

Required fields are shown with yellow backgrounds and asterisks.

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 WASHINGTON, D.C. 20549 Form 19b-4 Amendment No. (req. for Amendments *)

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 checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input 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)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 3C(b)(2) * <input type="checkbox"/>
Section 806(e)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document Exhibit 3 Sent As Paper Document

Description
 Provide a brief description of the action (limit 250 characters, required when Initial is checked *).
 Relating to Confidential Information, Market Disruption Events, and Other Changes

Contact Information
 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 * James Last Name * Nygard
 Title * Director and Assistant General Counsel
 E-mail * jnygard@dtcc.com
 Telephone * (813) 470-1898 Fax

Signature
 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.
 (Title *)
 Date 06/25/2021 Managing Director and Deputy General Counsel
 By Nikki Poulos npoulos@dtcc.com
 (Name *)

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 EFFS 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

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 the Proposed Rule Change

(a) The proposed rule change of The Depository Trust Company (“DTC”) is annexed hereto as Exhibit 5 and consists of modifications to DTC’s Rules, Bylaws and Organization Certificate (the “Rules”)¹ to (i) revise certain provisions in the Rules relating to the confidentiality of information furnished by Participants² to DTC, (ii) require that each Participant maintain confidential information furnished by DTC or its affiliates in confidence, and restrict use and disclosure of such information, (iii) add certain officers who are allowed to determine that there is a Market Disruption Event pursuant to Rule 38 and (iv) add a new Rule 38(A) to address situations in which it is necessary to disconnect a Participant, or third party service provider, or service bureau due to an imminent threat of harm to DTC, Participants and/or other market participants. Each of the proposed changes is described in greater detail below.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Risk Committee of the DTC Board of Directors (“Board of Directors”) on September 15, 2020.

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

(a) Purpose

The proposed rule change consists of modifications to (i) revise certain provisions in the Rules relating to the confidentiality of information furnished by Participants to DTC, (ii) require that each Participant maintain confidential information furnished by DTC or its affiliates in confidence and restrict use and disclosure of such information, (iii) add certain officers who are allowed to determine that there is a Market Disruption Event pursuant to Rule 38 and (iv) add a new Rule 38(A) to address situations in which it is necessary to disconnect a Participant, or third party service provider, or service bureau due to an imminent threat of harm to DTC, Participants and/or other market participants. Each of the proposed changes is described in greater detail below.

¹ Capitalized terms not defined herein are defined in the Rules, available at <https://www.dtcc.com/legal/rules-and-procedures>.

² As provided in the Rules, the term “Participant” includes the term “Limited Participant” unless (i) the context otherwise requires or (ii) the Procedures otherwise provide. Section 1 of Rule 2, id.

(i) DTC Confidentiality Requirements

Section 1 of Rule 2³ contains provisions relating to confidentiality of information furnished by Participants to DTC (collectively, the “DTC Confidentiality Requirements”). Each of the DTC Confidentiality Requirements provides that the rights of DTC to inspect books and records, or to be furnished with information, is subject to any applicable laws or rules, or regulations of regulatory bodies having jurisdiction over the Participant, that relate to confidentiality of records. DTC is proposing to update the DTC Confidentiality Requirements because such provisions (i) may result in unequal treatment of Participants due to differing laws or regulations of regulatory bodies, (ii) may result in a potential conflict of laws where rules or regulations governing a regulatory body of a Participant differ from the laws applicable to DTC, or a Participant has multiple regulatory bodies whose rules conflict, (iii) are burdensome as they require DTC to track the rules and regulations of each regulatory body of its Participants to determine what applicable laws or rules or regulations of regulatory bodies that relate to confidentiality of records affect its rights to receive information and (iv) are unnecessary as DTC has sufficient protections in place relating to protection and confidentiality of Participant data.

The regulatory bodies that have jurisdiction over Participants differ by Participant depending on certain criteria of each Participant, including the type of entity of the Participant, where the Participant was organized, the types of businesses in which the Participant engages and where the Participant is doing business. In addition, many Participants are regulated by more than one regulatory body. As a result, a requirement to maintain confidentiality standards for information provided by a Participant or the right to receive information based on the regulatory body or bodies that regulate such Participant result in varying standards of confidentiality for Participants that are regulated by different regulatory bodies. Such varying standards may result in unequal treatment of Participants due to differing laws or regulations of the regulatory body or bodies governing such Participants. In addition, such varying standards may result in a potential conflict of laws where rules or regulations governing a regulatory body of a Participant differ from the laws applicable to DTC or an entity that has multiple regulatory bodies whose rules conflict.

DTC believes that it is unnecessarily burdensome to determine the rules and regulations of each of the regulatory bodies that regulate its Participants. Such regulatory bodies include numerous U.S. federal and state regulators as well as foreign national, state and local regulators. DTC proposes revising the language in the DTC Confidentiality Requirements to maintain one confidentiality standard for all Participants rather than maintaining potentially different confidentiality standards for Participants based on the various, unrelated regulatory bodies regulating such Participants. DTC is proposing to replace the existing language in the DTC Confidentiality Requirements with language that would provide that DTC will hold non-public information furnished pursuant to those Rules in confidence as may be required under the law or the rules and regulations applicable to DTC that relate to the confidentiality of records. Such laws, rules and regulations would include national, state and foreign laws governing

³ Rule 2 relates to initial and ongoing requirements to become and continue to be a Participant and/or Pledgee, including information that DTC may require applicants or Participants to provide to DTC. Id.

confidentiality of data that are applicable to DTC in connection with its collection and disclosure of data.

DTC believes that the rules and regulations applicable to DTC governing the use and disclosure of confidential information provide standards that are representative of those of the various regulatory bodies governing its Participants. As a result, DTC does not believe that the proposed rule change relating to the DTC Confidentiality Requirements would result in any change to DTC's practices relating to data protection and confidentiality of information provided by Participants.

(ii) Participant Confidentiality Requirements

Historically, DTC has generally not provided, nor been requested to provide, information that contains confidential or proprietary information of DTC or its affiliates to its Participants except for information necessary for Participants and their service providers and service bureaus to connect to DTC and to participate in the services that DTC offers to its Participants. While certain information is protected by intellectual property rights of DTC and its affiliates under applicable intellectual property laws, such as copyright laws and trademark laws, the Rules do not include any express obligations for Participants to protect confidential information received by them from DTC or its affiliates.

In connection with the development of cyber and information security programs pursuant to applicable regulatory requirements by Participants, DTC and its parent company, The Depository Trust & Clearing Corporation ("DTCC"), have received an increasing number of requests from Participants for confidential and proprietary information of DTC and DTCC.⁴ This includes, for example, information regarding DTCC's network operations and data security practices, legal settlements, and other information. Additionally, in the event there is a cyber incident relating to a Participant, DTC or DTCC may be requested to disclose confidential information regarding its cyber threat indicators, sources of cyber threat information, or other information and actions taken related to a cyber event.

In order to provide for contractual protections for such confidential information of DTCC, DTC and DTCC's other subsidiaries, DTC is proposing to add provisions to the Rules that would require Participants to maintain confidential information of DTC and its affiliates that DTC provides to such Participants in confidence and not to disclose such confidential information except as necessary to perform such Participant's obligations under DTC's Rules or as otherwise required by applicable law ("Participant Confidentiality Requirements"). The Participant Confidentiality Requirements would provide that in the event of a breach of the Participant Confidentiality Requirements, DTC or DTCC would be entitled to seek any

⁴ DTCC provides a set of core business processes for DTC and DTCC's other subsidiaries, including the technology systems and networks that provide connectivity between DTC and its participants and that provide the ability of DTC to provide the services as required under its Rules. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides relevant services to DTC and DTCC's other subsidiaries.

temporary or permanent injunctive or other equitable relief in addition to any monetary damages under the Rules. In addition, as with any failure to comply with its Rules, DTC would have the ability to impose other disciplinary proceedings or restrictions on access to services as provided in the Rules for failure to comply with the Participant Confidentiality Requirements.

(iii) Market Disruption Events

Rule 38 (Market Disruption and Force Majeure)⁵ (the “Force Majeure Rule”) contains provisions that identify the events or circumstances that would be considered a Market Disruption Event, including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which DTC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems.⁶ Under the Force Majeure Rule, during the pendency of a Market Disruption Event, DTC would be entitled to (i) suspend the provision of any or all services and (ii) take, or refrain from taking, or require Members to take, or refrain from taking, any actions DTC considers appropriate to address, alleviate, or mitigate the event and facilitate the continuation of DTC’s services as may be practicable.⁷

Section 2 of the Force Majeure Rule provides that the Board of Directors may determine the existence of a Market Disruption Event and the actions to be taken in response thereto.⁸ However, if the Board of Directors is unable to convene, the Force Majeure Rule provides that certain officers may make such determination, on an interim basis, which determination is then ratified, modified or rescinded as soon as practicable by the Board of Directors. The officers that may make such determination are all senior executive officers of DTC: Chief Executive Officer, Chief Financial Officer, Group Chief Risk Officer and General Counsel.

The proposed rule change would add two senior executive officers of DTC, the Chief Information Officer and the Head of Clearing Agency Services, to the list of officers that could make such determination if the Board of Directors is unable to convene. These two officers, like the other senior executive officers currently listed in the Rules, maintain senior executive level positions at DTC, oversee divisions of DTC, and hold positions at DTC that would provide them a necessary global view into DTC’s operations and systems to enable them to determine the existence of a Market Disruption Event in the event that the Board of Directors is unable to convene. Adding these two additional officers would facilitate DTC’s ability to implement its emergency procedures in the event of a Market Disruption Event.

⁵ Rule 38, supra note 1.

⁶ Id.

⁷ Id.

⁸ Section 2 of Rule 38, id.

(iv) Systems Disconnect: Threat of Significant Impact to DTC's Systems

The proposed rule change would add a new Rule 38(A) (Systems Disconnect: Threat of Significant Impact to the Corporation's Systems) ("Systems Disconnect Rule") that would address situations in which DTC determines it is necessary for DTC to disconnect a single or limited number of Participants, or third party service providers, or service bureaus used by Participants to connect to DTC⁹ (collectively, "DTCC Systems Participants") from DTC's systems or network due to an imminent threat of harm to DTC's or DTCC's systems. The imminent threat could be the result of a system disruption or cyber incident applicable to the DTCC Systems Participants. This would allow DTCC to work with the affected Participants while protecting DTC, its systems and its other Participants.

The proposed Systems Disconnect Rule would be structured similarly to the Force Majeure Rule. The Systems Disconnect Rule would address DTC's authority to take certain actions upon the occurrence, and during the pendency, of a Major Event. A "Major Event" would be defined as the happening of one or more Systems Disruption(s) (as defined below) that is reasonably likely to have a significant impact on DTC's operations, including the DTCC Systems (as defined below), that affect the business, operations, safeguarding of securities or funds, or physical functions of DTC, Participants and/or other market participants. "Systems Disruption" would be defined as the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of a DTCC Systems Participant's systems that disrupts or degrades the normal operation of such DTCC Systems Participant's systems; or anything that impacts or alters the normal communication, or the files that are received, or information transmitted, to or from the DTCC Systems. "DTCC Systems" would be defined as the systems, equipment and technology networks of DTCC, DTC and/or their Affiliates,¹⁰ whether owned, leased, or licensed, software, devices, IP addresses or other addresses or accounts used in connection with providing the services set forth in the Rules, or used to transact business or to manage the connection with DTC.

The proposed Systems Disconnect Rule would allow DTC to mitigate the effect of such events by facilitating the continuity of services (or, if deemed necessary, the temporary suspension of services). To that end, under the proposed Systems Disconnect Rule, DTC would be entitled, during the pendency of a Major Event, to (1) disconnect a DTCC Systems Participant's systems from the DTCC Systems, (2) suspend the receipt and/or transmission of files or communications to or from the DTCC Systems Participant to the DTCC Systems and/or (3) take, or refrain from taking, or require a DTCC Systems Participant to take or refrain from taking, any actions that DTC considers appropriate to prevent, address, correct, mitigate or

⁹ Some Participants use third parties to connect to DTC's systems and/or to send data to DTC and receive data from DTC on the Participant's behalf. Such third parties are referred to as "service providers" or "service bureaus" herein.

¹⁰ "Affiliate" would be defined as a Person that controls or is controlled by or is under common control with another Person. Control of a Person means the direct or indirect ownership, or power to vote more than 50% of any class of the voting securities or other voting interests of such Person.

alleviate the Major Event and facilitate the continuation of services as may be practicable and, in that context, issue instructions to the DTCC Systems Participant.

The proposed Systems Disconnect Rule would define the governance procedures for how DTC would determine whether, and how, to implement the provisions of the rule. A determination that a Major Event has occurred could be made by the same officers with delegated authority under the Force Majeure Rule as discussed above (an “Officer Major Event Action”). Following this determination, any management committee on which all of the foregoing officers serve would convene, and DTC would convene a Board of Directors meeting as soon as practicable thereafter, and in any event within five Business Days following such determination, in each case, to ratify, modify, or rescind the Officer Major Event Action. The proposed Systems Disconnect Rule would require Participants to notify DTC immediately upon becoming aware of a Major Event, and, likewise, would require DTC to promptly notify the DTCC Systems Participant(s) of any action DTC takes or intends to take with respect to such DTCC Systems Participant(s) pursuant to the proposed rule.

Finally, the Systems Disconnect Rule would address certain miscellaneous matters including: (i) a limitation of liability for any failure or delay in performance, in whole or in part of DTC’s obligations under the Rules, arising out of or related to a Major Event, (ii) a statement that the power of DTC to take any action pursuant to the Systems Disconnect Rule also includes the power to repeal, rescind, revoke, amend or vary such action, (iii) a statement that the powers of DTC pursuant to the Systems Disconnect Rule shall be in addition to, and not in derogation of, authority granted elsewhere in the Rules to take action as specified therein, (iv) a requirement that Participants shall keep any DTCC Confidential Information (as defined below) provided to them by DTC and/or in connection with a Major Event confidential and (v) a statement that in the event of any conflict between the provisions of the Systems Disconnect Rule and any other Rules or Procedures, the provisions of the Systems Disconnect Rule would prevail.

(v) *Proposed Rule Changes*

The proposed rule change would amend the Rules to make the following changes to implement the changes discussed above:

DTC Confidentiality Requirements Changes

The proposed rule change would amend the DTC Confidentiality Requirements in two paragraphs in Section 1 of Rule 2,¹¹ to state as follows:

. . . any non-public information furnished to the Corporation pursuant to this Rule shall be held in confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records.

As discussed above, the proposed language is intended to provide one standard that DTC would apply uniformly to all Participants, which assures Participants that such information would be held in confidence with appropriate controls. DTC would add “non-public” when

¹¹ Section 1 of Rule 2, supra note 1.

describing the information that is subject to the DTC Confidentiality Requirements to make it clear that such requirements would only apply to information that is not public.

Certain Rules relating to DTC Confidentiality Requirements would also include language relating to Participant Confidentiality Requirements as described below.

Participant Confidentiality Requirements

In order to provide for Participant Confidentiality Requirements, DTC would add a provision at the end of Section 1 of Rule 2¹² to state that each applicant and Participant shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform its obligations under the Rules or as otherwise required by applicable law. DTC would add a new definition of DTCC Confidential Information in Section 1 of Rule 1¹³ to provide that “DTCC Confidential Information” would mean all non-public information provided by DTCC and/or DTC that (i) is marked or otherwise identified in writing prior to disclosure to the recipient as confidential, (ii) is designated by DTCC or DTC as confidential, or (iii) the recipient knows or, under the circumstances surrounding disclosure, ought to reasonably know is confidential. DTC would also add a definition of DTCC in Section 1 of Rule 1 and remove a corresponding definition in Rule 32(A)¹⁴ since it would be defined in Section 1 of Rule 1.

DTC would also add a statement in the provision relating to Participant Confidentiality Requirements that each applicant and Participant acknowledges that a breach of its confidentiality obligations under the Rules may result in serious and irreparable harm to DTC and/or DTCC for which there is no adequate remedy at law. In the event of such a breach by the applicant or Participant, DTC and/or DTCC would be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages.

Force Majeure Rule Officer Additions

The proposed rule change would add the Chief Information Officer and the Head of Clearing Agency Services to the list of officers that could make a determination of a Market Disruption Event if the Board of Directors is unable to convene in Rule 38.¹⁵

¹² Section 1 of Rule 2, supra note 1.

¹³ Section 1 of Rule 1, supra note 1.

¹⁴ Rule 32(A), supra note 1.

¹⁵ Rule 38, supra note 1.

Systems Disconnect Rule

The proposed rule change would add a new Rule 38(A) entitled “Systems Disconnect: Threat of Significant Impact to the Corporation’s Systems” that would address situations in which DTC determines it is necessary for DTC to disconnect a DTCC Systems Participant or DTCC Systems Participants from DTC’s systems or network due to an imminent threat of harm to DTC’s or DTCC’s systems consistent with the description above. The proposed Systems Disconnect Rule would include new definitions for “DTCC Systems,” “DTCC Systems Participant,” “Major Event” and “Systems Disruption” consistent with the descriptions of the Systems Disconnect Rule above.

(b) Statutory Basis

DTC believes that the proposal 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. In particular, DTC believes that each of the proposed rule changes is consistent with Section 17A(b)(3)(F) of the Act,¹⁶ and Rules 17Ad-22(e)(1) and (e)(21)¹⁷ promulgated under the Act. In addition, DTC believes that the proposed changes to add the two senior executive officers in the Force Majeure Rule and to add the proposed Systems Disconnect Rule are consistent with Rules 17Ad-22(e)(2) and (e)(17) under the Act.¹⁸

Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act¹⁹ requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible, and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

DTC believes that the proposed changes revising the DTC Confidentiality Requirements and adding the Participant Confidentiality Requirements are each consistent with this provision of the Act. The proposed revisions to the DTC Confidentiality Requirements are consistent with this provision because the proposed revisions would provide a clear and consistent standard relating to how DTC holds the information furnished by Participants pursuant to Section 1 of Rule 2.²⁰ The confidential information that DTC receives pursuant to this rule is used by DTC to determine whether to admit a Participant, to continue to allow such Participant to be a Participant, or to better understand the risks relating to each Participant. Providing a clear and

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

¹⁷ 17 CFR 240.17Ad-22(e)(1) and (e)(21).

¹⁸ 17 CFR 240.17Ad-22(e)(2) and (e)(17).

¹⁹ 15 U.S.C. 78q-1(b)(3)(F).

²⁰ Section 1 of Rule 2, supra note 1.

consistent standard would facilitate this process by allowing Participants to better understand DTC's obligations with respect to such information and providing a uniform obligation for DTC with respect to such information. DTC believes that facilitating the ability of DTC to evaluate Participants would promote the prompt and accurate clearance and settlement of securities transactions by DTC. As such, DTC believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.²¹

DTC also believes that the proposed rule change adding the Participant Confidentiality Requirements is consistent with this provision of the Act because the proposed revisions to the Participant Confidentiality Requirements would provide a clear and consistent contractual obligation for applicants and Participants who are requesting confidential information from DTC. Having clear and consistent Rules would help applicants and Participants to better understand their rights and obligations regarding DTC's clearance and settlement services. The information requested by applicants and Participants that would be subject to the Participant Confidentiality Requirements would be used by applicants and Participants to determine whether to participate in DTC's services, DTC system requirements and DTC system safeguards. DTC believes that when Participants better understand their rights and obligations regarding DTC's clearance and settlement services, they can better act in accordance with the Rules. DTC believes that better enabling Participants to comply with the Rules would promote the prompt and accurate clearance and settlement of securities transactions by DTC. As such, DTC believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.²²

DTC believes that the proposed changes to add the two officers to make a determination of a Market Disruption Event and to add the Systems Disconnect Rule are also consistent with this provision of the Act because those changes would enhance and streamline DTC's ability to take necessary actions in the event of a Market Disruption Event or a Major Event. Improving the ability of DTC to react to a Market Disruption Event or a Major Event would allow DTC to protect its Participants and their ability to promptly and accurately clear and settle securities transactions, and allow DTC to safeguard securities and funds that are in its custody or control. In particular, allowing two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add additional flexibility and tools to DTC while maintaining proper risk controls and improve the ability of DTC to act in the event of a Market Disruption Event. Also, providing for the ability of DTC to disconnect DTCC Systems Participants, suspend the receipt or transmission of files or communications to or from a DTCC Systems Participant, and/or require the DTCC Systems Participant to take such other actions as are necessary to protect DTC and its Participants would, in each case, provide additional tools for DTC in the event of a Major Event.

Improving the governance around the determination of a Market Disruption Event, and the implementation of procedures allowing DTC to disconnect a DTCC Systems Participant or DTCC Systems Participants from DTC's systems or network due to an imminent threat of harm, would improve DTC's ability to address and minimize losses to DTC and its Participants. Risks,

²¹ 15 U.S.C. 78q-1(b)(3)(F).

²² Id.

threats and potential vulnerabilities due to a Market Disruption Event or a Major Event could impact DTC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in its custody or control or for which it is responsible. In addition, providing governance around the ability to disconnect a DTCC Systems Participant that is having a systems disruption that could disrupt the ability of DTC or other DTCC Systems Participants from using DTC's systems would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Although disconnecting or limiting the service of a DTCC Systems Participant in the event of a Major Event would likely be an impediment to such DTCC Systems Participant, improving DTC's ability to address and minimize losses to DTC and its Participants, and reducing risks, threats and potential vulnerabilities due to a Major Event that could impact DTC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in its custody or control or for which it is responsible, would be consistent with Section 17A(b)(3)(F) of the Act.²³

Therefore, by implementing tools that would help to mitigate these risks, DTC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible, and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of Section 17A(b)(3)(F) of the Act.²⁴

Rule 17Ad-22(e)(1)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(1) promulgated under the Act,²⁵ which requires DTC to 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.

Establishing clear and consistent rules for each Participant with respect to the DTC Confidentiality Requirements would allow DTC to maintain one confidentiality standard for all Participants rather than maintaining potentially different confidentiality standards for Participants based on the various, unrelated regulatory bodies governing such Participants. In addition, setting forth a clear contractual obligation relating to Participant Confidentiality Requirements would enhance the understanding of the Participants receiving information from DTC and allow DTC to treat Participants equally with respect to how the information furnished to Participants should be protected by the Participants.

Adding the two officers to make a determination of a Market Disruption Event and adding the Systems Disconnect Rule are also consistent with Rule 17Ad-22(e)(1) under the Act because those changes would describe the circumstances under which DTC could take actions in

²³ Id.

²⁴ Id.

²⁵ 17 CFR 240.17Ad-22(e)(1).

the event of a Market Disruption Event or a Major Event that are necessary to protect DTC and its Participants. Providing clear guidelines with respect to Market Disruption Events and Major Events would allow DTC Participants to understand the rights and obligations of the Participants in the event of a Market Disruption Event or a Major Event.

Therefore, by establishing uniform and clear standards with respect to its receipt and furnishing of confidential information, and by providing clear rights and obligations of DTC and its Participants with respect to Market Disruption Events and Major Events, DTC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(1) promulgated under the Act.²⁶

Rule 17Ad-22(e)(21)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(21) promulgated under the Act,²⁷ which requires DTC to, inter alia, establish, implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its Participants and the markets it serves. The proposed rule change would streamline the DTC Confidentiality Requirements by providing that DTC would apply one standard for all Participants relating to confidential information sent to DTC by Participants, which would enhance (i) efficiency by avoiding applying varying standards of confidentiality based on the rules and regulations of the varying regulatory bodies that regulate the Participants, and (ii) effectiveness by reducing potential conflicts of laws and providing equal treatment to Participants relating to such confidential information.

The addition of the Participant Confidentiality Requirements would also provide a uniform and easily discernable requirement for all Participants with respect to confidential information provided by DTC allowing DTC to provide necessary information to such Participants in a safe and efficient manner. Adding two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add additional flexibility and tools to DTC while maintaining proper risk controls and improve the ability of DTC to act quickly, efficiently and effectively in a Market Disruption Event to address and minimize losses. Also, providing for the ability of DTC to disconnect DTCC Systems Participants, suspend the receipt or transmission of files or communications to or from a DTCC Systems Participant, and/or require the DTCC Systems Participant to take such other actions as are necessary to protect DTC and its Participants would, in each case, provide additional tools for DTC in the event of a Major Event and improve DTC's ability to act quickly, efficiently and effectively in the event of a Major Event to address and minimize losses.

Therefore, by establishing a more efficient and effective process for the treatment of confidential language, and establishing procedures designed to improve DTC's ability to act quickly, efficiently and effectively in the event of a Market Disruption Event and a Major Event,

²⁶ Id.

²⁷ 17 CFR 240.17Ad-22(e)(21).

DTC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(21) promulgated under the Act.²⁸

Rule 17Ad-22(e)(2)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(2) promulgated under the Act,²⁹ which requires DTC to, inter alia, establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.

Adding two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add additional flexibility and tools to DTC while maintaining proper risk controls, and improve the ability of DTC to act quickly, efficiently and effectively in a Market Disruption Event and mitigate any impact from such Market Disruption Event. Adding these officers to the governance procedures relating to a determination of a Market Disruption Event would make such governance procedures clear and transparent, and specify clear and direct lines of responsibility with respect to the determination of a Market Disruption Event, consistent with Rule 17Ad-22(e)(2) under the Act.³⁰

Adding the governance procedures relating to making a determination of a Major Event in the Systems Disconnect Rule is also consistent with Rule 17Ad-22(e)(2) promulgated under the Act.³¹ Identifying the officers that have the ability to determine if there is a Major Event, and providing for the ability of any management committee on which all of such officers serve and the Board of Directors to ratify, modify or rescind any determination of a Major Event by an officer would make such governance procedures clear and transparent, and specify clear and direct lines of responsibility with respect to the determination of a Major Event, consistent with Rule 17Ad-22(e)(2).³²

Rule 17Ad-22(e)(17)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(17)(i) promulgated under the Act,³³ which requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered

²⁸ Id.

²⁹ 17 CFR 240.17Ad-22(e)(2).

³⁰ Id.

³¹ Id.

³² Id.

³³ 17 CFR 240.17Ad-22(e)(17)(i).

clearing agency's operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.

Adding two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add additional flexibility and tools to DTC while maintaining proper risk controls and improve the ability of DTC to act quickly, efficiently and effectively in a Market Disruption Event and mitigate any impact from such Market Disruption Event. Also, providing for the ability of DTC to disconnect DTCC Systems Participants, suspend the receipt or transmission of files or communications to or from a DTCC Systems Participant, and/or require the DTCC Systems Participant to take such other actions as are necessary to protect DTC and its Participants would, in each case, provide additional tools for DTC in the event of a Major Event and improve DTC's ability to act quickly, efficiently and effectively in the event of a Major Event and mitigate any impact from such Major Event.

Therefore, by providing clear, efficient procedures of DTC and its Participants with respect to Market Disruption Events and Major Events that help identify and mitigate operational risks, DTC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(17)(i) promulgated under the Act.³⁴

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

DTC does not believe that the proposed changes relating to the DTC Confidentiality Requirements would have any impact on competition. These changes would provide one standard for how DTC treats Participant information furnished subject to the DTC Confidentiality Requirements but would not affect the information that the Participants are required to provide or affect the manner in which the Participants must provide the information. As such, DTC believes these proposed rule changes would not have any impact on competition.

DTC does not believe the proposed changes relating to adding Participant Confidentiality Requirements would have any impact on competition. Although the addition of the Participant Confidentiality Requirements would be adding obligations on Participants with respect to how they treat confidential or proprietary information of DTC or its affiliates, such obligations would be minimal because DTC would only require that such Participants hold such confidential information using the same means they use to protect their own confidential information but not less than a reasonable standard of care. The use of this standard would protect DTC by providing a clear legal obligation to protect such information but would not be burdensome or expensive for Participants, and therefore DTC believes that it would not have any impact on competition.

DTC does not believe the changes relating to adding the two officers to make a determination of a Market Disruption Event would have any impact on competition. The proposed rule change would add two senior executive officers of DTC, the Chief Information Officer and the Head of Clearing Agency Services, to the list of officers that could make a

³⁴

Id.

determination of a Market Disruption Event if the Board of Directors is unable to convene. Such addition would provide additional officers who could determine whether there is a Market Disruption Event but would not otherwise affect the rights of Participants or DTC in the determination of a Market Disruption Event or if a Market Disruption Event is declared. Therefore, DTC does not believe that the addition of the two officers would have any impact on competition.

DTC does not believe that the changes relating to adding the Systems Disconnect Rule would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act.³⁵ To the extent that DTC determines that there is a Major Event, it could take or refrain from taking actions, or require Participants to take or refrain from taking actions, that could burden competition because such requirements could cause Participants to incur additional costs, allow DTC to suspend services or communications, or disconnect a DTCC Systems Participant from the DTCC Systems. DTC believes such burden on competition could be significant but would be both necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act,³⁶ for the reasons described below.

DTC believes that the proposed changes to add the Systems Disconnect Rule are necessary in furtherance of the purposes of Section 17A(b)(3)(F) of the Act,³⁷ and Rules 17Ad-22(e)(1), (e)(2), (e)(17) and (e)(21) promulgated under the Act.³⁸ The proposed changes to add the Systems Disconnect Rule would (i) improve the ability of DTC to react to a Major Event allowing DTC to protect itself and its Participants and their ability to promptly and accurately clear and settle securities transactions, and allow DTC to safeguard securities and funds that are in its custody or control, consistent with the requirements of Section 17A(b)(3)(F) of the Act,³⁹ (ii) provide clear guidelines with respect to Major Events that would allow Participants to understand the rights and obligations of the Participants and DTC in the event of a Major Event, consistent with Rule 17Ad-22(e)(1) promulgated under the Act,⁴⁰ (iii) identify the officers that have the ability to determine if there is a Major Event, and provide for the ability of any management committee on which all of such officers serve, and the Board of Directors, to ratify, modify or rescind any determination of a Major Event by an officer, which would make such governance procedures clear and transparent, and specify clear and direct lines of responsibility with respect to the determination of a Major Event, consistent with Rule 17Ad 22(e)(2) promulgated under the Act,⁴¹ (iv) improve the ability of DTC to act quickly, efficiently and

³⁵ 15 U.S.C. 78q-1(b)(3)(I).

³⁶ Id.

³⁷ 15 U.S.C. 78q-1(b)(3)(F).

³⁸ 17 CFR 240.17Ad-22(e)(1), (e)(2), (e)(17) and (e)(21).

³⁹ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁰ 17 CFR 240.17Ad-22(e)(1).

⁴¹ 17 CFR 240.17Ad-22(e)(2).

effectively in the event of a Major Event, and mitigate any impact from such event by providing clear, efficient procedures of DTC and its Participants with respect to such event, consistent with the requirements of Rule 17Ad-22(e)(17)(i) promulgated under the Act⁴² and (v) establish procedures designed to improve DTC's ability to act quickly, efficiently and effectively in the event of a Major Event, consistent with the requirements of Rule 17Ad-22(e)(21) promulgated under the Act.⁴³

In addition, DTC believes that the proposed changes to add the Systems Disconnect Rule are appropriate in furtherance of the Act. Such changes have been designed to improve the ability of DTC to act quickly, efficiently and effectively in the event of a Major Event, and mitigate any impact from such event while also providing the Participants clear guidelines with respect to such event to allow Participants to understand their rights and obligations. Such changes have also been designed to apply uniformly to all Participants in the event of a Major Event and should not affect DTC's day-to-day operations under normal circumstances, or in the management of a typical Participant default scenario or non-default event.

Therefore, DTC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.⁴⁴

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

DTC has not received or solicited any written comments relating to this proposal. DTC will notify the Securities and Exchange Commission ("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 Act⁴⁵ 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.

⁴² 17 CFR 240.17Ad-22(e)(17)(i).

⁴³ 17 CFR 240.17Ad-22(e)(21).

⁴⁴ 15 U.S.C. 78q-1(b)(3)(I).

⁴⁵ 15 U.S.C. 78s(b)(2).

(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 Notice 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.

Exhibit 4 – Not applicable.

Exhibit 5 – Proposed changes to the Rules.

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[_____]; File No. SR-DTC-2021-011)

[DATE]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Confidential Information, Market Disruption Events, and Other Changes

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 June __, 2021, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. 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 consists of modifications to DTC’s Rules, Bylaws and Organization Certificate (the “Rules”)³ to (i) revise certain provisions in the Rules relating to the confidentiality of information furnished by Participants⁴ to DTC, (ii) require that each Participant maintain confidential information furnished by DTC or its affiliates in confidence, and restrict use and disclosure of such information, (iii) add

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms not defined herein are defined in the Rules, available at <https://www.dtcc.com/legal/rules-and-procedures>.

⁴ As provided in the Rules, the term “Participant” includes the term “Limited Participant” unless (i) the context otherwise requires or (ii) the Procedures otherwise provide. Section 1 of Rule 2, id.

certain officers who are allowed to determine that there is a Market Disruption Event pursuant to Rule 38 and (iv) add a new Rule 38(A) to address situations in which it is necessary to disconnect a Participant, or third party service provider, or service bureau due to an imminent threat of harm to DTC, Participants and/or other market participants. Each of the proposed changes is described in greater detail below.

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

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

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

1. Purpose

The proposed rule change consists of modifications to (i) revise certain provisions in the Rules relating to the confidentiality of information furnished by Participants to DTC, (ii) require that each Participant maintain confidential information furnished by DTC or its affiliates in confidence and restrict use and disclosure of such information, (iii) add certain officers who are allowed to determine that there is a Market Disruption Event pursuant to Rule 38 and (iv) add a new Rule 38(A) to address situations in which it is necessary to disconnect a Participant, or third party service provider, or service bureau due to an imminent threat of harm to DTC, Participants and/or other market participants. Each of the proposed changes is described in greater detail below.

(i) DTC Confidentiality Requirements

Section 1 of Rule 2⁵ contains provisions relating to confidentiality of information furnished by Participants to DTC (collectively, the “DTC Confidentiality Requirements”). Each of the DTC Confidentiality Requirements provides that the rights of DTC to inspect books and records, or to be furnished with information, is subject to any applicable laws or rules, or regulations of regulatory bodies having jurisdiction over the Participant, that relate to confidentiality of records. DTC is proposing to update the DTC Confidentiality Requirements because such provisions (i) may result in unequal treatment of Participants due to differing laws or regulations of regulatory bodies, (ii) may result in a potential conflict of laws where rules or regulations governing a regulatory body of a Participant differ from the laws applicable to DTC, or a Participant has multiple regulatory bodies whose rules conflict, (iii) are burdensome as they require DTC to track the rules and regulations of each regulatory body of its Participants to determine what applicable laws or rules or regulations of regulatory bodies that relate to confidentiality of records affect its rights to receive information and (iv) are unnecessary as DTC has sufficient protections in place relating to protection and confidentiality of Participant data.

The regulatory bodies that have jurisdiction over Participants differ by Participant depending on certain criteria of each Participant, including the type of entity of the Participant, where the Participant was organized, the types of businesses in which the Participant engages and where the Participant is doing business. In addition, many

⁵ Rule 2 relates to initial and ongoing requirements to become and continue to be a Participant and/or Pledgee, including information that DTC may require applicants or Participants to provide to DTC. Id.

Participants are regulated by more than one regulatory body. As a result, a requirement to maintain confidentiality standards for information provided by a Participant or the right to receive information based on the regulatory body or bodies that regulate such Participant result in varying standards of confidentiality for Participants that are regulated by different regulatory bodies. Such varying standards may result in unequal treatment of Participants due to differing laws or regulations of the regulatory body or bodies governing such Participants. In addition, such varying standards may result in a potential conflict of laws where rules or regulations governing a regulatory body of a Participant differ from the laws applicable to DTC or an entity that has multiple regulatory bodies whose rules conflict.

DTC believes that it is unnecessarily burdensome to determine the rules and regulations of each of the regulatory bodies that regulate its Participants. Such regulatory bodies include numerous U.S. federal and state regulators as well as foreign national, state and local regulators. DTC proposes revising the language in the DTC Confidentiality Requirements to maintain one confidentiality standard for all Participants rather than maintaining potentially different confidentiality standards for Participants based on the various, unrelated regulatory bodies regulating such Participants. DTC is proposing to replace the existing language in the DTC Confidentiality Requirements with language that would provide that DTC will hold non-public information furnished pursuant to those Rules in confidence as may be required under the law or the rules and regulations applicable to DTC that relate to the confidentiality of records. Such laws, rules and regulations would include national, state and foreign laws governing

confidentiality of data that are applicable to DTC in connection with its collection and disclosure of data.

DTC believes that the rules and regulations applicable to DTC governing the use and disclosure of confidential information provide standards that are representative of those of the various regulatory bodies governing its Participants. As a result, DTC does not believe that the proposed rule change relating to the DTC Confidentiality Requirements would result in any change to DTC's practices relating to data protection and confidentiality of information provided by Participants.

(ii) Participant Confidentiality Requirements

Historically, DTC has generally not provided, nor been requested to provide, information that contains confidential or proprietary information of DTC or its affiliates to its Participants except for information necessary for Participants and their service providers and service bureaus to connect to DTC and to participate in the services that DTC offers to its Participants. While certain information is protected by intellectual property rights of DTC and its affiliates under applicable intellectual property laws, such as copyright laws and trademark laws, the Rules do not include any express obligations for Participants to protect confidential information received by them from DTC or its affiliates.

In connection with the development of cyber and information security programs pursuant to applicable regulatory requirements by Participants, DTC and its parent company, The Depository Trust & Clearing Corporation ("DTCC"), have received an increasing number of requests from Participants for confidential and proprietary

information of DTC and DTCC.⁶ This includes, for example, information regarding DTCC's network operations and data security practices, legal settlements, and other information. Additionally, in the event there is a cyber incident relating to a Participant, DTC or DTCC may be requested to disclose confidential information regarding its cyber threat indicators, sources of cyber threat information, or other information and actions taken related to a cyber event.

In order to provide for contractual protections for such confidential information of DTCC, DTC and DTCC's other subsidiaries, DTC is proposing to add provisions to the Rules that would require Participants to maintain confidential information of DTC and its affiliates that DTC provides to such Participants in confidence and not to disclose such confidential information except as necessary to perform such Participant's obligations under DTC's Rules or as otherwise required by applicable law ("Participant Confidentiality Requirements"). The Participant Confidentiality Requirements would provide that in the event of a breach of the Participant Confidentiality Requirements, DTC or DTCC would be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages under the Rules. In addition, as with any failure to comply with its Rules, DTC would have the ability to impose other disciplinary proceedings or restrictions on access to services as provided in the Rules for failure to comply with the Participant Confidentiality Requirements.

⁶ DTCC provides a set of core business processes for DTC and DTCC's other subsidiaries, including the technology systems and networks that provide connectivity between DTC and its participants and that provide the ability of DTC to provide the services as required under its Rules. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides relevant services to DTC and DTCC's other subsidiaries.

(iii) Market Disruption Events

Rule 38 (Market Disruption and Force Majeure)⁷ (the “Force Majeure Rule”) contains provisions that identify the events or circumstances that would be considered a Market Disruption Event, including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which DTC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems.⁸ Under the Force Majeure Rule, during the pendency of a Market Disruption Event, DTC would be entitled to (i) suspend the provision of any or all services and (ii) take, or refrain from taking, or require Members to take, or refrain from taking, any actions DTC considers appropriate to address, alleviate, or mitigate the event and facilitate the continuation of DTC’s services as may be practicable.⁹

Section 2 of the Force Majeure Rule provides that the Board of Directors may determine the existence of a Market Disruption Event and the actions to be taken in response thereto.¹⁰ However, if the Board of Directors is unable to convene, the Force Majeure Rule provides that certain officers may make such determination, on an interim basis, which determination is then ratified, modified or rescinded as soon as practicable by the Board of Directors. The officers that may make such determination are all senior executive officers of DTC: Chief Executive Officer, Chief Financial Officer, Group Chief Risk Officer and General Counsel.

⁷ Rule 38, supra note 3.

⁸ Id.

⁹ Id.

¹⁰ Section 2 of Rule 38, id.

The proposed rule change would add two senior executive officers of DTC, the Chief Information Officer and the Head of Clearing Agency Services, to the list of officers that could make such determination if the Board of Directors is unable to convene. These two officers, like the other senior executive officers currently listed in the Rules, maintain senior executive level positions at DTC, oversee divisions of DTC, and hold positions at DTC that would provide them a necessary global view into DTC's operations and systems to enable them to determine the existence of a Market Disruption Event in the event that the Board of Directors is unable to convene. Adding these two additional officers would facilitate DTC's ability to implement its emergency procedures in the event of a Market Disruption Event.

(iv) Systems Disconnect: Threat of Significant Impact to DTC's Systems

The proposed rule change would add a new Rule 38(A) (Systems Disconnect: Threat of Significant Impact to the Corporation's Systems) ("Systems Disconnect Rule") that would address situations in which DTC determines it is necessary for DTC to disconnect a single or limited number of Participants, or third party service providers, or service bureaus used by Participants to connect to DTC¹¹ (collectively, "DTCC Systems Participants") from DTC's systems or network due to an imminent threat of harm to DTC's or DTCC's systems. The imminent threat could be the result of a system disruption or cyber incident applicable to the DTCC Systems Participants. This would

¹¹ Some Participants use third parties to connect to DTC's systems and/or to send data to DTC and receive data from DTC on the Participant's behalf. Such third parties are referred to as "service providers" or "service bureaus" herein.

allow DTCC to work with the affected Participants while protecting DTC, its systems and its other Participants.

The proposed Systems Disconnect Rule would be structured similarly to the Force Majeure Rule. The Systems Disconnect Rule would address DTC's authority to take certain actions upon the occurrence, and during the pendency, of a Major Event. A "Major Event" would be defined as the happening of one or more Systems Disruption(s) (as defined below) that is reasonably likely to have a significant impact on DTC's operations, including the DTCC Systems (as defined below), that affect the business, operations, safeguarding of securities or funds, or physical functions of DTC, Participants and/or other market participants. "Systems Disruption" would be defined as the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of a DTCC Systems Participant's systems that disrupts or degrades the normal operation of such DTCC Systems Participant's systems; or anything that impacts or alters the normal communication, or the files that are received, or information transmitted, to or from the DTCC Systems. "DTCC Systems" would be defined as the systems, equipment and technology networks of DTCC, DTC and/or their Affiliates,¹² whether owned, leased, or licensed, software, devices, IP addresses or other addresses or accounts used in connection with providing the services set forth in the Rules, or used to transact business or to manage the connection with DTC.

¹² "Affiliate" would be defined as a Person that controls or is controlled by or is under common control with another Person. Control of a Person means the direct or indirect ownership, or power to vote more than 50% of any class of the voting securities or other voting interests of such Person.

The proposed Systems Disconnect Rule would allow DTC to mitigate the effect of such events by facilitating the continuity of services (or, if deemed necessary, the temporary suspension of services). To that end, under the proposed Systems Disconnect Rule, DTC would be entitled, during the pendency of a Major Event, to (1) disconnect a DTCC Systems Participant's systems from the DTCC Systems, (2) suspend the receipt and/or transmission of files or communications to or from the DTCC Systems Participant to the DTCC Systems and/or (3) take, or refrain from taking, or require a DTCC Systems Participant to take or refrain from taking, any actions that DTC considers appropriate to prevent, address, correct, mitigate or alleviate the Major Event and facilitate the continuation of services as may be practicable and, in that context, issue instructions to the DTCC Systems Participant.

The proposed Systems Disconnect Rule would define the governance procedures for how DTC would determine whether, and how, to implement the provisions of the rule. A determination that a Major Event has occurred could be made by the same officers with delegated authority under the Force Majeure Rule as discussed above (an "Officer Major Event Action"). Following this determination, any management committee on which all of the foregoing officers serve would convene, and DTC would convene a Board of Directors meeting as soon as practicable thereafter, and in any event within five Business Days following such determination, in each case, to ratify, modify, or rescind the Officer Major Event Action. The proposed Systems Disconnect Rule would require Participants to notify DTC immediately upon becoming aware of a Major Event, and, likewise, would require DTC to promptly notify the DTCC Systems

Participant(s) of any action DTC takes or intends to take with respect to such DTCC Systems Participant(s) pursuant to the proposed rule.

Finally, the Systems Disconnect Rule would address certain miscellaneous matters including: (i) a limitation of liability for any failure or delay in performance, in whole or in part of DTC's obligations under the Rules, arising out of or related to a Major Event, (ii) a statement that the power of DTC to take any action pursuant to the Systems Disconnect Rule also includes the power to repeal, rescind, revoke, amend or vary such action, (iii) a statement that the powers of DTC pursuant to the Systems Disconnect Rule shall be in addition to, and not in derogation of, authority granted elsewhere in the Rules to take action as specified therein, (iv) a requirement that Participants shall keep any DTCC Confidential Information (as defined below) provided to them by DTC and/or in connection with a Major Event confidential and (v) a statement that in the event of any conflict between the provisions of the Systems Disconnect Rule and any other Rules or Procedures, the provisions of the Systems Disconnect Rule would prevail.

(v) *Proposed Rule Changes*

The proposed rule change would amend the Rules to make the following changes to implement the changes discussed above:

DTC Confidentiality Requirements Changes

The proposed rule change would amend the DTC Confidentiality Requirements in two paragraphs in Section 1 of Rule 2,¹³ to state as follows:

. . . any non-public information furnished to the Corporation pursuant to this Rule shall be held in confidence as may be required under the laws, rules

¹³ Section 1 of Rule 2, supra note 3.

and regulations applicable to the Corporation that relate to the confidentiality of records.

As discussed above, the proposed language is intended to provide one standard that DTC would apply uniformly to all Participants, which assures Participants that such information would be held in confidence with appropriate controls. DTC would add “non-public” when describing the information that is subject to the DTC Confidentiality Requirements to make it clear that such requirements would only apply to information that is not public.

Certain Rules relating to DTC Confidentiality Requirements would also include language relating to Participant Confidentiality Requirements as described below.

Participant Confidentiality Requirements

In order to provide for Participant Confidentiality Requirements, DTC would add a provision at the end of Section 1 of Rule 2¹⁴ to state that each applicant and Participant shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform its obligations under the Rules or as otherwise required by applicable law. DTC would add a new definition of DTCC Confidential Information in Section 1 of Rule 1¹⁵ to provide that “DTCC Confidential Information” would mean all non-public information provided by DTCC and/or DTC that (i) is marked or otherwise identified in writing prior

¹⁴ Section 1 of Rule 2, supra note 3.

¹⁵ Section 1 of Rule 1, supra note 3.

to disclosure to the recipient as confidential, (ii) is designated by DTCC or DTC as confidential, or (iii) the recipient knows or, under the circumstances surrounding disclosure, ought to reasonably know is confidential. DTC would also add a definition of DTCC in Section 1 of Rule 1 and remove a corresponding definition in Rule 32(A)¹⁶ since it would be defined in Section 1 of Rule 1.

DTC would also add a statement in the provision relating to Participant Confidentiality Requirements that each applicant and Participant acknowledges that a breach of its confidentiality obligations under the Rules may result in serious and irreparable harm to DTC and/or DTCC for which there is no adequate remedy at law. In the event of such a breach by the applicant or Participant, DTC and/or DTCC would be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages.

Force Majeure Rule Officer Additions

The proposed rule change would add the Chief Information Officer and the Head of Clearing Agency Services to the list of officers that could make a determination of a Market Disruption Event if the Board of Directors is unable to convene in Rule 38.¹⁷

Systems Disconnect Rule

The proposed rule change would add a new Rule 38(A) entitled “Systems Disconnect: Threat of Significant Impact to the Corporation’s Systems” that would address situations in which DTC determines it is necessary for DTC to disconnect a DTCC Systems Participant or DTCC Systems Participants from DTC’s systems or

¹⁶ Rule 32(A), supra note 3.

¹⁷ Rule 38, supra note 3.

network due to an imminent threat of harm to DTC's or DTCC's systems consistent with the description above. The proposed Systems Disconnect Rule would include new definitions for "DTCC Systems," "DTCC Systems Participant," "Major Event" and "Systems Disruption" consistent with the descriptions of the Systems Disconnect Rule above.

2. Statutory Basis

DTC believes that the proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. In particular, DTC believes that each of the proposed rule changes is consistent with Section 17A(b)(3)(F) of the Act,¹⁸ and Rules 17Ad-22(e)(1) and (e)(21)¹⁹ promulgated under the Act. In addition, DTC believes that the proposed changes to add the two senior executive officers in the Force Majeure Rule and to add the proposed Systems Disconnect Rule are consistent with Rules 17Ad-22(e)(2) and (e)(17) under the Act.²⁰

Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act²¹ requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible, and to remove impediments to and perfect the

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ 17 CFR 240.17Ad-22(e)(1) and (e)(21).

²⁰ 17 CFR 240.17Ad-22(e)(2) and (e)(17).

²¹ 15 U.S.C. 78q-1(b)(3)(F).

mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

DTC believes that the proposed changes revising the DTC Confidentiality Requirements and adding the Participant Confidentiality Requirements are each consistent with this provision of the Act. The proposed revisions to the DTC Confidentiality Requirements are consistent with this provision because the proposed revisions would provide a clear and consistent standard relating to how DTC holds the information furnished by Participants pursuant to Section 1 of Rule 2.²² The confidential information that DTC receives pursuant to this rule is used by DTC to determine whether to admit a Participant, to continue to allow such Participant to be a Participant, or to better understand the risks relating to each Participant. Providing a clear and consistent standard would facilitate this process by allowing Participants to better understand DTC's obligations with respect to such information and providing a uniform obligation for DTC with respect to such information. DTC believes that facilitating the ability of DTC to evaluate Participants would promote the prompt and accurate clearance and settlement of securities transactions by DTC. As such, DTC believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.²³

DTC also believes that the proposed rule change adding the Participant Confidentiality Requirements is consistent with this provision of the Act because the proposed revisions to the Participant Confidentiality Requirements would provide a clear and consistent contractual obligation for applicants and Participants who are requesting

²² Section 1 of Rule 2, supra note 3.

²³ 15 U.S.C. 78q-1(b)(3)(F).

confidential information from DTC. Having clear and consistent Rules would help applicants and Participants to better understand their rights and obligations regarding DTC's clearance and settlement services. The information requested by applicants and Participants that would be subject to the Participant Confidentiality Requirements would be used by applicants and Participants to determine whether to participate in DTC's services, DTC system requirements and DTC system safeguards. DTC believes that when Participants better understand their rights and obligations regarding DTC's clearance and settlement services, they can better act in accordance with the Rules. DTC believes that better enabling Participants to comply with the Rules would promote the prompt and accurate clearance and settlement of securities transactions by DTC. As such, DTC believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.²⁴

DTC believes that the proposed changes to add the two officers to make a determination of a Market Disruption Event and to add the Systems Disconnect Rule are also consistent with this provision of the Act because those changes would enhance and streamline DTC's ability to take necessary actions in the event of a Market Disruption Event or a Major Event. Improving the ability of DTC to react to a Market Disruption Event or a Major Event would allow DTC to protect its Participants and their ability to promptly and accurately clear and settle securities transactions, and allow DTC to safeguard securities and funds that are in its custody or control. In particular, allowing two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add

²⁴

Id.

additional flexibility and tools to DTC while maintaining proper risk controls and improve the ability of DTC to act in the event of a Market Disruption Event. Also, providing for the ability of DTC to disconnect DTCC Systems Participants, suspend the receipt or transmission of files or communications to or from a DTCC Systems Participant, and/or require the DTCC Systems Participant to take such other actions as are necessary to protect DTC and its Participants would, in each case, provide additional tools for DTC in the event of a Major Event.

Improving the governance around the determination of a Market Disruption Event, and the implementation of procedures allowing DTC to disconnect a DTCC Systems Participant or DTCC Systems Participants from DTC's systems or network due to an imminent threat of harm, would improve DTC's ability to address and minimize losses to DTC and its Participants. Risks, threats and potential vulnerabilities due to a Market Disruption Event or a Major Event could impact DTC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in its custody or control or for which it is responsible. In addition, providing governance around the ability to disconnect a DTCC Systems Participant that is having a systems disruption that could disrupt the ability of DTC or other DTCC Systems Participants from using DTC's systems would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Although disconnecting or limiting the service of a DTCC Systems Participant in the event of a Major Event would likely be an impediment to such DTCC Systems Participant, improving DTC's ability to address and minimize losses to DTC and its Participants, and reducing risks, threats and potential vulnerabilities due to a Major Event that could

impact DTC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in its custody or control or for which it is responsible, would be consistent with Section 17A(b)(3)(F) of the Act.²⁵

Therefore, by implementing tools that would help to mitigate these risks, DTC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible, and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of Section 17A(b)(3)(F) of the Act.²⁶

Rule 17Ad-22(e)(1)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(1) promulgated under the Act,²⁷ which requires DTC to 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.

Establishing clear and consistent rules for each Participant with respect to the DTC Confidentiality Requirements would allow DTC to maintain one confidentiality standard for all Participants rather than maintaining potentially different confidentiality standards for Participants based on the various, unrelated regulatory bodies governing

²⁵ Id.

²⁶ Id.

²⁷ 17 CFR 240.17Ad-22(e)(1).

such Participants. In addition, setting forth a clear contractual obligation relating to Participant Confidentiality Requirements would enhance the understanding of the Participants receiving information from DTC and allow DTC to treat Participants equally with respect to how the information furnished to Participants should be protected by the Participants.

Adding the two officers to make a determination of a Market Disruption Event and adding the Systems Disconnect Rule are also consistent with Rule 17Ad-22(e)(1) under the Act because those changes would describe the circumstances under which DTC could take actions in the event of a Market Disruption Event or a Major Event that are necessary to protect DTC and its Participants. Providing clear guidelines with respect to Market Disruption Events and Major Events would allow DTC Participants to understand the rights and obligations of the Participants in the event of a Market Disruption Event or a Major Event.

Therefore, by establishing uniform and clear standards with respect to its receipt and furnishing of confidential information, and by providing clear rights and obligations of DTC and its Participants with respect to Market Disruption Events and Major Events, DTC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(1) promulgated under the Act.²⁸

Rule 17Ad-22(e)(21)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(21) promulgated under the Act,²⁹ which requires DTC to, inter alia, establish,

²⁸ Id.

²⁹ 17 CFR 240.17Ad-22(e)(21).

implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its Participants and the markets it serves. The proposed rule change would streamline the DTC Confidentiality Requirements by providing that DTC would apply one standard for all Participants relating to confidential information sent to DTC by Participants, which would enhance (i) efficiency by avoiding applying varying standards of confidentiality based on the rules and regulations of the varying regulatory bodies that regulate the Participants, and (ii) effectiveness by reducing potential conflicts of laws and providing equal treatment to Participants relating to such confidential information.

The addition of the Participant Confidentiality Requirements would also provide a uniform and easily discernable requirement for all Participants with respect to confidential information provided by DTC allowing DTC to provide necessary information to such Participants in a safe and efficient manner. Adding two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add additional flexibility and tools to DTC while maintaining proper risk controls and improve the ability of DTC to act quickly, efficiently and effectively in a Market Disruption Event to address and minimize losses. Also, providing for the ability of DTC to disconnect DTCC Systems Participants, suspend the receipt or transmission of files or communications to or from a DTCC Systems Participant, and/or require the DTCC Systems Participant to take such other actions as are necessary to protect DTC and its Participants would, in each case, provide additional tools for DTC in the event of a Major Event and improve DTC's

ability to act quickly, efficiently and effectively in the event of a Major Event to address and minimize losses.

Therefore, by establishing a more efficient and effective process for the treatment of confidential language, and establishing procedures designed to improve DTC's ability to act quickly, efficiently and effectively in the event of a Market Disruption Event and a Major Event, DTC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(21) promulgated under the Act.³⁰

Rule 17Ad-22(e)(2)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(2) promulgated under the Act,³¹ which requires DTC to, inter alia, establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.

Adding two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add additional flexibility and tools to DTC while maintaining proper risk controls, and improve the ability of DTC to act quickly, efficiently and effectively in a Market Disruption Event and mitigate any impact from such Market Disruption Event. Adding these officers to the governance procedures relating to a determination of a Market Disruption Event would make such governance procedures clear and transparent, and

³⁰ Id.

³¹ 17 CFR 240.17Ad-22(e)(2).

specify clear and direct lines of responsibility with respect to the determination of a Market Disruption Event, consistent with Rule 17Ad-22(e)(2) under the Act.³²

Adding the governance procedures relating to making a determination of a Major Event in the Systems Disconnect Rule is also consistent with Rule 17Ad-22(e)(2) promulgated under the Act.³³ Identifying the officers that have the ability to determine if there is a Major Event, and providing for the ability of any management committee on which all of such officers serve and the Board of Directors to ratify, modify or rescind any determination of a Major Event by an officer would make such governance procedures clear and transparent, and specify clear and direct lines of responsibility with respect to the determination of a Major Event, consistent with Rule 17Ad-22(e)(2).³⁴

Rule 17Ad-22(e)(17)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(17)(i) promulgated under the Act,³⁵ which requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.

Adding two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene

³² Id.

³³ Id.

³⁴ Id.

³⁵ 17 CFR 240.17Ad-22(e)(17)(i).

would add additional flexibility and tools to DTC while maintaining proper risk controls and improve the ability of DTC to act quickly, efficiently and effectively in a Market Disruption Event and mitigate any impact from such Market Disruption Event. Also, providing for the ability of DTC to disconnect DTCC Systems Participants, suspend the receipt or transmission of files or communications to or from a DTCC Systems Participant, and/or require the DTCC Systems Participant to take such other actions as are necessary to protect DTC and its Participants would, in each case, provide additional tools for DTC in the event of a Major Event and improve DTC's ability to act quickly, efficiently and effectively in the event of a Major Event and mitigate any impact from such Major Event.

Therefore, by providing clear, efficient procedures of DTC and its Participants with respect to Market Disruption Events and Major Events that help identify and mitigate operational risks, DTC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(17)(i) promulgated under the Act.³⁶

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

DTC does not believe that the proposed changes relating to the DTC Confidentiality Requirements would have any impact on competition. These changes would provide one standard for how DTC treats Participant information furnished subject to the DTC Confidentiality Requirements but would not affect the information that the Participants are required to provide or affect the manner in which the Participants must provide the information. As such, DTC believes these proposed rule changes would not have any impact on competition.

³⁶ Id.

DTC does not believe the proposed changes relating to adding Participant Confidentiality Requirements would have any impact on competition. Although the addition of the Participant Confidentiality Requirements would be adding obligations on Participants with respect to how they treat confidential or proprietary information of DTC or its affiliates, such obligations would be minimal because DTC would only require that such Participants hold such confidential information using the same means they use to protect their own confidential information but not less than a reasonable standard of care. The use of this standard would protect DTC by providing a clear legal obligation to protect such information but would not be burdensome or expensive for Participants, and therefore DTC believes that it would not have any impact on competition.

DTC does not believe the changes relating to adding the two officers to make a determination of a Market Disruption Event would have any impact on competition. The proposed rule change would add two senior executive officers of DTC, the Chief Information Officer and the Head of Clearing Agency Services, to the list of officers that could make a determination of a Market Disruption Event if the Board of Directors is unable to convene. Such addition would provide additional officers who could determine whether there is a Market Disruption Event but would not otherwise affect the rights of Participants or DTC in the determination of a Market Disruption Event or if a Market Disruption Event is declared. Therefore, DTC does not believe that the addition of the two officers would have any impact on competition.

DTC does not believe that the changes relating to adding the Systems Disconnect Rule would have any impact, or impose any burden, on competition not necessary or

appropriate in furtherance of the purposes of the Act.³⁷ To the extent that DTC determines that there is a Major Event, it could take or refrain from taking actions, or require Participants to take or refrain from taking actions, that could burden competition because such requirements could cause Participants to incur additional costs, allow DTC to suspend services or communications, or disconnect a DTCC Systems Participant from the DTCC Systems. DTC believes such burden on competition could be significant but would be both necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act,³⁸ for the reasons described below.

DTC believes that the proposed changes to add the Systems Disconnect Rule are necessary in furtherance of the purposes of Section 17A(b)(3)(F) of the Act,³⁹ and Rules 17Ad-22(e)(1), (e)(2), (e)(17) and (e)(21) promulgated under the Act.⁴⁰ The proposed changes to add the Systems Disconnect Rule would (i) improve the ability of DTC to react to a Major Event allowing DTC to protect itself and its Participants and their ability to promptly and accurately clear and settle securities transactions, and allow DTC to safeguard securities and funds that are in its custody or control, consistent with the requirements of Section 17A(b)(3)(F) of the Act,⁴¹ (ii) provide clear guidelines with respect to Major Events that would allow Participants to understand the rights and obligations of the Participants and DTC in the event of a Major Event, consistent with

³⁷ 15 U.S.C. 78q-1(b)(3)(I).

³⁸ Id.

³⁹ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁰ 17 CFR 240.17Ad-22(e)(1), (e)(2), (e)(17) and (e)(21).

⁴¹ 15 U.S.C. 78q-1(b)(3)(F).

Rule 17Ad-22(e)(1) promulgated under the Act,⁴² (iii) identify the officers that have the ability to determine if there is a Major Event, and provide for the ability of any management committee on which all of such officers serve, and the Board of Directors, to ratify, modify or rescind any determination of a Major Event by an officer, which would make such governance procedures clear and transparent, and specify clear and direct lines of responsibility with respect to the determination of a Major Event, consistent with Rule 17Ad 22(e)(2) promulgated under the Act,⁴³ (iv) improve the ability of DTC to act quickly, efficiently and effectively in the event of a Major Event, and mitigate any impact from such event by providing clear, efficient procedures of DTC and its Participants with respect to such event, consistent with the requirements of Rule 17Ad-22(e)(17)(i) promulgated under the Act⁴⁴ and (v) establish procedures designed to improve DTC's ability to act quickly, efficiently and effectively in the event of a Major Event, consistent with the requirements of Rule 17Ad-22(e)(21) promulgated under the Act.⁴⁵

In addition, DTC believes that the proposed changes to add the Systems Disconnect Rule are appropriate in furtherance of the Act. Such changes have been designed to improve the ability of DTC to act quickly, efficiently and effectively in the event of a Major Event, and mitigate any impact from such event while also providing the Participants clear guidelines with respect to such event to allow Participants to

⁴² 17 CFR 240.17Ad-22(e)(1).

⁴³ 17 CFR 240.17Ad-22(e)(2).

⁴⁴ 17 CFR 240.17Ad-22(e)(17)(i).

⁴⁵ 17 CFR 240.17Ad-22(e)(21).

understand their rights and obligations. Such changes have also been designed to apply uniformly to all Participants in the event of a Major Event and should not affect DTC's day-to-day operations under normal circumstances, or in the management of a typical Participant default scenario or non-default event.

Therefore, DTC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.⁴⁶

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

DTC has not received or solicited any written comments relating to this proposal.

DTC will notify the Commission of any written comments received by DTC.

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

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.

⁴⁶ 15 U.S.C. 78q-1(b)(3)(I).

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2021-011 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-2021-011. 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-2021-011 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.⁴⁷

Secretary

⁴⁷ 17 CFR 200.30-3(a)(12).

Bold and underlined text indicates proposed added language.

~~Bold and strikethrough text~~ indicates proposed deleted language.

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

RULE 1

DEFINITIONS; GOVERNING LAW

Section 1. Unless the context requires otherwise, the terms defined in this Rule shall, for all purposes of these Rules, have the meanings herein specified.

* * *

Devaluation

The term “Devaluation” means a markdown of the Collateral Value of a Deposited Security to a reduced amount or zero.

DTCC

The term “DTCC” means The Depository Trust & Clearing Corporation.

DTCC Confidential Information

The term “DTCC Confidential Information” means all non-public information provided by DTCC and/or the Corporation that (i) is marked or otherwise identified in writing prior to disclosure to the recipient as confidential, (ii) is designated by DTCC or the Corporation as confidential, or (iii) the recipient knows or, under the circumstances surrounding disclosure, ought to reasonably know is confidential.

* * *

RULE 2

PARTICIPANTS AND PLEDGEEES

* * *

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:

* * *

Upon the request of the Corporation, a Participant shall furnish to the Corporation information sufficient to demonstrate its satisfactory financial condition and operational

capability, including, but not limited to, such information as the Corporation may request regarding the businesses and operations of the Participant and its risk management practices with respect to services of the Corporation utilized by the Participant for another Person or Persons; provided, however, that ~~the furnishing of any such financial or operational information to the Corporation shall be subject to any applicable laws or rules and regulations of regulatory bodies having jurisdiction over the Participant which relate to the confidentiality of records~~ **any non-public information furnished to the Corporation pursuant to this Rule shall be held in confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records.**

* * *

(e) The Participant's books and records, to the extent only that they relate to services rendered to the Participant by the Corporation, shall at all times during the regular business hours of the Participant (and at such other times as may be acceptable to the Participant) be open to the inspection of the duly authorized employees or agents of the Corporation, and the Corporation shall be furnished with all such information with respect to such services rendered to the Participant as it may require; provided, however, that (i) the Corporation's right to inspect the books and records of the Participant and to be furnished with information as provided herein shall extend only to books, records and information relating to the Participant's relationship with the Corporation or to contracts or transactions which the Participant has made or had with the Corporation and shall not extend to books, records and information relating to the Participant's relationship with Persons upon whose behalf it may obtain the services of the Corporation nor to books, records and information relating to such persons, their accounts or market activity and (ii) ~~the Corporation's right to inspect the books and records of the Participant and to be furnished with information as provided herein shall be subject to any applicable laws or rules and regulations of regulatory bodies having jurisdiction over the Participant which relate to the confidentiality of records~~ **any non-public information furnished to the Corporation pursuant to this Rule shall be held in confidence as may be required under the laws, rules and regulations applicable to the Corporation that relate to the confidentiality of records.**

* * *

A Participant shall use its best efforts to provide to the Corporation, at the request of the Corporation, during the regular business hours of the Participant, current market prices and/or bid and asked quotations for any Eligible Security.

Each applicant and Participant shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform such applicant's or Participant's obligations under these Rules or as otherwise required by applicable law. Each applicant and Participant acknowledges that a breach of its confidentiality obligations under these Rules may result in serious and irreparable harm to the Corporation and/or DTCC for which there is no adequate remedy at law. In the event of such a breach by the applicant or Participant, the

Corporation and/or DTCC shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages hereunder.

* * *

RULE 32(A)

WIND-DOWN OF THE CORPORATION

Section 1. Defined Terms

(a) For purposes of this Rule 32(A):

* * *

~~“DTCC” means The Depository Trust & Clearing Corporation.~~

* * *

RULE 38

MARKET DISRUPTION AND FORCE MAJEURE

* * *

Section 2. Powers of the Corporation

If the Board of Directors or any officer of the Corporation listed below determines, in its, his, or her judgment that there is a Market Disruption Event, the Corporation shall be entitled to act (or refrain from acting) as prescribed in Section 3 of this Rule 38. To the extent practicable, the determination of the existence of a Market Disruption Event, and the actions to be taken in response thereto, shall be made by the Board of Directors at a meeting where a quorum is present and acting. However, if the Corporation is unable to convene a Board meeting promptly and timely in such event, then such determination may be made by either the Chief Executive Officer, the Chief Financial Officer, the Group Chief Risk Officer, **the Chief Information Officer, the Head of Clearing Agency Services,** or the General Counsel, or by any management committee on which all of the foregoing officers serves (an “Officer Market Disruption Event Action”), provided that the Corporation shall convene a Board meeting as soon as practicable thereafter (and in any event within 5 Business Days following such determination) to ratify, modify or rescind such Officer Market Disruption Event Action.

* * *

RULE 38(A)

SYSTEMS DISCONNECT: THREAT OF SIGNIFICANT IMPACT TO THE CORPORATION'S SYSTEMS

Section 1. Major Event

For purposes of this Rule, the following terms shall have the following meanings:

“Affiliate” means a Person that controls or is controlled by or is under common control with another Person. Control of a Person means the direct or indirect ownership, or power to vote more than 50% of any class of the voting securities or other voting interests of such Person.

“DTCC Systems” means the systems, equipment and technology networks of DTCC, the Corporation and/or their Affiliates, whether owned, leased, or licensed, software, devices, IP addresses, or other addresses or accounts used in connection with providing the services set forth in the Rules, or used to transact business or to manage the connection with the Corporation.

“DTCC Systems Participant” means a Participant, or third party service provider, or service bureau that is connecting with the DTCC Systems.

“Major Event” means the happening of one or more Systems Disruption(s) that is reasonably likely to have a significant impact on the Corporation’s operations, including the DTCC Systems, that affect the business, operations, safeguarding of securities or funds, or physical functions of the Corporation, Participants and/or other market participants.

“Systems Disruption” means the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of a DTCC Systems Participant’s systems that disrupts or degrades the normal operation of such DTCC Systems Participant’s systems; or anything that impacts or alters the normal communication, or the files that are received, or information transmitted, to or from the DTCC Systems.

Section 2. Powers of the Corporation

The determination that the Corporation has a reasonable basis to conclude that there has been a Major Event and shall be entitled to act (or refrain from acting) as prescribed in Section 3 of this Rule 38(A) may be made by either the Chief Executive Officer, the Chief Financial Officer, the Group Chief Risk Officer, the Chief Information Officer, the Head of Clearing Agency Services or the General Counsel (an “Officer Major Event Action”). As soon as practical following such a decision, any management committee on which all of the foregoing officers serve shall convene, and the Corporation shall convene a Board of Directors meeting as soon as practicable thereafter (and in any event within 5 Business Days following such determination), in each case, to ratify, modify or rescind such Officer Major Event Action.

Section 3. Authority to take Actions

Upon the determination that there is a Major Event, the Corporation shall be entitled, during the pendency of such Major Event, to:

- (a) disconnect the DTCC Systems Participant's system from the DTCC Systems;**
- (b) suspend the receipt and/or transmission of files or communications to/from the DTCC Systems Participant to the DTCC Systems; or**
- (c) take, or refrain from taking, or require the DTCC Systems Participant to take or refrain from taking, any and all action that the Corporation considers appropriate to prevent, address, correct, mitigate or alleviate the Major Event and facilitate the continuation of services as may be practicable, and, in that context, issue instructions to the DTCC Systems Participant.**

Section 4. Notifications

(a) Each Participant shall notify the Corporation immediately upon becoming aware of any Major Event and cooperate with the Corporation to identify the root cause and resolution.

(b) The Corporation shall promptly notify the DTCC Systems Participant(s) of any action the Corporation takes or intends to take with respect to such DTCC Systems Participant(s) pursuant to Section 3 of this Rule 38(A).

Section 5. Certain Miscellaneous Matters

(a) Without limiting any other provisions in these Rules concerning limitations on liability, none of the Corporation or its Affiliates, its or their directors, officers, employees, agents, or contractors shall be liable to a Participant or any other person (including any third party provider or service bureau acting on behalf of the Participant or any customer or client thereof) for:

- (i) any failure, hindrance, interruption or delay in performance in whole or in part of the obligations of the Corporation under the Rules or Procedures, if that failure, hindrance, interruption or delay arises out of or relates to a Major Event; or**
- (ii) any loss, liability, damage, cost or expense arising from or relating in any way to any actions taken, or omitted to be taken, pursuant to this Rule 38(A).**

(b) The power of the Corporation to take any action pursuant to this Rule 38(A) also includes the power to repeal, rescind, revoke, amend, or vary any such action.

(c) The powers of the Corporation pursuant to this Rule 38(A) shall be in addition to, and not in derogation of, authority granted elsewhere in these Rules to take action as specified therein.

(d) The Participant(s) shall, in accordance with the Rules, maintain the confidentiality of any DTCC Confidential Information provided to them by the Corporation and/or DTCC in connection with a Major Event.

(e) In the event of any conflict between the provisions of this Rule 38(A) and any other Rules or Procedures, the provisions of this Rule 38(A) shall prevail.

* * *