

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) The proposed rule change of The Depository Trust Company (“DTC”) is attached hereto as Exhibit 5.¹ 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.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board Risk Committee of the Board of Directors of DTC at a meeting duly called and held on February 26, 2019.

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

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.

¹ 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, By-Laws and Organization Certificate of DTC (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 Securities and Exchange Commission (“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).

(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.² 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.³ 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.⁴

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

² 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>.

³ 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 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. . . .”).

⁴ 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 1, 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 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 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.⁵ 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

⁵ See, e.g., Rule 9(B), *supra* note 1 ("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.").

effects.⁶ 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 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.⁷ Key among these is daily settlement on each Business Day, but also, historically, the Participants Fund was a

⁶ Supra note 2.

⁷ See Settlement Guide at 48, supra note 1 (“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 1. The first two paragraphs of Rule 6 describe services provided by DTC, including settlement. Rule 6, supra note 1. 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 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.”).

resource to cover losses and other liabilities as well.⁸ 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”).⁹ 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 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.¹⁰ 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.¹¹ 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

⁸ See id.

⁹ See Securities Exchange Act Release No. 83969 (August 28, 2018), 83 FR 44955 (September 4, 2018) (SR-DTC-2017-022).

¹⁰ 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.

¹¹ See infra note 13.

provide a discrete loss allocation waterfall (“Loss Allocation Waterfall”) more comparable to NSCC and FICC.

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.¹² Specifically, certain provisions might be construed to narrow the scope of use of the Participants Fund for settlement to a default gap only.¹³ 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 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.”¹⁴

Section 3 of Rule 4 is the basic provision of remedies if a Participant fails to satisfy an obligation to DTC.¹⁵ 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

¹² See supra note 7.

¹³ 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.”).

¹⁴ Supra note 1.

¹⁵ Therefore, Section 3 of Rule 4 does not apply to a situation where there is no Participant Default.

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.

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 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.¹⁶

¹⁶ Supra note 1. 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.

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.¹⁷ If there is 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.

¹⁷ See Settlement Guide at 19-20, supra note 1.

(iii) 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 Default¹⁸ 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;¹⁹
3. Revise the language that refers to DTC’s sole discretion to apply its liquidity resources, including Participants Fund, to fund settlement,²⁰ to state, “. . . in such order and in

¹⁸ 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.”

¹⁹ 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.

²⁰ 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

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
- (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 DTC²¹ that had appeared in previous versions of Rule 4, including Section 4 of Previous Rule 4.²² With respect to (c), DTC is

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.”

²¹ The retained earnings of DTC are reflected in its quarterly condensed consolidated financial statements and annual financial statements, available at <http://www.dtcc.com/legal/financial-statements>.

²² 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.

proposing to insert the phrase “but not limited to,” after “including,” in order 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 paragraph²³ 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 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.

²³ 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."

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.

(b) Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (“Act”) and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act²⁴ and Rule 17Ad-22(e)(1) promulgated under the Act,²⁵ for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.²⁶ The proposed rule 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 use of the Participants Fund and other resources for settlement, are intended to enhance the overall efficiency and effectiveness of end-of-day settlement in circumstances where there is a settlement gap.

The proposed rule change 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, which could interfere with the prompt and accurate clearance and settlement of securities transactions.

The proposed rule change would also make other technical and clarifying amendments in order to provide enhanced transparency with respect to use of the Participants Fund and other resources for settlement. The proposed amendments would (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

²⁴ 15 U.S.C. 78q-1(b)(3)(F).

²⁵ 17 CFR 240.17Ad-22(e)(1).

²⁶ 15 U.S.C. 78q-1(b)(3)(F).

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 the foregoing 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.

Therefore, the proposed rule change is designed to 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, thereby promoting the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act, cited above.

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.²⁷ 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 rule change is designed to provide an 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, consistent with Rule 17Ad-22(e)(1) under the Act, cited above.

4. Self-Regulatory Organization's Statement on Burden on Competition

DTC believes that the proposed rule change to amend certain provisions of Rule 4 to reflect expressly that the Participants Fund continues to be a liquidity resource to fund a settlement gap on a Business Day, whether there is a default gap or a non-default gap, could impose a burden on competition.²⁸

As noted above, 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. The proposed rule change would enhance DTC's ability to quickly and effectively use the pro rata application of the Participants Fund to respond to a non-default gap on a Business Day. DTC recognizes, however, that a pro rata application of the Participants Fund to fund a

²⁷ 17 CFR 240.17Ad-22(e)(1).

²⁸ 15 U.S.C. 78q-1(b)(3)(I).

settlement gap, including a non-default gap, could potentially result in a deficiency in the Required Participants Fund Deposit of one or more Participants, which could potentially impose a burden on competition. Under Rule 4, in the event of a deficiency in the Required Participants Fund Deposit of a Participant after a pro rata application of the Participants Fund to a settlement gap, the Participant, upon the demand of DTC and within such time as DTC may require, would be required to deposit into the Participants Fund the amount of cash needed to eliminate the deficiency.²⁹ While the proposed rule change does not change or affect this long-standing replenishment obligation,³⁰ DTC acknowledges that such demand for additional capital on a Participant could be a competitive burden for the Participant.

DTC does not believe that any burden imposed by the proposed rule change would be significant. First, if DTC were to use a pro rata application of the Participants Fund to fund a non-default gap, it would not necessarily result in a deficiency to the Required Participants Fund Deposit of any Participant. Whether there would be any deficiencies would depend on the facts and circumstances on that Business Day, including, but not limited to, the amount of funds a Participant has on deposit in the Participants Fund that is in excess of its Required Participants Fund Deposit, as well as the aggregate amount of the pro rata application of the Participants Fund to fund the settlement gap. Second, the Required Participants Fund Deposit of a Participant is itself based on the amount of activity of the Participant, and therefore any burden on a Participant from the requirement to replenish its Required Participants Fund Deposit would be proportional to the volume of its business activity at DTC.

Regardless of whether the potential burden on competition is significant, DTC believes that any burden on competition that may be created by the proposed rule change would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.³¹

DTC believes that any burden on competition created by the proposed rule change would be necessary to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.³² As noted above, if the scope of the permitted use of the Participants Fund to fund a settlement gap on a Business Day could be construed as limited to a default settlement gap, DTC's ability on a Business Day to quickly and effectively respond to and resolve any settlement gap could be adversely affected by the perceived limitation on use of the Participants Fund. This, in turn, could cause settlement delays

²⁹ See supra note 16.

³⁰ See DTC CA-1 Application for Permanent Registration as a Clearing Agency, dated December 15, 1980 (File 600-1) at page 589 (“Rule 4 . . . Section 5. If a pro rata charge is made against a Participant’s contribution to the Participants Fund pursuant to Section 4 of this Rule, such Participant shall immediately upon demand, which shall be made by the Corporation as soon as practicable after such charge, make good the deficiency in the amount of its contribution resulting from such pro rata charge. . . .”).

³¹ 15 U.S.C. 78q-1(b)(3)(I).

³² 15 U.S.C. 78q-1(b)(3)(F).

that might interfere with the prompt and accurate clearance and settlement of securities transactions. Therefore, DTC believes any burden that may be created by the proposed rule change would be necessary in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.³³

Furthermore, DTC believes that any burden on competition resulting from the proposed rule change would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.³⁴ First, The Participants Fund is designed as ready “cash on hand” for settlement and is, typically, the most available liquidity resource for settlement. The proposed rule change is designed to enhance DTC’s ability to use this readily available resource to fund a non-default gap and to continue to support end-of-day net funds settlement. Second, as noted above, any competitive burden imposed on Participants would be proportional to their activity at DTC. Therefore, DTC believes any burden that may be created by the proposed rule change would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.³⁵

DTC does not believe that the proposed rule change to make technical and clarifying amendments to provide enhanced transparency with respect to use of the Participants Fund and other resources for settlement would have an impact on competition.³⁶ The proposed rule change would (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. Taken together, these proposed rule changes would provide a more transparent framework for the use of DTC’s available liquidity resources to fund a settlement gap, as determined by DTC in its sole discretion, and would not change the rights or obligations of Participants in connection thereto. Therefore, DTC believes that the proposed rule change to make technical and clarifying changes to provide enhanced transparency with respect to use of the Participants Fund and other resources for settlement would not have an impact on competition.³⁷

³³ 15 U.S.C. 78q-1(b)(3)(I).

³⁴ Id.

³⁵ Id.

³⁶ Id.

³⁷ Id.

5. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

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

6. Extension of Time Period for Commission Action

DTC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act³⁸ for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

- (a) Not applicable.
- (b) Not applicable.
- (c) Not applicable.
- (d) Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act of 2010

Not applicable.

11. Exhibits

Exhibit 1 – Not applicable.

Exhibit 1A – Notice of proposed rule change for publication in the Federal Register.

Exhibit 2 – Not applicable.

Exhibit 3 – Not applicable.

³⁸ 15 U.S.C. 78s(b)(2).

Exhibit 4 – Not applicable.

Exhibit 5 – Proposed changes to the Rules.

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[____]; File No. SR-DTC-2020-011)

[DATE]

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

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 September __, 2020, 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.³ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change would amend Rule 4⁴ to provide expressly that the Participants Fund continues to be a liquidity resource that may be used by DTC to fund a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On September __, 2020, DTC filed this proposed rule change as an advance notice (SR-DTC-2020-801) with the Commission 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, 12 U.S.C. 5465(e)(1), and Rule 19b-4(n)(1)(i) under the Act, 17 CFR 240.19b-4(n)(1)(i). A copy of the advance notice is available at <http://www.dtcc.com/legal/sec-rule-filings.aspx>.

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, By-Laws and Organization Certificate of DTC (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

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.

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 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

Rules that relate to settlement, including, but not limited to, Rule 4 (Participants Fund and Participants Investment).

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

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 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),

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 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

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>).

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 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

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.

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 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.”

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 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.

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 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

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

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

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.

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

occurrence of a Default Loss Event or Declared Non-Default Loss Event subject to Section 5.

¹⁴ See infra note 16.

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 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 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.

¹⁷ Supra note 4.

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

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.

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 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 any problem with the receipt or disbursement of funds for settlement, it would need to be

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.

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.

(iii) 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 Default²¹ by revising the text to state that, “If, on a Business Day,

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

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

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 DTC²⁴ that had appeared in previous versions of Rule 4, including Section 4 of Previous Rule 4.²⁵ With respect to

²⁴ The retained earnings of DTC are reflected in its quarterly condensed consolidated financial statements and annual financial statements, available at <http://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.

(c), DTC is proposing to insert the phrase “but not limited to,” after “including,” in order 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 paragraph²⁶ 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

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.”

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 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.

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act²⁷ and Rule 17Ad-22(e)(1) promulgated under the Act,²⁸ for the reasons described below.

²⁷ 15 U.S.C. 78q-1(b)(3)(F).

²⁸ 17 CFR 240.17Ad-22(e)(1).

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.²⁹ The proposed rule 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 use of the Participants Fund and other resources for settlement, are intended to enhance the overall efficiency and effectiveness of end-of-day settlement in circumstances where there is a settlement gap.

The proposed rule change 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, which could interfere with the prompt and accurate clearance and settlement of securities transactions.

The proposed rule change would also make other technical and clarifying amendments in order to provide enhanced transparency with respect to use of the Participants Fund and other resources for settlement. The proposed amendments would (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

²⁹ 15 U.S.C. 78q-1(b)(3)(F).

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 the foregoing 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.

Therefore, the proposed rule change is designed to 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, thereby promoting the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act, cited above.

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.³⁰ 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

³⁰ 17 CFR 240.17Ad-22(e)(1).

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 rule change is designed to provide an 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, consistent with Rule 17Ad-22(e)(1) under the Act, cited above.

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

DTC believes that the proposed rule change to amend certain provisions of Rule 4 to reflect expressly that the Participants Fund continues to be a liquidity resource to fund a settlement gap on a Business Day, whether there is a default gap or a non-default gap, could impose a burden on competition.³¹

As noted above, 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. The proposed rule change would enhance DTC's ability to quickly and effectively use the pro rata application of the Participants Fund to respond to a non-default gap on a Business Day. DTC recognizes, however, that a pro rata application of the Participants Fund to fund a settlement gap, including a non-default gap, could potentially result in a deficiency in the Required Participants Fund Deposit of one or more Participants, which could potentially impose a burden on competition. Under Rule 4, in the event of a deficiency in the Required Participants Fund Deposit of a Participant after a pro rata application of the Participants Fund to a settlement gap, the Participant, upon the demand of DTC and within such time as DTC may require, would be required

³¹ 15 U.S.C. 78q-1(b)(3)(I).

to deposit into the Participants Fund the amount of cash needed to eliminate the deficiency.³² While the proposed rule change does not change or affect this long-standing replenishment obligation,³³ DTC acknowledges that such demand for additional capital on a Participant could be a competitive burden for the Participant.

DTC does not believe that any burden imposed by the proposed rule change would be significant. First, if DTC were to use a pro rata application of the Participants Fund to fund a non-default gap, it would not necessarily result in a deficiency to the Required Participants Fund Deposit of any Participant. Whether there would be any deficiencies would depend on the facts and circumstances on that Business Day, including, but not limited to, the amount of funds a Participant has on deposit in the Participants Fund that is in excess of its Required Participants Fund Deposit, as well as the aggregate amount of the pro rata application of the Participants Fund to fund the settlement gap. Second, the Required Participants Fund Deposit of a Participant is itself based on the amount of activity of the Participant, and therefore any burden on a Participant from the requirement to replenish its Required Participants Fund Deposit would be proportional to the volume of its business activity at DTC.

Regardless of whether the potential burden on competition is significant, DTC believes that any burden on competition that may be created by the proposed rule change

³² See supra note 19.

³³ See DTC CA-1 Application for Permanent Registration as a Clearing Agency, dated December 15, 1980 (File 600-1) at page 589 (“Rule 4 . . . Section 5. If a pro rata charge is made against a Participant’s contribution to the Participants Fund pursuant to Section 4 of this Rule, such Participant shall immediately upon demand, which shall be made by the Corporation as soon as practicable after such charge, make good the deficiency in the amount of its contribution resulting from such pro rata charge. . . .”).

would be necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.³⁴

DTC believes that any burden on competition created by the proposed rule change would be necessary to promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.³⁵ As noted above, if the scope of the permitted use of the Participants Fund to fund a settlement gap on a Business Day could be construed as limited to a default settlement gap, DTC's ability on a Business Day to quickly and effectively respond to and resolve any settlement gap could be adversely affected by the perceived limitation on use of the Participants Fund. This, in turn, could cause settlement delays that might interfere with the prompt and accurate clearance and settlement of securities transactions. Therefore, DTC believes any burden that may be created by the proposed rule change would be necessary in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.³⁶

Furthermore, DTC believes that any burden on competition resulting from the proposed rule change would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.³⁷ First, The Participants Fund is designed as ready "cash on hand" for settlement and is, typically, the most available liquidity resource for settlement. The proposed rule change is designed to enhance DTC's ability

³⁴ 15 U.S.C. 78q-1(b)(3)(I).

³⁵ 15 U.S.C. 78q-1(b)(3)(F).

³⁶ 15 U.S.C. 78q-1(b)(3)(I).

³⁷ Id.

to use this readily available resource to fund a non-default gap and to continue to support end-of-day net funds settlement. Second, as noted above, any competitive burden imposed on Participants would be proportional to their activity at DTC. Therefore, DTC believes any burden that may be created by the proposed rule change would be appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act.³⁸

DTC does not believe that the proposed rule change to make technical and clarifying amendments to provide enhanced transparency with respect to use of the Participants Fund and other resources for settlement would have an impact on competition.³⁹ The proposed rule change would (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. Taken together, these proposed rule changes would provide a more transparent framework for the use of DTC's available liquidity resources to fund a settlement gap, as determined by DTC in its sole discretion, and would not change the rights or obligations of Participants in connection thereto. Therefore, DTC believes that the proposed rule change to make technical and clarifying

³⁸ Id.

³⁹ Id.

changes to provide enhanced transparency with respect to use of the Participants Fund and other resources for settlement would not have an impact on competition.⁴⁰

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

Written comments relating to this proposed rule change have not been solicited or received. 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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change

should be disapproved.

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

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:

⁴⁰ Id.

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-2020-011 on the subject line.

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-2020-011. 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-2020-011 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴¹

Secretary

⁴¹ 17 CFR 200.30-3(a)(12).

Bolded, underlined text indicates proposed added language.

~~Bolded, strikethrough text~~ indicates proposed deleted language.

**RULES, BY-LAWS
AND ORGANIZATION CERTIFICATE
OF
THE DEPOSITORY TRUST COMPANY**

RULE 4

PARTICIPANTS FUND AND PARTICIPANTS INVESTMENT

Section 1. Participants Fund

The Participants Fund shall comprise the Actual Participants Fund Deposits of all Participants, as provided in these Rules and as specified in the Procedures.

(f) Maintenance, Permitted Use and Investment of Participants Fund

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. For purposes of this Rule, the term “business” with respect to the Corporation shall mean 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. Notwithstanding anything to the contrary in this Rule, the Participants Fund may be used as provided in any Clearing Agency Agreement.

Section 4. Liquidity Resources to Fund Settlement; Application of Participants Fund Deposits of Non-Defaulting Participants

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.

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 Participants Fund shall constitute a liquidity resource which may be applied by 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; 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

- (a) apply the Actual Participants Fund Deposits of all Participants (other than the Defaulting Participant whose Actual Participants Fund Deposit is exhausted pursuant to Section 3); (each, a “non-defaulting Participant”) as provided in this Section and/or
- (b) the existing retained earnings or undivided profits of the Corporation; or
- (c) apply such 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.

~~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”).~~

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.

~~Each non-defaulting Participant’s The pro rata share of such application of the Actual Participants Fund Deposit of any Participant applied pursuant to paragraph (a) (each, a “pro rata settlement charge”) shall be equal to the ratio of (i) its the Required Participants Fund Deposit of the Participant, as such Required Participants Fund Deposit was fixed on the Business Day on which such charge is made of such application less its Additional Participants Fund Deposit, if any, on that day Business Day, divided by to (ii) the sum of the Required Participants Fund Deposits, as fixed on the Business Day on which such charge is made, of all non-defaulting Participants so charged on that Business Day, as such Required Participants Fund Deposits were fixed on that day, less the sum of the Additional Participants Fund Deposits, if any, of such those non-defaulting Participants on that day 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.~~

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”).

A Participant shall have a period of five Business Days following issuance of a Settlement Charge Notice (such period, a “Settlement Charge Termination Notification Period”) to notify the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(a) of this Rule.
