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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91429; File No. SR-DTC-2021-004]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Recovery & Wind-down Plan

March 29, 2021

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 23, 2021, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 15 U.S.C. 78s(b)(3)(A).

4 17 CFR 240.19b-4(f)(4).

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change[5] consists of amendments to the R&W Plan to (i) reflect business and product developments, (ii) make certain changes to improve the clarity of the Plan, (iii) remove provisions covering certain "business-as-usual" actions, and (iv) make certain technical corrections, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. 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, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend the R&W Plan to (i) reflect business and product developments, (ii) make certain changes to improve the clarity of the Plan, (iii) remove provisions covering certain "business-as-usual" actions, and (iv) make certain technical corrections. Each of the proposed revisions is further described below.

Background

[5] Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (the "Rules"), available at https://www.dtcc.com/-/media/Files/Downloads/legal/rules/dtc_rules.pdf, or in the Recovery & Wind-down Plan of DTC (the "R&W Plan" or "Plan").

The R&W Plan was adopted in August 2018[6] and is maintained by DTC for compliance with Rule 17Ad-22(e)(3)(ii) under the Act.[7] The R&W Plan sets forth the plan to be used by the Board and DTC management in the event DTC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan is structured as a roadmap that defines the strategy and identifies the tools available to DTC to either (i) recover, in the event it experiences losses that exceed its prefunded resources (such strategies and tools referred to herein as the "Recovery Plan") or (ii) wind-down its business in a manner designed to permit the continuation of DTC's critical services in the event that such recovery efforts are not successful (such strategies and tools referred to herein as the "Wind-down Plan"). The recovery tools available to DTC are intended to address the risks of (a) uncovered losses or liquidity shortfalls resulting from the default of one or more of its Participants, and (b) losses arising from non-default events, such as damage to DTC's physical assets, a cyber-attack, or custody and investment losses, and the strategy for implementation of such tools. The R&W Plan also describes the strategy and framework for the orderly

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6 See Securities Exchange Act Release Nos. 83972 (August 28, 2018), 83 FR 44964 (September 4, 2018) (SR-DTC-2017-021); and 83953 (August 27, 2018), 83 FR 44381 (August 30, 2018) (SR-DTC-2017-803).

7 17 CFR 240.17Ad-22(e)(3)(ii). DTC is a "covered clearing agency" as defined in Rule 17Ad-22(a)(5) under the Act and must comply with paragraph (e) of Rule 17Ad-22.

wind-down of DTC and the transfer of its business in the event the implementation of the available recovery tools does not successfully return DTC to financial viability.

The R&W Plan is managed and developed by DTC's parent company, the Depository Trust & Clearing Corporation ("DTCC"),[8] and is managed by the Office of Recovery & Resolution Planning (referred to in the Plan as the "R&R Team") on behalf of DTC, with review and oversight by the DTCC Management Committee and the Board.

Proposed Amendments to the R&W Plan

The Board, or such committees as may be delegated authority by the Board from time to time pursuant to its charter, is required to review and approve the R&W Plan biennially.[9] In connection with the first biennial review of the Plan, DTC is proposing the revisions described in greater detail below. The proposed rule change is designed to update and enhance the clarity of the Plan to ensure it is current in the event it is ever necessary to be implemented. None of the proposed changes modify DTC's general objectives and approach with respect to its recovery and wind-down strategy as set forth under the current Plan.

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8 DTCC operates on a shared service model with respect to DTC and its other affiliated clearing agencies, National Securities Clearing Corporation ("NSCC") and Fixed Income Clearing Corporation ("FICC"). Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides relevant services to DTC, NSCC and FICC (collectively, the "Clearing Agencies").

9 Supra note 6.

A. Proposed Changes to Reflect Business or Product Developments

1. Updates to DTCC Business Profile, Intercompany Arrangements, FMI Links and Governance

DTC is proposing the following changes to the DTCC Business Profile, Intercompany Arrangements, FMI Links and Governance sections of the Plan based upon business updates that have occurred since the time the Plan was adopted.

Section 2.1 (DTCC Business Profile) of the Plan describes that DTCC is a user-owned and user-governed holding company for a group of direct and indirect subsidiaries and joint ventures. This section includes a brief summary of each of the three subsidiaries (DTC, FICC and NSCC) that have been designated as systemically important financial market utilities ("SIFMUs") by the Financial Stability Oversight Council. The proposed rule change would revise the introductory paragraph of this section to remove reference to joint ventures because DTCC currently has no joint ventures.

Section 2.4 (Intercompany Arrangements) of the Plan currently describes how corporate support services are provided to DTC from DTCC, and to DTCC's other subsidiaries, through intercompany agreements under a shared services model. DTC is proposing to update Table 2-A (SIFMU Legal Entity Structure and Intercompany Agreements), which delineates DTC's affiliates, to reflect the name change of Omgeo Pte Ltd by removing "Omgeo Pte Ltd" and replacing it with the new name of this entity, "DTCC Singapore Pte. Ltd." A related footnote would also be added to make clear that the services provided by DTCC Singapore Pte. Ltd. are performed through its branch office in Manila, DTCC Manila. Additionally, this section includes a separate table, Table 2-B, that lists each of the DTCC facilities utilized by the Clearing Agencies and indicates whether the facility is owned or leased by DTCC. DTC proposes to update this

table to add Boston, Massachusetts as an additional location of a DTCC facility and to indicate that this facility is leased by DTCC.

Currently, Section 2.5 (FMI Links) of the Plan describes some, but not all, of the key financial market infrastructures ("FMIs"), both domestic and foreign, that DTC has identified as critical "links."[10] In order to better align with the structure of DTCC's inventory of links maintained by DTCC's Systemic Risk Office ("SRO"), which includes all of DTC's link relationships, the proposed rule change would delete the current FMI Links section of the R&W Plan and replace it with a revised version of Section 2.5 that would include an overview of DTC's link arrangements, a related footnote to the definition of a "link" under Rule 17Ad-22(a)(8) under the Act, and a table (Table 2-C: Links) listing all of DTC's FMI link arrangements. The table would list the link, the link category (i.e., whether the link is an "inbound" or "outbound" link, a central counterparty, or matching utility), and a brief description. The proposed rule change would also add a table (Table 2-D: Schedule A Relationships) that would identify certain critical external service providers that, as determined by DTC's management, do not meet the specified criteria of "link" but nevertheless are subject to the same review process as is conducted for links, referred to within DTC as "Schedule A Relationships," and a related footnote. This change would align with the structure of SRO's inventory of Schedule A Relationships.

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[10] As defined in Rule 17Ad-22(a)(8) under the Act, a link "means, for purposes of paragraph (e)(20) of [Rule 17Ad-22], a set of contractual and operational arrangements between two or more clearing agencies, financial market utilities, or trading markets that connect them directly or indirectly for the purposes of participating in settlement, cross margining, expanding their services to additional instruments or participants, or for any other purposes material to their business." 17 CFR 240.17Ad-22(a)(8).

Section 4.3 (Recovery and Wind-down Program Governance) of the Plan currently contains a paragraph that identifies DTCC's "R&R Steering Group" as the internal group responsible for ensuring that each of the Clearing Agencies observes recovery planning requirements, and that recovery planning is integrated into the Clearing Agencies' overall governance processes including the preparation, review, and filing of the Clearing Agencies' R&W Plans. Pursuant to the proposed rule change, DTC would revise Section 4.3 to reflect an internal organizational name change. The proposal would change the name of the R&R Steering Group to the "Recovery and Wind-down Planning Council" to reflect its role as an advisory body.[11] This name change would not change the composition, role or responsibilities of this internal group, which includes selected members of DTCC's Management Committee and members of DTCC's financial and operational risk management, product management, legal, and treasury/finance teams that are responsible for providing strategic guidance and direction for the recovery and wind-down program[12] and the Plan. Additionally, for purposes of clarification, the proposal would add the words ", where necessary," to refer to when the council would engage with internal working groups.

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[11] In accordance with DTCC's Policy on Governance of Internal Committees and Councils, a "council" is defined as an advisory body that has no decision-making authority. A council may be formed by any committee or a Managing Director. Councils will share information, discuss topics, and make recommendations to its initiating committee or Managing Director. Councils report up to their initiating committee or Managing Director.

[12] In 2013, DTCC launched its Recovery & Resolution Planning Program for DTC, NSCC, and FICC as part of its continued commitment to enhancing risk management. The Office of Recovery & Resolution Planning was established to manage the program and the development of the recovery and wind-down plans for the Clearing Agencies.

2. Recovery Tool Characteristics, Legal Basis

Section 7.2 (Effectiveness) of the Plan describes DTC's legal basis for executing the "recovery tools"[13] that are outlined in the Recovery Plan. The recovery tools are intended to provide DTC with a comprehensive set of options to address its material risks and support the resiliency of its critical services under a range of stress scenarios. Many of the recovery tools are provided for in the Rules. Other recovery tools have legal basis in contractual arrangements to which DTC is a party.

Within this section there is currently a paragraph, under the subheading titled "Basis," that includes a description of what a non-U.S. applicant (a "foreign applicant") for DTC membership is required to submit as part of the membership application process. The proposed rule change would revise the description of the application process for foreign applicants due to changes to this process that were approved by the Commission pursuant to a previous proposed rule change.[14] Specifically, the proposed rule change would provide that DTC requires foreign applicants to pay DTC a fee, as specified in the Rules, relating to DTC obtaining an opinion of foreign counsel satisfactory to DTC.

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[13] In addition to existing business-as-usual tools, the R&W Plan describes DTC's other principal recovery tools, which include, for example, (i) identifying, monitoring and managing general business risk and holding sufficient liquid net assets funded by equity to cover potential general business losses pursuant to the Clearing Agency Policy on Capital Requirements (the "Capital Policy"), (ii) maintaining the Clearing Agency Capital Replenishment Plan (the "Capital Plan") as a viable plan for the replenishment of capital should DTC's equity fall close to or below the amount being held pursuant to the Capital Policy, and (iii) the process for the allocation of losses among Participants as provided in Rule 4.

[14] Securities Exchange Act Release No. 83544 (June 28, 2018), 83 FR 31223 (July 3, 2018) (SR-DTC-2018-002). Prior to that rule change, as reflected in the current Plan, DTC required foreign applicants to submit an acceptable opinion of relevant foreign counsel.

B. Proposal to Make Certain Clarifications to the R&W Plan

1. Critical Services and Indicative Non-Critical Services

Section 3 (Critical Services) of the Plan defines the criteria for classifying certain of DTC's services as "critical,"[15] and identifies such critical services and the rationale for their classification. The identification of DTC's critical services is important for evaluating how the recovery tools and the wind-down strategy would facilitate and provide for the continuation of DTC's critical services to the markets it serves. This section also includes a list of indicative non-critical services.

As more fully described below, the proposed rule change would clarify the description of some of the critical services and indicative non-critical services, and revise one of the classification criteria. While these changes do not change the classification of the relevant service (as being either "critical" or "indicative non-critical"), nor impact the existing classification of other services, DTC believes these revisions would enhance the clarity of the descriptions of them.

First, in the table listing the criteria for determining what constitutes a critical service, pursuant to the proposed rule change, DTC would delete "Criteria Determinant #2," and replace it with a description that DTC believes more fully captures what DTC's book-entry delivery and settlement services are, and the impact on transaction processing

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15 Under the current Plan, the criteria that is used to identify a DTC service or function as critical includes consideration as to whether (1) there is a lack of alternative providers or products; (2) failure of the service could impact DTC's ability to perform its book-entry and settlement services; (3) failure of the service could impact DTC's ability to perform its payment system functions; and (4) the service is interconnected with other participants and processes within the U.S. financial system (for example, with other FMIs, settlement banks, broker-dealers, and exchanges).

if these services were not available. Specifically, the language proposed to be deleted provides that, "Failure / Disruption of Book-Entry Delivery and Settlement Services (Impact on Transaction Costs): DTC's settlement of equity and debt security transactions in the U.S. does not have alternative providers or products." The proposed rule change would replace the existing language with, "Failure/Disruption of Book-Entry Delivery and Settlement Services (Impact on Transaction Processing): DTC maintains the books and records of ownership for equity and debt securities held and serviced by the depository. Failure of this service would result in clients' inability to settle transactions through book-entry movement of securities held at DTC."

Second, in Table 3-B (DTC Critical Services), the description of critical service #19, (Cash and Stock Distributions) states that "As the owner of the securities, DTC has an obligation to its Participants to distribute principal, interest, dividend payments and other distributions received for those securities. No alternative provider is available." The proposed rule change would revise the first sentence of this description to add the phrase "on the issuer's books and records" after the words "As owner of the securities." DTC believes this change to the description, which currently does not include a reference to the fact that DTC's obligations with respect to distribution of "Cash and Stock Distributions" arise from its ownership of securities on the books and records of the issuer, is necessary to make clear that DTC is not the beneficial owner of the securities.

Third, in Table 3-C (Indicative Non-Critical DTC Services), the proposed rule change would amend the description of the last indicative non-critical service listed, "Foreign Tax Relief Service," to add language to the beginning of the first sentence to clarify that this service, which works to reduce taxes withheld on non-U.S. company

securities to a more favorable rate, is associated with the critical services (described in Table 3-B) of "Cash and Stock Distributions" and "Mandatory and Voluntary Corporate Actions."

2. Participant Default Losses through the Crisis Continuum

Section 5 (Participant Default Losses through the Crisis Continuum) of the Plan is comprised of multiple subsections that identify the risk management surveillance, tools, and governance that DTC may employ across an increasing stress environment, referred to as the "Crisis Continuum."[16] This section currently identifies, among other things, the tools that can be employed by DTC to mitigate losses, and mitigate or minimize liquidity

[16] As set forth in the Recovery Plan, the phases of the "Crisis Continuum" include (1) a stable market phase, (2) a stressed market phase, (3) a phase commencing with DTC's decision to cease to act for a Participant or Affiliated Family of Participants (The Plan refers to an "Affiliated Family" of Participants as a number of affiliated entities that are all Participants of DTC), and (4) a recovery phase.

needs, as the market environment becomes increasingly stressed. As more fully described below, the proposed rule change would clarify certain language.

Currently, Section 5.1 (Introduction) identifies the financial resources available to DTC, pursuant to the Rules, to address losses arising out of the default of a DTC Participant. One paragraph contains a statement that such losses would be satisfied first by applying a Corporate Contribution and then, if necessary, by allocating remaining losses to non-defaulting Participants, in accordance with Rule 4.[17] The proposed rule change would add a sentence to the end of this paragraph that would provide that, in addition to the tools described in Rule 4 (which are to be applied when, and in the order, specified in that Rule), DTC may, in extreme circumstances, borrow net credits from Participants secured by collateral of the defaulting Participant.[18] DTC believes this additional language is necessary to more clearly set forth the full range of actions and tools DTC may employ in response to such conditions.

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17 Rule 4 defines the amount DTC would contribute to address a loss resulting from either a Participant default or a non-default event as the "Corporate Contribution." This amount is 50 percent of the "General Business Risk Capital Requirement," which is calculated pursuant to the Capital Policy and is an amount sufficient to cover potential general business losses so that DTC can continue operations and services as a going concern if those losses materialize, in compliance with Rule 17Ad-22(e)(15) under the Act. See 17 CFR 240.17Ad-22(e)(15).

18 As noted in a footnote to Table 5-C of the Plan, each of these tools may be used in accordance with their respective terms and conditions, whether or not DTC has reached the Recovery Phase, in order to complete settlement.

Section 5.2.4 (Recovery Corridor and Recovery Phase) outlines the early warning indicators to be used by DTC to evaluate its options and potentially prepare to enter the "Recovery Phase," which phase refers to the actions to be taken by DTC to restore its financial resources and avoid a wind-down of its business. Included in this section are descriptions of potential stress events that could lead to recovery, and several early warning indicators and metrics that DTC has established to evaluate its options and potentially prepare to enter the Recovery Phase. These indicators, which are referred to in the Recovery Plan as recovery corridor indicators ("Corridor Indicators"),[19] are calibrated against DTC's financial resources and are designed to give DTC the ability to replenish financial resources, typically through business as usual ("BAU") tools applied prior to entering the Recovery Phase.

Section 5.2.4 also includes language that requires DTC management to review the Corridor Indicators and the related metrics at least annually and modify these metrics as necessary in light of observations from simulation of Participant defaults and other analyses. In order to more closely align with the biennial cycle of DTCC's multi-member closeout simulation exercise, the proposed rule change would shift the timing of

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[19] The majority of the Corridor Indicators, as identified in the Recovery Plan, relate directly to conditions that may require DTC to adjust its strategy for hedging and liquidating collateral securities, and any such changes would include an assessment of the status of the Corridor Indicators. Corridor Indicators include, for example, the effectiveness and speed of DTC's efforts to liquidate Collateral securities, and an impediment to the availability of DTC's resources to repay any borrowings due to any Participant Default. For each Corridor Indicator, the Recovery Plan identifies (1) measures of the indicator, (2) evaluations of the status of the indicator, (3) metrics for determining the status of the deterioration or improvement of the indicator, and (4) "Corridor Actions," which are steps that may be taken to improve the status of the indicator, as well as management escalations required to authorize those steps.

management's review of the Corridor Indicators and related metrics from annually to biennially. DTC believes this change is necessary for consistency with the cycle of the multi-member closeout simulation in which the Corridor Indicators and metrics are assessed as part of the simulation exercise.

Also, there is a paragraph in Section 5.2.4 and an associated table (Table 5-B: Loss Waterfall Tools) that delineates the liquidity resources that DTC may draw upon following a Participant Default and subsequent cease to act. The table has four columns ("Order," "Tool," "Relevant Rules/Documents," and "Responsible Body/Personnel") and is organized by the order in which the liquidity resources are to be applied by DTC. Currently, the text of this paragraph describes that DTC may draw upon the Participants Fund Deposit and other collateral of the Participant for which it has ceased to act as provided under the Rules, including resources available under clearing agency cross guaranty agreements, and apply such resources to satisfy any losses that may result from the closeout. In order to be consistent with the title of Table 5-B, the proposed rule change would add a heading at the beginning this paragraph to be titled, "Loss Waterfall Tools." Similarly, consistent with the descriptions and order of the tools listed in Table 5-B, the proposed rule change would remove the words "can only be used" and shift the phrase "would be applied in the order listed" in the text of the sentence directly above Table 5-B. Accordingly, under the proposed rule change, this sentence would read,

"These tools would be applied in the order listed in accordance with the provisions of Rule 4."[20]

Within Table 5-B, Corporate Contribution is the first entry under the column labeled "Tool." Currently, the narrative for this entry includes a description of Corporate Contribution and delineates that in the event of a cease to act, before applying the Participants Fund deposits of all other Participants to cover any resulting loss, DTC will apply the Corporate Contribution.[21] The proposed rule change would revise the current text of the definition of Corporate Contribution in order to more closely align with how this term is defined under Rule 4.[22] Specifically, pursuant to the proposed rule change, the definition of Corporate Contribution would be revised to state, "The Corporate Contribution is an amount that is equal to 50% of the amount calculated by DTC in respect of its General Business Risk Capital Requirement, for losses that occur over any rolling 12 month period." Similarly, the sentence directly above the definition of Corporate Contribution would be revised to remove the words "applying the Participants Fund deposits of all other Participants," and replace them with "charging Participants on a pro rata basis (other than the Defaulting Participant)."

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[20] Rule 4, supra note 5.

[21] Supra note 17.

[22] Rule 4, supra note 5.

Additionally, with respect to the second entry in Table 5-B, "Loss Allocation," the descriptive text in the "Responsible Body/Personnel" column would be revised to more closely align with the same language contained in Rule 4. The revised text would state, "The Rules provide for loss allocation of any remaining loss following the Corporate Contribution (plus any additional amounts that the Board may determine to apply). Participants will be obligated to fund loss allocations on the second business day after the Corporation issues any such notice."

Section 5.3 (Liquidity Shortfalls) identifies tools that may be used to address foreseeable shortfalls of DTC's liquidity resources following a Participant Default. As described in DTC's previous proposed rule change adopting the Plan,[23] the goal in managing DTC's liquidity resources is to maximize resource availability in an evolving stress situation, to maintain flexibility in the order and use of sources of liquidity, and to repay any third-party lenders in a timely manner. The proposed rule change would revise the text described below to better clarify and enhance the description of the DTC's liquidity considerations and the use of its liquidity tools.

First, the current text of this section provides that, as elaborated in the Plan, there is interaction between market and liquidity actions on DTC's overall risk exposures. In particular, the third and fourth sentences state, "A longer liquidation horizon could lengthen the period that [DTC's] liquidity resources are deployed and could increase the strain on the liquidity resources. On the other hand, managing the closeout process with an eye toward minimizing market disruption may reduce resulting losses." In order to more specifically reflect the type of risks to DTC posed in these circumstances, the

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[23] Supra note 6.

proposed rule change would amend this statement to add the words "market risk" before "losses."

Second, Table 5-C currently lists (i) the liquidity tools intended to address foreseeable liquidity shortfalls that would not be covered by DTC's existing liquid resources, (ii) the relevant rules/documents associated with the applicable tool, and (iii) the process and relevant governance required to employ the tool. There is introductory language directly above Table 5-C that states, "The following tools are intended to address foreseeable liquidity shortfalls that would not be covered by DTC's existing liquid resources and how its existing qualifying liquid resources may be replenished (ordered by ease and speed to market)." For purposes of additional clarity, the proposal would add the following parenthetical, "(for example, due to non-performance of committed lenders)," after the words "DTC's existing liquid resources," and to the existing parenthetical would add the word "again" before "ordered by ease and speed to market."

3. Non-Default Losses

Section 6 (Non-Default Losses) of the Plan outlines how DTC would address losses that result other than from a Participant Default. This section provides a roadmap to other documents that describe these events in greater detail and outlines DTC's approach to monitoring losses that could result from a non-default event. This section also includes a description of Rule 38 (Market Disruption and Force Majeure), referred to in the Plan as the "Force Majeure Rule,"[24] which pertains to how DTC addresses

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[24] Id.

extraordinary events that occur outside the control of DTC and its Participants. As more fully described below, the proposed rule change would clarify certain language.

Section 6.4 (Resources to Cover Non-Default Losses) provides that DTC maintains two categories of financial resources to cover losses and expenses arising from non-default risks or events: (i) Liquid Net Assets Funded by Equity ("LNA"), including, pursuant to Rule 4, the required Corporate Contribution,[25] and (ii) loss-allocation charges to Participants in accordance with the provisions of Rule 4.[26] Following an overview of the four buckets of LNA, which can be applied towards non-default losses,[27] there is a paragraph under the heading, "Loss Allocation to Participants, backed by the Participants Fund," that provides that non-default losses could be allocated among Participants as provided in Rule 4. There is sentence that describes the timeframe in which such losses charged to Participants are required to be paid. Currently, this sentence states that losses are to be paid by Participants "within 2 business days of the date of receipt of a notice of a loss allocation charge . . . ." However, this is not the same language used to describe

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25 See Securities Exchange Act Release Nos. 84426 (October 15, 2018), 83 FR 53138 (October 19, 2018) (SR-DTC-2018-008); and 89361 (July 21, 2020), 85 FR 45263 (July 27, 2020) (SR-DTC-2020-010) (filings amending the Capital Policy and Capital Plan). The initial Capital Policy and Capital Plan were approved by the Commission in 2017 – see Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR-DTC-2017-003, SR-NSCC-2017-004, SR-FICC-2017-007).

26 Rule 4, supra note 5.

27 As set forth in the Plan, DTC maintains the following four buckets of LNA, which can be applied towards a non-default loss: (i) General Business Risk Capital as determined in the Capital Policy, supra note 25, (ii) the Corporate Contribution, (iii) a "Buffer," as described in the Capital Policy, and (iv) excess LNA, which refers to any available LNA held at DTC above the required amounts for General Business Risk Capital, the Corporate Contribution, and Buffer.

this timing in Rule 4. In order to be consistent with the language formulation set out in Rule 4, the proposed rule change would revise this sentence to state, "Losses charged to Participants are required to be paid by Participants on the second business day after the Corporation issues any such notice of a loss allocation charge and may be charged to the Participant's Settlement Account when due."[28] The following sentence would remain as it is under the current Plan: "If not timely paid by any Participant, the Corporation may apply the Participants Fund deposit of that Participant to satisfy its loss allocation obligation."

Section 6.6 (Market Disruption and Force Majeure Rule) describes the Force Majeure Rule. The Force Majeure Rule was adopted at the same time as the Plan[29] and provides an additional resiliency tool designed to mitigate the risks caused by market disruption events and thereby minimize the risk of financial loss that may result from such events. The proposed rule change would remove the following phrase after the reference to the Force Majeure Rule in the first paragraph of this section, ", adopted in conjunction with this Plan," because it is not necessary as both the Plan and the Force Majeure Rule are no longer newly adopted. In addition, to remain consistent with the usage of "Force Majeure" and "Market Disruption Event" throughout this section, DTC would conform all references to the defined terms "Force Majeure" and "Market Disruption Event" so that they appear as capitalized terms.

The proposed rule change would also make revisions to the second paragraph of Section 6.6. First, for purposes of clarity and readability, the following text would be

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[28] Rule 4, supra note 5.

[29] Supra note 6.

removed from the beginning of the second sentence: "Most FMIs have rules designed to deal with force majeure or market disruption events, and." Second, the reference to "Superstorm Sandy" would be removed from the last sentence of this paragraph along with the related footnote that references Superstorm Sandy as an example of circumstances in which DTC needed to fashion a work-around necessitated by a force majeure event. DTC believes inclusion of references to Superstorm Sandy are outdated and no longer necessary to be included in the Plan.

C. Remove Provisions Covering Certain "Business-as-Usual" Actions

Section 8.6 (Actions and Preparation) of the Plan sets forth the legal framework and strategy for the orderly wind-down of DTC if the use of the recovery tools described in the Recovery Plan do not successfully return DTC to financial viability. This section includes an overview of the actions and preparations to be taken by DTC and DTCC in connection with executing the wind-down portions of the Plan. Section 8.6.1 (Business-as-Usual Actions) describes those actions DTC or DTCC may take to prepare for wind-down in the period before DTC experiences financial distress.

Under the current plan, the Business-as-Usual Actions are (i) educating the Board to keep them informed of the Plan and the actions the Board would need to take to implement it, (ii) engaging in discussions with key linked FMIs as to the key elements of DTC's wind-down strategy and the expected actions of the respective link parties should a wind-down be implemented, (iii) developing and maintaining an index of internal data that includes the critical, ancillary, and non-critical services that DTC provides to its membership, the support DTC receives from DTCC and from its other affiliates, key third-party vendors, key personnel, DTC assets and liabilities, and agreements and arrangements DTC has with liquidity providers and with other FMIs, (iv) developing administrative wind-down guidance that identifies key Board and management actions that would be taken during the Recovery Phase and "Runway Period"[30] prior to DTC's failure, and in connection with its Chapter 11 proceedings, and (v) preparing constituent documents for the Failover Entity[31] and evaluating capitalization options.

Pursuant to the proposed rule change, DTC would remove the Business-as-Usual Actions section (currently Section 8.6.1) in its entirety because each of the actions outlined have either been completed or would be addressed in DTC's internal procedures going forward. This includes certain documents necessary to effect the wind-down

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30 The Wind-down Plan identifies the time period leading up to a decision to wind-down DTC as the "Runway Period."

31 As set forth in Section 8.4.1 (General Objectives and Approach) of the Plan, in the event that no viable or preferable third-party transferee timely commits to acquire the business and services of DTC, the transfer will be effectuated to a failover entity created for that purpose (referred to as the "Failover Entity"), that would be owned by a trust held, to the extent of the value of the Failover Entity attributed to DTC's transferred business and services, for the benefit of DTC's bankruptcy estate.

aspects of the Plan that were in the process of being finalized when the Plan was adopted and have since been completed. Since adoption of the Plan,[32] DTC has completed all necessary internal documentation, including DTCC's internal wind-down guidance, the constituent documentation for the Failover Entity, and the evaluation of DTC's capitalization options. Further, the other actions included in this section (e.g., maintaining an index of non-critical services, educating the Board on the Plans) would be addressed, going forward, in DTCC's Recovery & Resolution Planning Procedures maintained by the R&R Team.[33] As a result of this proposed change, current Section 8.6.2 (Recovery and Runway Period Actions) would be renumbered as Section 8.6.1. Also, consistent with the proposed removal of Business-as-Usual Actions that have been completed, the proposed rule change would remove from the first sentence of proposed Section 8.6.1 (current Section 8.6.2) the words "Among other things, the guidance would provide" and replace them with "The DTCC Clearing Agency Wind-down Guidance developed in connection with this Plan provides."

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32 Supra note 6.

33 The R&R Team is responsible for maintaining the DTCC "Office of Recovery & Resolution Planning Procedures" document. The purpose of these procedures is to communicate roles and responsibilities, and procedures for the documentation of the R&W Plans covering each of the Clearing Agencies, in compliance with applicable rules and regulations. These procedures also describe the biennial closeout simulation exercise whereby the Plans for each clearing agency are tested through the simulation of a multi-member default.

D. Technical Revisions

The proposal would also make several technical changes and corrections to the Plan. DTC believes that these proposed changes would not substantively alter the meaning of the applicable sections and would improve the overall readability and clarity of the Plan. Specifically, DTC is proposing to make the following changes and corrections:

1. In Section 1.3 (Summary), in the list of topics covered under the Plan, in the seventh bullet point, add "Recovery Corridor and" prior to the words "Recovery Phase" to correctly state the full name of this section of the Plan.

2. In Section 1.4 (Conventions), in the third paragraph, delete the words "conjunction with" and replace them with "support of," and delete the words "also adopted" and replace them with "maintains." Accordingly, under the proposed rule change, this paragraph would state, "In support of this Plan, DTC maintains (a) a Market Disruption and Force Majeure Rule (the "Force Majeure Rule") and (b) a Wind-down of the Corporation Rule (the "Wind-down Rule"), each as described herein."

3. In Section 2.1 (DTCC Business Profile), under the heading "DTCC SIFMU Subsidiaries":

- In the description of DTC's affiliated clearing agency, NSCC, add ", netting," after the word "clearing"; and after the words "exchange-traded," delete "fund ("ETF")" and replace it with "products ("ETPs")."
- In the description of DTC's other affiliated clearing agency, FICC, with respect to the Government Securities Division ("GSD"), add the word "netting," after "clearing."
- In the description of the Mortgage-Backed Securities Division ("MBSD") of FICC, delete the modifier "To-Be-Announced" before the phrase "pass-through mortgage-backed securities issued by Ginnie Mae, Freddie Mac and Fannie Mae."
- In the sentence that describes FICC's publication of the GCF Repo® Index, add the parenthetical "("GCF Repos®")"after the words "general collateral finance repurchase transactions."

4. In Section 3.2 (Criteria Used to Determine Criticality), in the second sentence that currently states, "Each service was assessed for criticality to determine the potential systemic impact from a service disruption," add the word "resulting" after the word "impact."

5. In Section 3.3 (DTC Critical Services List), make the following changes to Table 3-B (DTC Critical Services): (a) In the column titled "Business Unit Activity," in the entry for "8. European Pre-Issuance Messaging," remove the word "European" because this service is not specific to European issues, and (b) in the column titled "Description," in the narrative for "20.

Mandatory and Voluntary Corporate Actions," remove the capitalization of the words "Dutch Auctions."

6. In Section 4.1 (DTCC and SIFMU Governance Structure), in the third paragraph, which lists each of the Board committees, delete "Board" before the words "Risk Committee." Additionally, in the footnote in this section that provides the citation of a previous proposed rule change covering the Clearing Agency Risk Management Framework, add a reference to DTC's amended filing published July 9, 2020.

7. In Section 4.2 (Recovery Governance), in order to clarify the types of loss scenarios referred to, at the beginning of the third sentence, after the phrase "As described throughout Section 5 (Participant Default Losses through the Crisis Continuum), indicators and measures have been defined for," add the modifier "credit/market and liquidity" before "loss scenarios throughout the Crisis Continuum (as hereinafter defined)."

8. In Section 5.1 (Introduction), in the fourth paragraph, capitalize the word "board." Additionally, in the footnote included in this section that provides the citation to a previous proposed rule change covering the Clearing Agency Liquidity Risk Management Framework, add a reference to DTC's amended filing published December 11, 2020.

9. In Section 5.2.3 (Participant Default Phase), in the last sentence, for the reference to "Net Credit Reductions" and the related footnote, remove the capitalization of the words "Credit Reductions."

10. In Section 5.3 (Liquidity Shortfalls):

- In Table 5-C, which lists the tools that can be used to address liquidity shortfalls, in the entry for "Credit Facility," in the column titled "Relevant Rules/Documents," (i) delete "Currently, Section 2.03A(h) of the Credit Facility," because reference to a specific section of the credit facility documentation is not necessary, and (ii) for purposes of clarification and readability, revise the text of the description to state, "The terms of the Credit Facility provide that any such voluntary loans would be secured on a pari passu basis with committed loans under the facility. This should provide comfort to such voluntary lenders that make voluntary loans in stress market conditions."
- In the penultimate paragraph and in Table 5-C (in the entry for "Net Credit Reductions," in the column titled "Process and relevant governance"), remove the capitalization from the words "Net Credit Reductions" for purposes of consistency when these words are used throughout the Plan.

11. In Section 5.4 (Scenarios Not on Crisis Continuum), capitalize the word "Phase" after the words "Stress Market."

12. In Section 6.3 (Risk Mitigation), in the footnote that includes the citation to a previous proposed rule change covering the Clearing Agency Operational Risk Management Framework, add a reference to DTC's amended filing published December 16, 2020.

13. In Section 6.4 (Resources to Cover Non-Default Losses), in the footnote that includes the citation to a previous proposed rule change covering the Capital Policy and Capital Plan, add a reference to DTC's amended filings

published July 27, 2020 with respect to the Capital Policy, and October 19, 2018 with respect to the Capital Plan.

14. In Section 6.6 (Market Disruption and Force Majeure Rule):

- In the second bullet point of the third paragraph, remove the quotation marks from the words "Market Disruption Event" and delete the parenthetical "(as defined in the Force Majeure Rule)" because Market Disruption Event was defined earlier in this section.
- In the second sentence of the fourth paragraph, for purposes of reflecting present tense, delete the word "would" before the word "operate," and pluralize "operate."
- In the first sentence of the second paragraph:
    - for purposes of reflecting present tense and to improve readability, (a) remove the word "currently" prior to "the Force Majeure Rule" and (b) remove the words "is designed to clarify," and replace them with "clarifies," and
    - in order to correct a typographical error, insert the word "and" in between "its Participants" and "to mitigate."

15. In Section 7.1 (Comprehensiveness), for purposes of correcting a typographical error, remove the capitalization of the words "Critical Services."

16. In Section 7.2 (Effectiveness), under the heading "Reliability," for the purpose of correcting typographical errors, (a) move the

second footnote, currently at the end of the last sentence, to the end of the last sentence of the introductory paragraph of Section 7.2 and (b) in the text of the other footnote that currently reads, "See, for example, DTCC Whitepaper, *CCP Resiliency and Resources*, pg. 2, section 2 (June 2015)," remove ", section 2."

17. In Section 8.2.1 (Potential Scenarios), in the second sentence of the fifth paragraph, replace "enhancements to the loss allocation process are" with "the loss allocation process is." Accordingly, under the proposed rule change this sentence would state, "As noted above, the loss allocation process is designed so that the Participants Fund can be applied to losses arising from multiple Participant failures that occur during an "Event Period", and there can be successive rounds of loss allocations to address losses arising with respect to a given Event Period."

18. In Section 8.4.1 (General Objectives and Approach), in the second paragraph, delete the words "have been amended to" after the words "the Rules" in order to more clearly reflect the fact that the Wind-down of the Corporation Rule[34] was adopted.

19. In Section 8.4.2 (Critical Services and FMI Link Arrangements), for purposes of addressing a typographical error, in the first sentence, after the words "other information," remove the word "and."

20. In Section 8.4.4 (Rules Adopted in Connection with the Wind-down Plan), under the heading "Certain Ex Ante Matters," in the first sentence add an "a" before the second use of the word "Transferee."

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[34] Supra note 6.

21. In Section 8.4.6 (Key Dependencies and Requirements for Effectiveness), in the last paragraph under the heading, "Regulatory approvals," revise the word "see" to "seek," to address a typographical error.

22. In proposed Section 8.6.1 (currently Section 8.6.2) (Recovery and Runway Period Actions), capitalize the word "chapter" in two places where "chapter 11" is not capitalized.

23. In Section 8.7 (Costs and Time to Effectuate Plan), (a) in the second sentence of the fifth paragraph, delete the word "of" between the words "detailed" and "analysis," and (b) at the end of the last sentence of this section, delete the phrase ", as provided in the Capital Requirements Policy." As a result, under the proposed rule change, this sentence would state, "The estimated wind-down costs amount will be reviewed and approved by the Board annually."

24. In Appendix 1 (Defined Terms), add each of the new defined terms based on the addition of such terms to the Plan, and delete the defined terms that were removed based on the deletion of these terms from the Plan.

2. Statutory Basis

DTC believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, DTC believes that the amendments to the R&W Plan are consistent with

Section 17A(b)(3)(F) of the Act[35] and Rule 17Ad-22(e)(3)(ii) under the Act,[36] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of DTC be designed to promote the prompt and accurate clearance and settlement of securities transactions.[37] The Recovery Plan serves to promote the prompt and accurate clearance and settlement of securities transactions by providing DTC with a roadmap for the actions it may employ to mitigate losses, and monitor and, as needed, stabilize DTC's financial condition, which would allow it to continue its critical clearance and settlement services in stress situations. The Recovery Plan is designed to identify the actions and tools that DTC may use to address and minimize losses to both DTC and its Participants, and provide DTC management and the Board with guidance in this regard by identifying the indicators and governance around the use and application of such tools to enable them to address stress situations in a manner most appropriate for the circumstances. Further, the Wind-down Plan establishes a framework for the transfer and orderly wind-down of DTC's business and is designed to facilitate the continuity of DTC's critical services. It establishes clear mechanisms for the transfer of DTC's critical services and membership as well as clear provisions for the transfer of the securities inventory DTC holds in fungible bulk for Participants. By doing so, the Wind-down Plan enables Participants and Pledgees to maintain access to DTC's services in the event DTC defaults or the Wind-down Plan is triggered by the Board.

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35 15 U.S.C. 78q-1(b)(3)(F).

36 17 CFR 240.17Ad-22(e)(3)(ii).

37 15 U.S.C. 78q-1(b)(3)(F).

As described above, the proposed rule change would update the R&W Plan to (i) reflect business and product developments, (ii) make certain clarifications, (iii) remove provisions covering certain "business-as-usual" actions, and (iv) make certain technical corrections. By helping to ensure that the R&W Plan reflects current business and product developments, and providing additional clarity regarding the framework for the transfer and orderly wind-down of DTC's business, DTC believes that the proposed rule change would help it continue to maintain the Plan in a manner that supports the continuity of DTC's critical services and enables its Participants and Pledgees to maintain access to DTC's services through the transfer of its membership in the event DTC defaults or the Wind-down Plan is ever triggered by the Board. Further, by facilitating the continuity of its critical clearance and settlement services, DTC believes the Plan and the proposed rule change would continue to promote the prompt and accurate clearance and settlement of securities transactions. Therefore, DTC believes the proposed amendments to the R&W Plan are consistent with the requirements of Section 17A(b)(3)(F) of the Act.

Rule 17Ad-22(e)(3)(ii) under the Act requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity

shortfalls, losses from general business risk, or any other losses.[38] The R&W Plan is designed to comply with Rule 17Ad-22(e)(3)(ii) and is consistent with the Act because it provides plans for the recovery and orderly wind-down of DTC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.

Specifically, the Recovery Plan defines the risk management activities, stress conditions and indicators, and tools that DTC may use to address stress scenarios that could eventually prevent it from being able to provide its critical services as a going concern. Through the framework of the Crisis Continuum, the Recovery Plan addresses measures that DTC may take to address risks of credit losses and liquidity shortfalls, and other losses that could arise from a Participant default. The Recovery Plan also addresses the management of general business risks and other non-default risks that could lead to losses. The Wind-down Plan would be triggered by a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning DTC to viability as a going concern. Once triggered, the Wind-down Plan sets forth clear mechanisms for the transfer of DTC's membership and business, and is designed to facilitate continued access to DTC's critical services and to minimize market impact of the transfer. By establishing the framework and strategy for the execution of the transfer and wind-down of DTC in order to facilitate continuous access to its critical services, the Wind-down Plan establishes a plan for the orderly wind-down of DTC.

As described above, the proposed rule change would update the R&W Plan to (i) reflect business and product developments, (ii) make certain clarifications, (iii) remove provisions covering certain "business-as-usual" actions, and (iv) make certain technical

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[38] 17 CFR 240.17Ad-22(e)(3)(ii).

corrections. By ensuring that material provisions of the Plan are current, clear, and technically correct, DTC believes that the proposed amendments are designed to support the maintenance of the Plan for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, and, as such, meets the requirements of Rule 17Ad-22(e)(3)(ii) under the Act.[39] Therefore, the proposed changes would help DTC to maintain the Plan in a way that continues to be consistent with the requirements of Rule 17Ad-22(e)(3)(ii).

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change would have any impact, or impose any burden, on competition. DTC does not anticipate that the proposal would affect its day-to-day operations under normal circumstances, or in the management of a typical Participant default scenario or non-default event. The R&W Plan was developed and documented in order to satisfy applicable regulatory requirements, as discussed above. The proposal is intended to enhance and update the Plan to ensure it is clear and remains current in the event it is ever necessary to be implemented. The proposed revisions would not effect any changes to the overall structure or operation of the Plan or DTC's recovery and wind-down strategy as set forth under the current Plan. As such, DTC believes the proposal would not have any impact, or impose any burden, on competition.

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[39] Id.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

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

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[40] of the Act and paragraph (f)[41] of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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-2021-004 on the subject line.

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40 15 U.S.C 78s(b)(3)(A).

41 17 CFR 240.19b-4(f).

Paper Comments:

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

All submissions should refer to File Number SR-DTC-2021-004. 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 proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change 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-2021-004 and should be submitted on or before **[INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

J. Matthew DeLesDernier,

Assistant Secretary.

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[42] 17 CFR 200.30-3(a)(12).