

## OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="22"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2017"/> - * <input type="text" value="006"/> Amendment No. (req. for Amendments *) <input type="text"/>
Filing by The Depository Trust Company Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934		
Initial * <input checked="" type="checkbox"/> Amendment * <input type="checkbox"/> Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/> Section 19(b)(3)(A) * <input checked="" type="checkbox"/> Section 19(b)(3)(B) * <input type="checkbox"/>	Rule <input checked="" type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/>	Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/> Section 806(e)(2) * <input type="checkbox"/>	
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>
<b>Description</b> Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div style="border: 1px solid black; padding: 5px; margin-top: 10px;">           Proposed rule change to enhance transparency with regard to certain application and participation requirements of DTC.         </div>		
<b>Contact Information</b> Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.		
First Name * <input type="text" value="John"/> Last Name * <input type="text" value="Petrofsky"/> Title * <input type="text" value="Assistant General Counsel"/> E-mail * <input type="text" value="jpetrofsky@dtcc.com"/> Telephone * <input type="text" value="(813) 470-2115"/> Fax <input type="text"/>		
<b>Signature</b> Pursuant to the requirements of the Securities Exchange Act of 1934, has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. <div style="text-align: center;">(Title *)</div> <div style="display: flex; justify-content: space-between; align-items: flex-end;"> <div style="width: 30%;">         Date <input type="text" value="04/07/2017"/>          By <input type="text" value="Lois J. Radisch"/>          (Name *)       </div> <div style="width: 60%; text-align: center;"> <div style="border: 1px solid black; padding: 5px; margin-bottom: 5px;">           Managing Director and Deputy General Counsel         </div> <div style="border: 1px solid black; padding: 5px; background-color: #cccccc; display: inline-block;">           lradisch@dtcc.com         </div> </div> </div>		
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.		

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

**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

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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

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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 the Proposed Rule Change**

(a) The text of the proposed rule change of The Depository Trust Company (“DTC”) is annexed hereto as Exhibit 5. The proposed rule change would amend the Rules, By-Laws and Organization Certificate of DTC (“Rules”)<sup>1</sup> to expressly set forth in the Rules (i) the existing applicable minimum financial resource requirements that any applicant to become a Participant (“Applicant”) that is a U.S. bank, trust company or registered broker-dealer must respectively meet in order to qualify to become a Participant and, once admitted, continue as a Participant in good standing<sup>2</sup> and (ii) the existing requirement that each Applicant that is a U.S. entity must provide a legal opinion as part of its application to become a Participant, as discussed below.

(b) Not applicable.

(c) Not applicable.

## **2. Procedures of the Self-Regulatory Organization**

(a) The proposed rule changes were approved by DTC Management Risk Committee on February 22, 2017.

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

### **(a) Purpose**

Pursuant to Rule 2,<sup>3</sup> DTC has established application criteria and participation requirements for Applicants and Participants related to financial resources, creditworthiness and operational capability.<sup>4</sup> These requirements are designed to manage the risks a Participant

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<sup>1</sup> Available at <http://www.dtcc.com/legal/rules-and-procedures>. Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the Rules.

<sup>2</sup> A U.S. bank or trust company that otherwise meets the application criteria and participation requirements established by DTC pursuant to the Rules is qualified to become a Participant pursuant to Section 1(d) of Rule 3. A U.S. broker dealer that otherwise meets the application criteria and participation requirements pursuant to the Rules is qualified to become a Participant pursuant to Section 1(h)(ii) of Rule 3. See Rule 3, supra note 1.

<sup>3</sup> Rule 2, supra note 1.

<sup>4</sup> See also Disclosure under the Principles for Financial Market Infrastructures (“PFMI”), available at [http://www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/DTC\\_Disclosure\\_Framework.pdf](http://www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/DTC_Disclosure_Framework.pdf) at 100-104 (Describing DTC access and participation requirements).

presents to DTC or to its membership, while facilitating fair and open access by market participants.<sup>5</sup> The proposed rule change would amend the Rules to enhance transparency with respect to certain existing application criteria and participation requirements, specifically, (i) the minimum financial resource requirements for Applicants and Participants that are either U.S. banks, trust companies or registered broker-dealers and (ii) the requirement for Applicants that are U.S. entities to provide a legal opinion, as discussed below.

### Minimum Financial Requirements

Rule 2 requires each Applicant or Participant to demonstrate that it has sufficient financial ability to meet its anticipated obligations to DTC.<sup>6</sup> In this regard, DTC sets financial requirements for establishing and continuing participation that are based on the type of legal entity and the types of services that the entity will use at DTC. Currently, among other requirements, a registered broker dealer must have a minimum of \$500,000 in excess net capital over its regulatory net capital requirement,<sup>7</sup> and a U.S. bank or trust company must have more than \$2 million in equity capital<sup>8</sup> (collectively, “Minimum Financial Requirements”), to become,

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<sup>5</sup> Rule 17 Ad-22(e)(18) under the Securities Exchange Act of 1934, as amended (“Act”), provides that each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, “establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.” 17 CFR 240.17Ad-22(e)(18). (The Securities and Exchange Commission (“Commission”) adopted amendments to Rule 17Ad-22, including the addition of new section 17Ad-22(e), on September 28, 2016. See Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14). DTC is a “covered clearing agency” as defined in Rule 17Ad-22(a)(5), and must comply with new section (e) (including subsection (e)(18) described above) of Rule 17Ad-22 by April 11, 2017.)

<sup>6</sup> Rule 2, supra note 1.

<sup>7</sup> For this purpose, the broker dealer’s minimum regulatory net capital requirement is the greater of (i) the amount imposed on it pursuant to Rule 15c3-1 under the Act, 17 CFR 240.15c3-1, and (ii) such higher amount imposed by the broker-dealer’s designated examining authority, as named by the Commission pursuant to Rule 17d-1 under the Act, 17 CFR 240.17d-1.

<sup>8</sup> For this purpose, equity capital has the meaning as defined on the form of Consolidated Report of Condition and Income and related instructions maintained by the Federal Financial Institutions Examination Council (FFIEC), available at [https://www.ffiec.gov/pdf/FFIEC\\_forms/FFIEC031\\_201612\\_f.pdf](https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_201612_f.pdf) and

and continue in good standing as, a Participant.<sup>9</sup> The Minimum Financial Requirements are currently disclosed in the PFMI and in a list of DTC application requirements that is made available to all Applicants (“Onboarding Requirements”). In order to increase transparency with regard to its application and participation requirements, DTC proposes to amend the Rules by adding the Minimum Financial Requirements for Applicants and Participants that are (i) U.S. broker-dealers or (ii) U.S. banks or trust companies to Section 1 of the Policy Statement.<sup>10</sup>

#### Legal Opinion Requirement

Each Applicant enters into a Participant’s Agreement (“Agreement”), pursuant which the Applicant agrees, *inter alia*, that the DTC Rules shall be a part of the terms and conditions of every contract or transaction that it may make or have with DTC. DTC requires that all Applicants provide an opinion of counsel that provides DTC with comfort as to the valid authorization, execution and delivery of the Agreement by an Applicant and, as applicable, the enforceability of the Agreement under applicable state and federal laws (“Legal Opinion Requirement”). Except with respect to non-U.S. Applicants,<sup>11</sup> the Legal Opinion Requirement is not currently expressly set forth in the Rules.<sup>12</sup> To enhance transparency with regard to the Legal Opinion Requirement, DTC proposes to amend the Rules to add the Legal Opinion Requirement for U.S. Applicants to the Policy Statement.

#### Proposed Changes to Rules Text

Pursuant to the proposed rule change, DTC would (i) amend the text of Section 1 of the Policy Statement to add the existing (A) Minimum Financial Requirements and (B) Legal

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[https://www.ffiec.gov/pdf/FFIEC\\_forms/FFIEC031\\_FFIEC041\\_201609\\_i.pdf](https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_201609_i.pdf), respectively.

<sup>9</sup> Not including non-U.S. Participants, whose minimum financial resource requirements are set forth in the Policy Statement on the Admission of Participants (“Policy Statement”), *See* Policy Statement, *supra* note 1 at 122, most Applicants and Participants are (i) U.S. broker dealers or (ii) U.S. banks or trust companies. Since U.S. broker dealers and U.S. banks and trust companies are subject to standard regulatory capital requirements, DTC has determined that setting the Minimum Financial Requirements based on applicable regulatory requirements is a practical method for determining whether such entities have sufficient financial ability to meet their obligations to DTC. For other Applicants and Participants, DTC reviews any appropriate financial information or reports available with respect to that entity to determine whether it maintains sufficient financial ability to meet its obligations under the Rules.

<sup>10</sup> *See* Policy Statement, *supra* note 1 at 121.

<sup>11</sup> *Id* at 122.

<sup>12</sup> The Legal Opinion Requirement is set forth in the Onboarding Requirements.

Opinion Requirement that pertains to U.S. Applicants, as discussed above, and (ii) add a cross-reference within Rule 2 to the requirements that would be added to the Policy Statement.

Effective Date of Proposed Rule Change

The proposed rule change would become effective immediately upon filing with the Commission.

(b) Statutory Basis

Section 17A(b)(3)(F) of the Act, requires, *inter alia*, that the Rules promote the prompt and accurate clearance and settlement of securities transactions.<sup>13</sup> The proposed rule change would provide transparency in the Rules regarding existing participation requirements that Applicants and Participants must meet for access to DTC's services, including but not limited to participation in its settlement service, by (i) adding the Minimum Financial Requirements and the Legal Opinion Requirement to the Policy Statement and (ii) adding a cross-reference within Rule 2 to the Policy Statement, as discussed above. Collectively, the proposed changes would enhance the transparency and clarity of the Rules, which would enable stakeholders to readily understand DTC's access requirements. Therefore, by providing stakeholders with enhanced transparency and clarity with regard to existing participation requirements that Applicants and Participants must meet for access to DTC's services, including but not limited to participation in its settlement service, DTC believes that the proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions consistent with Section 17A(b)(3)(F) of the Act.

Rule 17Ad-22(d)(2) under the Act requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency; have procedures in place to monitor that participation requirements are met on an ongoing basis; and have participation requirements that are objective and publicly disclosed, and permit fair and open access.<sup>14</sup> As mentioned above, the proposed rule change would provide transparency in the Rules regarding existing DTC participation requirements by (i) adding the Minimum Financial Requirements and the Legal Opinion Requirement to the Policy Statement and (ii) adding a cross-reference within Rule 2 to the Policy Statement, as discussed above. Therefore, by providing stakeholders with greater transparency with regard to existing participation requirements by providing an additional source of public disclosure in this regard through the Policy Statement, DTC believes that the proposed rule change is consistent with Rule 17Ad-22(d)(2) promulgated under the Act cited above.

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<sup>13</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>14</sup> 17 CFR 240.17Ad-22(d)(2).

The proposed rule change is also designed to be consistent with Rule 17Ad-22(e)(18) of the Act, which was recently adopted by the Commission.<sup>15</sup> Rule 17Ad-22(e)(18) will require DTC, *inter alia*, to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis. As mentioned above, the proposed rule change would provide transparency in the Rules regarding existing DTC participation requirements by (i) adding the Minimum Financial Requirements and the Legal Opinion Requirement to the Policy Statement and (ii) adding a cross-reference within Rule 2 to the Policy Statement, as discussed above. Therefore, by providing stakeholders with greater transparency with regard to existing participation requirements by providing an additional source of public disclosure in this regard through the Policy Statement, DTC believes that the proposed rule change is consistent with Rule 17Ad-22(e)(18) promulgated under the Act cited above.

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

DTC does not believe that the proposed rule change would have any impact on competition because the proposed change expressly reflects existing application criteria and participation requirements applicable to all Applicants and Participants.

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

DTC has not solicited and does not intend to solicit comments regarding the proposed rule change. DTC has not received any unsolicited written comments from interested parties. To the extent DTC receives written comments on the proposed rule change, DTC will forward such comments to the Commission.

#### **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 Act for Commission action.

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<sup>15</sup> 17 CFR 240.17Ad-22(e)(18). As mentioned above, the Commission adopted amendments to Rule 17Ad-22, including the addition of new subsection 17Ad-22(e), on September 28, 2016. *See* Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14). DTC is a "covered clearing agency" as defined by new Rule 17Ad-22(a)(5) and must comply with new subsection (e) of Rule 17Ad-22 by April 11, 2017. *Id.*

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

(a) The proposed rule change is to take effect immediately upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>16</sup> and subparagraph (f)(1) of Rule 19b-4 under the Act.<sup>17</sup>

(b) The proposed rule change consists of changes to the text of the Rules that reflect existing application criteria and participation requirements for Applicants and Participants and therefore constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

(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**

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.

Exhibit 4 – Not applicable.

Exhibit 5 – Proposed Changes to the Rules.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(1).



**EXHIBIT 1A**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-[\_\_\_\_]; File No. SR-DTC-2017-006)

[DATE]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the DTC Rules in Order to Enhance Transparency with Regard to Application Criteria and Participation Requirements for Applicants and Participants

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4,<sup>2</sup> notice is hereby given that on \_\_\_\_\_, 2017, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)<sup>3</sup> of the Act and Rule 19b-4(f)(1)<sup>4</sup> thereunder. The proposed rule change was effective upon filing with the Commission. 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 the Rules, By-Laws and Organization Certificate of DTC (“Rules”)<sup>5</sup> to expressly set forth in the Rules (i) the existing

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> Available at <http://www.dtcc.com/legal/rules-and-procedures>. Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the Rules.

applicable minimum financial resource requirements that any applicant to become a Participant (“Applicant”) that is a U.S. bank, trust company or registered broker-dealer must respectively meet in order to qualify to become a Participant and, once admitted, continue as a Participant in good standing<sup>6</sup> and (ii) the existing requirement that each Applicant that is a U.S. entity must provide a legal opinion as part of its application to become a Participant, 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

Pursuant to Rule 2,<sup>7</sup> DTC has established application criteria and participation requirements for Applicants and Participants related to financial resources,

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<sup>6</sup> A U.S. bank or trust company that otherwise meets the application criteria and participation requirements established by DTC pursuant to the Rules is qualified to become a Participant pursuant to Section 1(d) of Rule 3. A U.S. broker dealer that otherwise meets the application criteria and participation requirements pursuant to the Rules is qualified to become a Participant pursuant to Section 1(h)(ii) of Rule 3. See Rule 3, supra note 5.

<sup>7</sup> Rule 2, supra note 5.

creditworthiness and operational capability.<sup>8</sup> These requirements are designed to manage the risks a Participant presents to DTC or to its membership, while facilitating fair and open access by market participants.<sup>9</sup> The proposed rule change would amend the Rules to enhance transparency with respect to certain existing application criteria and participation requirements, specifically, (i) the minimum financial resource requirements for Applicants and Participants that are either U.S. banks, trust companies or registered broker-dealers and (ii) the requirement for Applicants that are U.S. entities to provide a legal opinion, as discussed below.

#### Minimum Financial Requirements

Rule 2 requires each Applicant or Participant to demonstrate that it has sufficient financial ability to meet its anticipated obligations to DTC.<sup>10</sup> In this regard, DTC sets

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<sup>8</sup> See also Disclosure under the Principles for Financial Market Infrastructures (“PFMI”), available at [http://www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/DTC\\_Disclosure\\_Framework.pdf](http://www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/DTC_Disclosure_Framework.pdf) at 100-104 (Describing DTC access and participation requirements).

<sup>9</sup> Rule 17 Ad-22(e)(18) under the Act, provides that each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, “establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.” 17 CFR 240.17Ad-22(e)(18). (The Commission adopted amendments to Rule 17Ad-22, including the addition of new section 17Ad-22(e), on September 28, 2016. See Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14). DTC is a “covered clearing agency” as defined in Rule 17Ad-22(a)(5), and must comply with new section (e) (including subsection (e)(18) described above) of Rule 17Ad-22 by April 11, 2017.)

<sup>10</sup> Rule 2, supra note 5.

financial requirements for establishing and continuing participation that are based on the type of legal entity and the types of services that the entity will use at DTC. Currently, among other requirements, a registered broker dealer must have a minimum of \$500,000 in excess net capital over its regulatory net capital requirement,<sup>11</sup> and a U.S. bank or trust company must have more than \$2 million in equity capital<sup>12</sup> (collectively, “Minimum Financial Requirements”), to become, and continue in good standing as, a Participant.<sup>13</sup> The Minimum Financial Requirements are currently disclosed in the PFMI and in a list of DTC application requirements that is made available to all Applicants (“Onboarding Requirements”). In order to increase transparency with regard to its application and

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<sup>11</sup> For this purpose, the broker dealer’s minimum regulatory net capital requirement is the greater of (i) the amount imposed on it pursuant to Rule 15c3-1 under the Act, 17 CFR 240.15c3-1, and (ii) such higher amount imposed by the broker-dealer’s designated examining authority, as named by the Commission pursuant to Rule 17d-1 under the Act, 17 CFR 240.17d-1.

<sup>12</sup> For this purpose, equity capital has the meaning as defined on the form of Consolidated Report of Condition and Income and related instructions maintained by the Federal Financial Institutions Examination Council (FFIEC), available at [https://www.ffiec.gov/pdf/FFIEC\\_forms/FFIEC031\\_201612\\_f.pdf](https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_201612_f.pdf) and [https://www.ffiec.gov/pdf/FFIEC\\_forms/FFIEC031\\_FFIEC041\\_201609\\_i.pdf](https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_201609_i.pdf), respectively.

<sup>13</sup> Not including non-U.S. Participants, whose minimum financial resource requirements are set forth in the Policy Statement on the Admission of Participants (“Policy Statement”), See Policy Statement, supra note 5 at 122, most Applicants and Participants are (i) U.S. broker dealers or (ii) U.S. banks or trust companies. Since U.S. broker dealers and U.S. banks and trust companies are subject to standard regulatory capital requirements, DTC has determined that setting the Minimum Financial Requirements based on applicable regulatory requirements is a practical method for determining whether such entities have sufficient financial ability to meet their obligations to DTC. For other Applicants and Participants, DTC reviews any appropriate financial information or reports available with respect to that entity to determine whether it maintains sufficient financial ability to meet its obligations under the Rules.

participation requirements, DTC proposes to amend the Rules by adding the Minimum Financial Requirements for Applicants and Participants that are (i) U.S. broker-dealers or (ii) U.S. banks or trust companies to Section 1 of the Policy Statement.<sup>14</sup>

#### Legal Opinion Requirement

Each Applicant enters into a Participant's Agreement ("Agreement"), pursuant to which the Applicant agrees, inter alia, that the DTC Rules shall be a part of the terms and conditions of every contract or transaction that it may make or have with DTC. DTC requires that all Applicants provide an opinion of counsel that provides DTC with comfort as to the valid authorization, execution and delivery of the Agreement by an Applicant and, as applicable, the enforceability of the Agreement under applicable state and federal laws ("Legal Opinion Requirement"). Except with respect to non-U.S. Applicants,<sup>15</sup> the Legal Opinion Requirement is not currently expressly set forth in the Rules.<sup>16</sup> To enhance transparency with regard to the Legal Opinion Requirement, DTC proposes to amend the Rules to add the Legal Opinion Requirement for U.S. Applicants to the Policy Statement.

#### Proposed Changes to Rules Text

Pursuant to the proposed rule change, DTC would (i) amend the text of Section 1 of the Policy Statement to add the existing (A) Minimum Financial Requirements and (B) Legal Opinion Requirement that pertains to U.S. Applicants, as discussed above, and (ii) add a cross-reference within Rule 2 to the requirements that would be added to the Policy Statement.

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<sup>14</sup> See Policy Statement, supra note 5 at 121.

<sup>15</sup> Id at 122.

<sup>16</sup> The Legal Opinion Requirement is set forth in the Onboarding Requirements.

Effective Date of Proposed Rule Change

The proposed rule change would become effective immediately upon filing with the Commission.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act, requires, inter alia, that the Rules promote the prompt and accurate clearance and settlement of securities transactions.<sup>17</sup> The proposed rule change would provide transparency in the Rules regarding existing participation requirements that Applicants and Participants must meet for access to DTC's services, including but not limited to participation in its settlement service, by (i) adding the Minimum Financial Requirements and the Legal Opinion Requirement to the Policy Statement and (ii) adding a cross-reference within Rule 2 to the Policy Statement, as discussed above. Collectively, the proposed changes would enhance the transparency and clarity of the Rules, which would enable stakeholders to readily understand DTC's access requirements. Therefore, by providing stakeholders with enhanced transparency and clarity with regard to existing participation requirements that Applicants and Participants must meet for access to DTC's services, including but not limited to participation in its settlement service, DTC believes that the proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions consistent with Section 17A(b)(3)(F) of the Act.

Rule 17Ad-22(d)(2) under the Act requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, require participants to have sufficient financial resources and robust

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<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(F).

operational capacity to meet obligations arising from participation in the clearing agency; have procedures in place to monitor that participation requirements are met on an ongoing basis; and have participation requirements that are objective and publicly disclosed, and permit fair and open access.<sup>18</sup> As mentioned above, the proposed rule change would provide transparency in the Rules regarding existing DTC participation requirements by (i) adding the Minimum Financial Requirements and the Legal Opinion Requirement to the Policy Statement and (ii) adding a cross-reference within Rule 2 to the Policy Statement, as discussed above. Therefore, by providing stakeholders with greater transparency with regard to existing participation requirements by providing an additional source of public disclosure in this regard through the Policy Statement, DTC believes that the proposed rule change is consistent with Rule 17Ad-22(d)(2) promulgated under the Act cited above.

The proposed rule change is also designed to be consistent with Rule 17Ad-22(e)(18) of the Act, which was recently adopted by the Commission.<sup>19</sup> Rule 17Ad-22(e)(18) will require DTC, inter alia, to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational

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<sup>18</sup> 17 CFR 240.17Ad-22(d)(2).

<sup>19</sup> 17 CFR 240.17Ad-22(e)(18). As mentioned above, the Commission adopted amendments to Rule 17Ad-22, including the addition of new subsection 17Ad-22(e), on September 28, 2016. See Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14). DTC is a “covered clearing agency” as defined by new Rule 17Ad-22(a)(5) and must comply with new subsection (e) of Rule 17Ad-22 by April 11, 2017. Id.

capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis. As mentioned above, the proposed rule change would provide transparency in the Rules regarding existing DTC participation requirements by (i) adding the Minimum Financial Requirements and the Legal Opinion Requirement to the Policy Statement and (ii) adding a cross-reference within Rule 2 to the Policy Statement, as discussed above. Therefore, by providing stakeholders with greater transparency with regard to existing participation requirements by providing an additional source of public disclosure in this regard through the Policy Statement, DTC believes that the proposed rule change is consistent with Rule 17Ad-22(e)(18) promulgated under the Act cited above.

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

DTC does not believe that the proposed rule change would have any impact on competition because the proposed change expressly reflects existing application criteria and participation requirements applicable to all Applicants and Participants.

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

DTC has not solicited and does not intend to solicit comments regarding the proposed rule change. DTC has not received any unsolicited written comments from interested parties. To the extent DTC receives written comments on the proposed rule change, DTC will forward such comments to the Commission.

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



The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>20</sup> of the Act and paragraph (f) of Rule 19b-4<sup>21</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2017-006 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-2017-006. 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

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f).

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2017-006 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.<sup>22</sup>

Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

**RULES, BY-LAWS AND ORGANIZATION CERTIFICATE**

**OF**

**THE DEPOSITORY TRUST COMPANY**

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**RULE 2**

**PARTICIPANTS AND PLEDGEES**

*Section 1.* The Corporation shall make its services, or certain of its services, available to partnerships, corporations or other organizations or entities which (i) apply to the Corporation for the use of such services, (ii) meet the qualifications specified in Rule 3, (iii) are approved by the Corporation and (iv) if required, make a Required Participants Fund Deposit pursuant to Section 1 of Rule 4 and Required Preferred Stock Investment pursuant to Section 2 of Rule 4. The Corporation shall approve applications only upon a determination by the Corporation that the applicant meets the standards of financial condition, operational capability and character defined below:

(a) the applicant has demonstrated that it has sufficient financial ability to make any Required Participants Fund Deposit and Required Preferred Stock Investment and meet all of its anticipated obligations to the Corporation;

(b) the applicant has demonstrated that it has adequate personnel capable of handling transactions with the Corporation and adequate physical facilities, books and records and procedures to fulfill its anticipated commitments to, and to meet the operational requirements of, the Corporation, other Participants and Pledgees with necessary promptness and accuracy and to conform to any condition and requirement which the Corporation reasonably deems necessary for its protection;

(c) the Corporation has received no substantial information which would reasonably and adversely reflect on the applicant or its Controlling Management to such extent that access of the applicant to the Corporation should be denied; and any such applicant may be deemed not to meet the qualifications set forth in this paragraph if:

(i) the Corporation shall have reasonable grounds to believe that the applicant or its Controlling Management to be responsible for (A) making a misstatement of a material fact or omitting to state a material fact to the Corporation in connection with its application to become a Participant or thereafter or (B) fraudulent acts or the violation of the Securities Act, the Exchange Act, the Investment Company Act, the Investment Advisers Act or any rule or regulation thereunder;

(ii) the applicant or its Controlling Management has been convicted within the ten years preceding the filing of its application to become a Participant or at any time thereafter of any crime, felony or misdemeanor which involves the purchase, sale or transfer of any security or the breach of fiduciary duty, or arose out of conduct of the business of a broker, dealer, investment company, investment adviser, underwriter, bank, trust company, fiduciary, insurance company or other financial institution; or involves robbery, larceny, embezzlement, fraudulent conversion, forgery or misappropriation of funds, securities or other property; or involves any violation of Section 1341, 1342 or 1343 of Title 18 of the United States Code;

(iii) the applicant or its Controlling Management is permanently or temporarily enjoined by order, judgment or decree of any court or other governmental authority of competent jurisdiction from acting as a broker, dealer, investment company, investment adviser, underwriter, bank, trust company, fiduciary, insurance company or other financial institution or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase, sale or Delivery of any security, and the enforcement of such injunction or prohibition has not been stayed;

(iv) the applicant or its Controlling Management has been expelled or suspended, or had its participation terminated from a national securities association or exchange registered under the Exchange Act, a self-regulatory organization as defined in Section 3(a)(26) of the Exchange Act, or a corporation which engages in clearance and settlement activities or a securities depository or has been barred or suspended from being associated with any member of such an exchange, association, corporation or securities depository;

(v) the applicant is subject to statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934, or an order of similar effect issued by a Federal or State banking authority, or other examining authority or regulator, including a non-U.S. examining authority or regulator.

**(d) the applicant meets the requirements set forth in the Policy Statement on the Admission of Participants set forth in these Rules**

~~(d)~~**(e)** with regard to any applicant that shall be an FFI Participant, such applicant must be FATCA Compliant.

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**POLICY STATEMENTS**  
**ON THE**  
**ADMISSION OF PARTICIPANTS**

*Section 1. Policy Statement on the Admission of U.S. Entities as Direct Depository Participants:* DTC Rules 2 and 3 set forth the basic standards for the admission of DTC Participants. These rules provide, among other things, that the admission of a Participant is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility, operational capability, and character at the time of its application and on an ongoing basis thereafter.

In evaluating whether its members continue to meet these standards, DTC relies on the fact that all of its Participants are subject to federal or state regulation relating to, among other things, capital adequacy, financial reporting and recordkeeping, operating performance, disqualification from employment, and business conduct. Pursuant to such regulation, DTC's Participants receive periodic regulatory examinations to assure their compliance with these requirements and are subject to disciplinary action if violations are found.

**Any applicant that satisfies the qualifications for eligibility to become a Participant set forth under subsections (d) or (h)(ii) of Section 1 of Rule 3 must comply with minimum financial resource requirements in order to qualify to be admitted, and continue in good standing, as a Participant, as follows:**

- (a) **any applicant or Participant that satisfies the qualifications of subsection 1(d) of Section 1 of Rule 3 shall maintain equity capital in the amount of at least \$2 million based on the definition of the equity capital provided in the form and instructions of the Consolidated Report of Conditions and Income maintained by the Federal Financial Institutions Examination Council (FFIEC); and**
- (b) **any applicant or Participant that satisfies the qualifications of subsection (h)(ii) of Section 1 of Rule 3 shall maintain a minimum amount of not less than \$500,000 in excess net capital over the greater of (i) the minimum capital requirement imposed on it pursuant to Securities Exchange Act Rule 15c3-1, or (ii) such higher minimum capital requirement imposed by the registered broker-dealer's designated examining authority.**

**Each applicant shall, at the time of its application to become a Participant, submit to the Corporation an opinion of counsel in form and substance satisfactory to the Corporation confirming that (i) it is duly organized, validly existing and in good standing under the laws of its state of organization and has the organizational power to execute, deliver and perform the Participant's Agreement in accordance with its terms, (ii) it has taken all necessary organizational or other action to authorize the execution, delivery and performance of the Participant's Agreement, and the Participant's Agreement has been**

**duly executed and delivered to the Corporation, (iii) the Participant's Agreement and the Rules are enforceable against it.**

Except for organizations specifically enumerated in Section 17A(b)(3)(B) of the Securities Exchange Act of 1934, as amended, unless an applicant organization is subject to regulatory agency oversight, it will not qualify for admittance inasmuch as the application of DTC's own resources could not provide an adequate substitute for the kind of continuing regulatory oversight described above.

Notwithstanding the above, however, in the event an organization that is not subject to regulatory oversight desires to become a direct participant at DTC, DTC will explore with such organization the economic and operational implications of direct participation as well as how its participation could be structured to comply with this policy statement.

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