of the circumstances in which DTC may apply the Participants Fund to fund settlement;[22]

3. Revise the language that refers to DTC's sole discretion to apply its liquidity resources, including Participants Fund, to fund settlement,[23] to state, " . . . in such order and in such amounts as the Corporation shall determine, in its sole discretion, to the extent necessary to fund settlement on the Business Day:"; and

4. Enhance the transparency of Section 4 of Rule 4 with respect to liquidity resources that may be available to DTC to fund settlement by amending Section 4 of Rule 4 to provide DTC may apply:

(a) the Actual Participants Fund Deposits of all Participants (other than a Participant whose Actual Participants Fund Deposit is exhausted pursuant to Section 3);
(b) the existing retained earnings or undivided profits of DTC; or

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21 The current default gap language is "if there is a Defaulting Participant and the amount charged to the Actual Participants Fund Deposit of the Defaulting Participant pursuant to Section 3 of this Rule is not sufficient to complete settlement."

22 Section 3 of Rule 4 applies when there is a Participant Default. If there is no Participant Default, Section 3 of Rule 4 does not apply. Therefore, if there is a settlement gap where Section 3 of Rule 4 is inapplicable, such settlement gap could be considered a non-default gap.

23 Rule 4 currently states: "The Participants Fund shall constitute a liquidity resource which may be applied by the Corporation in such amounts as the Corporation shall determine, in its sole discretion, to fund settlement . . . and/or apply such other liquidity resources as may be available to the Corporation from time to time, including the End-of-Day Credit Facility."

(c) any other liquidity resources as may be available to DTC from time to time, including, but not limited to, the End-of-Day Credit Facility.

Specifically, with respect to (a), DTC is proposing to replace the reference in the first paragraph of Section 4 of Rule 4 to "non-defaulting Participants" with "all Participants (other than a Participant whose Actual Participants Fund Deposit is exhausted pursuant to Section 3)." The purpose of this change is to provide expressly that (i) in the case of a non-default gap, all Participants would be charged a pro rata share of the application of the Participants Fund, and (ii) a Participant that cured its Participant Default pursuant to Section 3 by the application of some, but not all, of its Actual Participants Fund Deposit on that Business Day, would still be subject to a pro rata share of the application of the Participants Fund to fund settlement, up to the remaining balance of its Actual Participants Fund Deposit, if there is (x) a default gap (due to the default of another Participant) or (y) a non-default gap.

With respect to (b), in order to enhance the transparency of available resources to fund settlement, DTC is proposing to restore the express provision for the optional use of a discretionary amount of existing retained earnings of DTC[24] that had appeared in previous versions of Rule 4, including Section 4 of Previous Rule 4.[25] With respect to (c), DTC is proposing to insert the phrase "but not limited to," after "including," in order

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24 The retained earnings of DTC are reflected in its quarterly condensed consolidated financial statements and annual financial statements, available at https://www.dtcc.com/legal/financial-statements.

25 As noted above, the loss allocation provisions of Rule 4 are not relevant to the application of liquidity resources to a settlement gap on a given Business Day. As such, the optional use of the existing retained earnings of DTC to fund settlement is separate and distinct from calculation of, or application of, the Corporate Contribution required in Section 5 of Rule 4.

to make clear that DTC may have other liquidity resources available in addition to the End-of-Day Credit Facility.

In sum, pursuant to the above proposed changes, the revised paragraph would state:

> If, on a Business Day, there is a Participant Default which is not satisfied pursuant to Section 3 of this Rule by the application of the Actual Participants Fund Deposit of a Participant, or if Section 3 is not applicable, then the Corporation shall apply, in such order and in such amounts as the Corporation shall determine, in its sole discretion, to the extent necessary to fund settlement on the Business Day:
>
> (a) the Actual Participants Fund Deposits of all Participants (other than a Participant whose Actual Participants Fund Deposit is exhausted pursuant to Section 3);
> (b) the existing retained earnings or undivided profits of the Corporation; or
> (c) any other liquidity resources as may be available to the Corporation from time to time, including, but not limited to, the End-of-Day Credit Facility.

Section 4 of Rule 4, Second Paragraph (Proposed Fifth Paragraph):

For conformity, DTC is proposing to modify this paragraph to conform with the proposed changes to the third paragraph. Specifically, pursuant to the proposed rule change, this paragraph would state: "If the Participants Fund is applied pursuant to paragraph (a) of this Section, the Corporation shall promptly after the event notify each Participant and the SEC of the amount of the Participants Fund applied and the reasons therefor ("Settlement Charge Notice")."

In addition, to further streamline Section 4 of Rule 4, DTC is proposing to move the proposed amended paragraph to follow the proposed fourth paragraph.

Section 4 of Rule 4, Proposed Third Paragraph:

For enhanced transparency with respect to the governance relating to a pro rata application of the Participants Fund, DTC is proposing to add the following paragraph:

A determination to apply the Participants Fund pursuant to this Section shall be made by either the Chief Executive Officer, Chief Risk Officer, Chief Financial Officer, a member of any management committee, Treasurer or any Managing Director as may be designated by the Chief Risk Officer from time to time. The Board of Directors (or an authorized Committee thereof) shall be promptly informed of the determination.

Section 4 of Rule 4, Third Paragraph (Proposed Fourth Paragraph):

Pursuant to the proposed rule change, DTC would revise this paragraph[26] to make clarifying changes that reflect that a Participant's pro rata share of an application of the Participants Fund would be the same whether there is a default gap or a non-default gap. Specifically, DTC is proposing to (i) remove the references to "non-defaulting Participants," (ii) streamline the language by representing the calculation of a pro rata share as a ratio, instead of a division calculation, (iii) make conforming changes with the foregoing, and (iv) for consistency and clarity, make ministerial word changes and replace references to "day" with the defined term "Business Day."

In sum, DTC is proposing that this paragraph be revised to state: "The pro rata share of the Actual Participants Fund Deposit of any Participant applied pursuant to paragraph (a) shall be equal to the ratio of (i) the Required Participants Fund Deposit of the Participant, as fixed on the Business Day on which such charge is made less its

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26 Currently, the paragraph states: "Each non-defaulting Participant's pro rata share of such application of the Participants Fund (each, a "pro rata settlement charge") shall be equal to (i) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the Business Day of such application less its Additional Participants Fund Deposit, if any, on that day, divided by (ii) the sum of the Required Participants Fund Deposits of all non-defaulting Participants, as such Required Participants Fund Deposits were fixed on that day, less the sum of the Additional Participants Fund Deposits, if any, of such non-defaulting Participants on that day."

Additional Participants Fund Deposit, if any, on that Business Day, to (ii) the sum of the Required Participants Fund Deposits, as fixed on the Business Day on which such charge is made, of all Participants so charged on that Business Day, less the sum of the Additional Participants Fund Deposits, if any, of those Participants on that Business Day. The amount so charged to the Actual Participants Fund Deposit of a Participant shall constitute a "pro rata settlement charge" with respect to that Participant."

Section 4 of Rule 4, Fifth, Sixth, Seventh and Eighth Paragraphs (Proposed Paragraphs Six, Seven, Eight and Nine):

There would be no changes to these paragraphs. The proposed rule change would not affect the Settlement Charge Termination Notification Period, the Settlement Charge Cap, nor the right of DTC to retain the entire amount of the Actual Participants Fund Deposit of a Participant subject to a pro rata settlement charge, up to the amount of the Participant's Settlement Charge Cap. The proposed rule change would not affect the requirement that if the Actual Participants Fund Deposit of a Participant is applied pursuant to Section 4 of Rule 4, and, as a result, the Actual Participants Fund Deposit of such Participant is less than its Required Participants Fund Deposit, the Participant must, upon the demand of DTC and within such time as DTC would require, deposit to the Participants Fund the amount in cash needed to eliminate any resulting deficiency in its Required Participants Fund Deposit.

B. Section 1(f) of Rule 4

Section 1(f) of Rule 4 currently states, in relevant part: "The Actual Participants Fund Deposits of Participants to the Participants Fund shall be held by the Corporation and may be used or invested as provided in these Rules and as specified in the Procedures. The Actual Participants Fund Deposits of Participants may be used (i) to satisfy the obligations of Participants to the Corporation, as provided in Section 3 of this Rule, (ii) to fund settlement among non-defaulting Participants, as provided in Section 4 of this Rule and (iii) to satisfy losses and liabilities of the Corporation incident to the business of the Corporation, as provided in Section 5 of this Rule."

In conformity with the proposed changes to Section 4 of Rule 4, DTC is proposing a ministerial change of removing the word "non-defaulting" from Section 1(f) of Rule 4.

Anticipated Effect on and Management of Risk

DTC believes that the proposed change to (i) amend Rule 4 to provide expressly that the Participants Fund may be used by DTC to fund a settlement gap, whether it is a default gap or a non-default gap, and (ii) make other technical changes, would provide enhanced transparency with respect to use of the Participants Fund and other resources to complete settlement. In this way, the proposal would enhance the overall efficiency and effectiveness of end-of-day settlement in circumstances where there is a settlement gap, thereby reducing Participants' risk exposure to a possible delay in end-of-day settlement.

As a CSD, DTC plays a critical role in the national financial infrastructure. As a CSD, DTC is structured to provide for the settlement of book-entry transfers and pledges of interests in securities between Participants, and for end-of-day net funds settlement on each Business Day. Given its critical role, if DTC does not complete settlement on a given Business Day, there could be significant market-wide effects. Accordingly, if there is a settlement gap on a Business Day, access to liquidity resources needs to be optimized during the tight timeframe in which settlement must be completed. The Participants Fund is designed to be one of the foundational liquidity resources available to DTC. If there is uncertainty as to the scope and manner of DTC's use of the Participants Fund to complete settlement on a given Business Day, DTC's ability to quickly and effectively respond to and resolve any settlement gap may be compromised. If its ability to respond to and resolve a settlement issue is compromised, settlement may be delayed, possibly causing complications for Participants and the market.

DTC's proposal, as described in detail above, would enhance the overall efficiency and effectiveness of settlement on a Business Day in circumstances where there is a settlement gap by facilitating timely action by DTC to complete settlement on a Business Day when there is a settlement gap, including, but not limited to, in situations where Section 3 of Rule 4 is not applicable. The ability of DTC to take timely action to fund a settlement gap, including, but not limited to, the pro rata application of the Participants Fund, would allow DTC to continue to support end-of-day net funds settlement in connection with book-entry transfers of securities on each Business Day.

Consistency with the Clearing Supervision Act

DTC believes the proposed change would be consistent with the Clearing Supervision Act, specifically with the risk management objectives and principles of Section 805(b), and with certain of the risk management standards adopted by the Commission pursuant to Section 805(a)(2), for the reasons described below.[27]

(i) Consistency with Section 805(b) of the Clearing Supervision Act

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, its stated purpose is instructive: to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting

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[27] 12 U.S.C. 5464(a)(2) and (b).

uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[28]

DTC believes the proposal is consistent with the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.[29]

First, the proposal would amend Section 4 of Rule 4 to provide expressly for the pro rata application of the Participants Fund to any settlement gap, including a non-default gap. As noted above, if there were a question as to DTC's right to apply the Participants Fund to a non-default gap, DTC's ability on a Business Day to quickly and effectively respond to and resolve any such settlement gap and complete settlement might be adversely affected.

Second, the proposal would also (i) clarify that a Participant's pro rata share of an application of the Participants Fund would be the same whether there is a default gap or a non-default gap, (ii) restore the express provision for the optional use of a discretionary amount of existing retained earnings of DTC to fund settlement, (iii) specifically state that DTC may apply its available resources to fund settlement, in such order and in such amounts as it determines, in its sole discretion, and (iv) make ministerial changes for conformity and readability. Without these changes, DTC's rights with respect to the manner and use of its liquidity resources to fund settlement might not be promptly ascertainable, particularly in a time of stress.

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28 12 U.S.C. 5461(b).

29 12 U.S.C. 5464(b).

Taken together, the proposed changes would enhance the transparency of DTC's use of the Participants Fund and other resources to complete settlement on a Business Day. Reducing the risk of uncertainty to DTC, its Participants, and the market overall would promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.

Therefore, DTC believes that the proposed changes to (i) amend Rule 4 to provide expressly that the Participants Fund may be used by DTC to fund a settlement gap, whether it is a default gap or a non-default gap, and (ii) make other technical changes to provide enhanced transparency with respect to completing settlement when there is a settlement gap, would be consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act,[30] which specify the promotion of robust risk management, promotion of safety and soundness, reduction of systemic risks and support of the stability of the broader financial system by, among other things, strengthening the liquidity of systemically important financial market utilities, such as DTC.

(ii) Consistency with Section 805(a)(2) of the Clearing Supervision Act

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like DTC, and financial institutions engaged in designated activities for which the Commission is the supervisory agency or the appropriate financial regulator.[31] The Commission has accordingly adopted risk management standards under

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[30] Id.

[31] 12 U.S.C. 5464(a)(2).

Section 805(a)(2) of the Clearing Supervision Act[32] and Section 17A of the Act ("Covered Clearing Agency Standards").[33] The Covered Clearing Agency Standards require covered clearing agencies 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.[34]

DTC believes the proposed changes are consistent with Rule 17Ad-22(e)(1) of the Covered Clearing Agency Standards[35] for the reasons described below.

Rule 17Ad-22(e)(1) under the Act requires that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[36]

As discussed above, changes to Section 4 of Previous Rule 4 might be construed as narrowing the scope of use of the Participants Fund for settlement to a default gap, even though the Participants Fund is a liquidity resource that is available to fund any settlement gap. By amending Rule 4 to provide expressly that the Participants Fund continues to be a liquidity resource that may be used by DTC to fund a settlement gap to complete settlement on a Business Day, whether the settlement gap is the result of a Participant Default or otherwise, the proposed changes are designed to provide an

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32 Id.

33 17 CFR 240.17Ad-22(e).

34 Id.

35 17 CFR 240.17Ad-22(e)(1).

36 Id.

expressly clear, transparent and enforceable legal basis for the application of the Participants Fund to a settlement gap, whether or not caused by a Participant Default. In this way, DTC believes the proposal is consistent with Rule 17Ad-22(e)(1) under the Act.[37]

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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[37] Id.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the Advance Notice is consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2020-801 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-DTC-2020-801. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC

20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (http://dtcc.com/legal/sec-rule-filings.aspx). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2020-801 and should be submitted on or before **[INSERT DATE 15 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

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