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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2021 - * 017

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"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <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)		
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Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

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 *).

Enhance Capital Requirements and Make 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 * [Redacted] Last Name * [Redacted]

Title * [Redacted]

E-mail * RuleFilingAdmin@dtcc.com

Telephone * [Redacted] Fax [Redacted]

Signature

Pursuant to the requirements of the Securities Exchange of 1934, The Depository Trust Company has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 12/13/2021

(Title *)

By [Redacted]

[Redacted]

(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Date: 2021.12.13
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Required fields are shown with yellow backgrounds and astericks.

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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Narrative (DTC) - Membership Stand

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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Exh 1A (DTC) - Membership Standard

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 Advanced 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 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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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Exh 3 (DTC) (Redacted) - Membership

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 Sent As Paper Document

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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Exh 5 (DTC) - Membership Standards

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item 1 and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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

1. Text of Proposed Rule Change

(a) The text of the proposed changes to the Rules, By-Laws and Organization Certificate (“Rules”) of The Depository Trust Company (“DTC”) are attached hereto as Exhibit 5.¹

(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 Board of Directors of DTC at a meeting duly called and held on December 15, 2020.

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

(a) Purpose

The purpose of this proposed rule change is to (i) enhance DTC’s capital requirements for Participants, (ii) redefine DTC’s Watch List and eliminate DTC’s enhanced surveillance list and (iii) make certain other clarifying, technical and supplementary changes in the Rules, including definitional updates, to accomplish items (i) and (ii).

(i) Background

Central securities depositories (“CSDs”) play a key role in financial markets by mitigating counterparty credit risk on transactions of their participants. As a CSD, DTC is exposed to the credit risks of its Participants. The credit risks borne by DTC are mitigated, in part, by the capital maintained by Participants, which serves as a loss-absorbing buffer.

In accordance with Section 17A(b)(4)(B) of the Securities Exchange Act of 1934 (“Exchange Act”),² a registered clearing agency such as DTC may, among other things, deny participation to, or condition the participation of, any person on such person meeting such standards of financial responsibility prescribed by the rules of the registered clearing agency.

In furtherance of this authority, DTC requires applicants and Participants to meet the relevant financial responsibility standards prescribed by the Rules. These financial responsibility standards generally require Participants to have and maintain certain levels of capital, as more particularly described in the Rules and below.

¹ Capitalized terms not defined herein are defined in the Rules, available at https://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf.

² 15 U.S.C. 78q-1(b)(4)(B).

DTC's capital requirements for Participants have not been updated in over 20 years. Since that time, there have been significant changes to the financial markets that warrant DTC revisiting its capital requirements. For example, the regulatory environment within which DTC and its Participants operate has undergone various changes. The implementation of the Basel III standards,³ the designation of many banks as systemically important by the Financial Stability Board,⁴ as well as the designation of DTC as a systemically important financial market utility ("SIFMU") by the Financial Stability Oversight Council,⁵ have significantly increased the regulatory requirements, including capital requirements, of many financial institutions and CSDs. Similarly, the Covered Clearing Agency Standards ("CCAS") adopted by the Securities and Exchange Commission ("Commission") have raised the regulatory standards applicable to CSDs such as DTC.⁶

There also have been significant Participant changes over the past 20 years. Numerous mergers, acquisitions, and new market entrants have created a diverse group of Participants that has expanded the credit-risk profiles that DTC must manage.

Moreover, transaction values at DTC have increased significantly over the years.⁷ Although the increase does not present more risk to DTC directly, as DTC's services are nonguaranteed and fully collateralized, DTC does have an interest in ensuring that its Participants have a certain minimum amount of capital to help support the increased activity.

Although these factors do not directly require DTC to increase capital requirements for Participants (e.g., there is no specific regulation or formula that prescribes a set capital requirement for participants of a CSD such as DTC), the overarching and collective focus of the regulatory changes noted above, in light of the many heightened risks to the financial industry, has been to increase the stability of the financial markets in order to reduce systemic risk. As a self-regulatory organization, a SIFMU, and being exposed to the new and increased risks over the past 20 years, DTC has a responsibility to do the same. Enhancing its capital requirements helps meet that responsibility and improve DTC's credit risk management. Enhanced capital requirements also help mitigate other risks posed directly or indirectly by Participants such as

³ Basel Committee on Banking Supervision, The Basel Framework, available at https://www.bis.org/basel_framework/index.htm?export=pdf ("Basel III Standards").

⁴ See Financial Stability Board, 2021 list of global systemically important banks, available at <https://www.fsb.org/wp-content/uploads/P231121.pdf>.

⁵ See U.S. Department of the Treasury, Designations, Financial Market Utility Designations, available at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc/designations>.

⁶ 17 CFR 240.17Ad-22(e).

⁷ See, e.g., DTCC Annual Reports, available at <https://www.dtcc.com/about/annual-report>. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation ("DTCC"). The DTCC Annual Reports highlight and track DTC transactional values year-over-year.

legal risk, operational risk and cyber risk, as better capitalized Participants have greater financial resources in order to mitigate the effects of these and other risks.

As for setting the specific capital requirements proposed, again, there is no regulation or formula that requires or calculates a specific amount (i.e., there is no magic number). Instead, DTC considered several factors, including inflation and the capital requirements of other Financial Market Infrastructures (“FMIs”), both in the U.S. and abroad, to which the proposed requirements align.⁸

In light of these and other developments described below, DTC proposes to enhance its capital requirements for Participants, as described in more detail below.

DTC also proposes to redefine the Watch List, which is a list of Participants that are deemed by DTC to pose a heightened risk to it and its Participants based on credit ratings and other factors. As part of the redefinition of the Watch List, DTC proposes to eliminate the separate enhanced surveillance list and implement a new Watch List that consists of a relatively smaller group of Participants that exhibit heightened credit risk, as described in more detail below.

(ii) Current DTC Capital Requirements

The current DTC capital requirements for Participants are set forth in DTC’s Policy Statements on the Admission of Participants and Pledges (the “Policy Statement”).⁹

⁸ See The Options Clearing Corporation, OCC Rules, Rule 301(a), [available at https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules](https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules) (requiring broker-dealers to have initial net capital of not less than \$2,500,000); Chicago Mercantile Exchange Inc., CME Rulebook, Rule 970.A.1, [available at https://www.cmegroup.com/rulebook/CME/I/9/9.pdf](https://www.cmegroup.com/rulebook/CME/I/9/9.pdf) (requiring clearing members to maintain capital of at least \$5 million, with banks required to maintain minimum tier 1 capital of at least \$5 billion); LCH SA, LCH SA Clearing Rule Book, Section 2.3.2, [available at https://www.lch.com/resources/rulebooks/lch-sa](https://www.lch.com/resources/rulebooks/lch-sa) (requiring, with respect to securities clearing, capital of at least EUR 10 million for self-clearing members and at least EUR 25 million for members clearing for others, subject to partial satisfaction by a letter of credit) (1 EUR = \$0.8150 as of December 31, 2020; see <https://www.fiscal.treasury.gov/reports-statements/treasury-reporting-rates-exchange/current.html> (last visited January 14, 2021)).

Although the requirements of these FMIs are greater than what DTC proposes, DTC is choosing not to raise the requirement further given that it employs a fully collateralized model, which mitigates the level of risk that its Participants pose to DTC.

⁹ See Policy Statement, supra note 1.

Policy Statement

The Policy Statement is divided into three sections. Section 1 of the Policy Statement concerns entities organized in the U.S. (“U.S. entities”) applying to become Participants. Section 2 of the Policy Statement concerns entities organized in a country other than the U.S. and that are not otherwise subject to U.S. federal or state regulation (“non-U.S. entities”) applying to become Participants. Section 3 of the Policy Statement concerns fees and time limits on applications to become a Participant or Pledgee.

As relevant to DTC’s proposal to enhance its capital requirements for Participants:

Section 1

Section 1 of the Policy Statement provides that Rules 2 (Participants and Pledgees) and 3 (Participants Qualifications) set forth the basic standards for the admission of Participants, including that the admission of a Participant is subject to an applicant’s demonstration that it meets reasonable standards of financial responsibility, operational capability, and character at the time of its application and on an ongoing basis thereafter.

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

Subsection (d) of Section 1 of Rule 3 provides that a bank or trust company which is subject to supervision or regulation pursuant to the provisions of federal or state banking laws, or any subsidiary of such a bank or trust company or a bank holding company or any subsidiary of a bank holding company, is eligible to become a Participant.

Pursuant to the Policy Statement, any applicant or Participant that satisfies the qualifications of subsection (d) of Section 1 of Rule 3 is required to maintain equity capital in the amount of at least \$2 million based on the definition of equity capital provided in the form and instructions of the Consolidated Report of Conditions and Income maintained by the Federal Financial Institutions Examination Council.

Subsection (h)(ii) of Section 1 of Rule 3 provides that a broker-dealer registered under the Exchange Act is eligible to become a Participant.

Pursuant to the Policy Statement, any applicant or Participant that satisfies the qualifications of subsection (h)(ii) of Section 1 of Rule 3 is required to maintain a minimum amount of not less than \$500,000 in excess net capital over the greater of (i) the minimum capital requirement imposed on it pursuant to Exchange Act Rule 15c3-1, or (ii) such higher minimum capital requirement imposed by the registered broker-dealer’s designated examining authority.

Section 2

Section 2 of the Policy Statement provides that non-U.S. entities are eligible to become Participants.

Section 2 of the Policy Statement requires that non-U.S. entities applying to become Participants provide to DTC, for financial monitoring purposes, audited financial statements prepared in accordance with U.S. generally accepted accounting principles (“U.S. GAAP”) or other generally accepted accounting principles that are satisfactory to DTC.

In order to address the risk presented by the acceptance of financial statements not prepared in accordance with U.S. GAAP, Section 2 of the Policy Statement provides that the minimum financial requirements applicable to a non-U.S. entity will be subject to a specified premium, as follows:

- i. for financial statements prepared in accordance with International Financial Reporting Standards, the U.K. Companies Act of 1985 (“U.K. GAAP”), or Canadian generally accepted accounting principles – a premium of 1 ½ times the minimum financial requirements;
- ii. for financial statements prepared in accordance with a European Union country’s generally accepted accounting principles, other than U.K. GAAP – a premium of 5 times the minimum financial requirements; and
- iii. for financial statements prepared in accordance with any other type of generally accepted accounting principles – a premium of 7 times the minimum financial requirements.

Accordingly, a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP is required to meet financial requirements between 1 ½ to 7 times the minimum financial requirements that would otherwise be applicable to the non-U.S. entity. Given that, as noted above, the financial responsibility requirements generally require a Participant to have a certain level of capital, Section 2 of the Policy Statement has the effect of requiring a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

Section 2 of the Policy Statement also provides that a non-U.S. entity must be in compliance with the financial reporting and responsibility standards of its home country regulator.

(iii) Current DTC Watch List and Enhanced Surveillance List

DTC’s Watch List is a list of Participants that are deemed by DTC to pose a heightened risk to it and its Participants based on credit ratings and other factors.¹⁰

Specifically, the Watch List is the list of Participants with credit ratings derived from DTC’s Credit Risk Rating Matrix (“CRRM”)¹¹ of 5, 6 or 7, as well as Participants that, based on

¹⁰ See Rule 1 (Definitions; Governing Law), supra note 1.

¹¹ DTC’s CRRM is a matrix of credit ratings of Participants specified in Section 10(a) of Rule 2. The CRRM is developed by DTC to evaluate the credit risk Participants pose to DTC and its Participants and is based on factors determined to be relevant by DTC from

DTC's consideration of relevant factors, including those set forth in Section 10 of Rule 2 (Participants and Pledgees),¹² are deemed by DTC to pose a heightened risk to it and its Participants.

In addition to the Watch List, DTC also maintains a separate list of Participants subject to enhanced surveillance in accordance with the provisions of Section 10(b) of Rule 2, as discussed below. The enhanced surveillance list is a list of Participants for which DTC has heightened credit concerns, which may include Participants that are already, or may soon be, on the Watch List. As described below, a Participant is subject to the same potential consequences from being subject to enhanced surveillance or being placed on the Watch List.

Rule 2 (Participants and Pledgees)

Rule 2 (Participants and Pledgees) specifies the ongoing participation requirements and monitoring applicable to Participants and Pledgees.¹³

Section 10(b) of Rule 2 provides that a Participant that is (1) a U.S. bank or trust company that files the Consolidated Report of Condition and Income ("Call Report"), (2) a registered broker-dealer that files the Financial and Operational Combined Uniform Single Report ("FOCUS Report") or the equivalent with its regulator, or (3) a non-U.S. bank or trust company that has audited financial data that is publicly available, will be assigned a credit rating by DTC in accordance with the CRRM. A Participant's credit rating is reassessed each time the Participant provides DTC with requested information pursuant to Section 1 of Rule 2 or as may be otherwise required under the Rules.

Section 10(b) further provides that because the factors used as part of the CRRM may not identify all risks that a Participant assigned a credit rating by DTC may present to DTC, DTC may, in its discretion, override such Participant's credit rating derived from the CRRM to downgrade the Participant. This downgrading may result in the Participant being placed on the Watch List and/or it may subject the Participant to enhanced surveillance based on relevant factors.

Section 10(c) of Rule 2 provides that Participants not assigned a credit rating by DTC will not be assigned a credit rating by the CRRM but may be placed on the Watch List and/or may be subject to enhanced surveillance based on relevant factors.

time to time, which factors are designed to collectively reflect the financial and operational condition of a Participant. These factors include (i) quantitative factors, such as capital, assets, earnings, and liquidity, and (ii) qualitative factors, such as management quality, market position/environment, and capital and liquidity risk management. See Rule 1 (Definitions; Governing Law), supra note 1.

¹² Rule 2 (Participants and Pledgees), Section 10, supra note 1.

¹³ Rule 2 (Participants and Pledgees), supra note 1.

Section 10(d) of Rule 2 provides that the factors to be considered by DTC in determining whether a Participant is placed on the Watch List and/or subject to enhanced surveillance include (i) news reports and/or regulatory observations that raise reasonable concerns relating to the Participant, (ii) reasonable concerns around the Participant's liquidity arrangements, (iii) material changes to the Participant's organizational structure, (iv) reasonable concerns about the Participant's financial stability due to particular facts and circumstances, such as material litigation or other legal and/or regulatory risks, (v) failure of the Participant to demonstrate satisfactory financial condition or operational capability or if DTC has a reasonable concern regarding the Participant's ability to maintain applicable participation standards, and (vi) failure of the Participant to provide information required by DTC to assess risk exposure posed by the Participant's activity.

Section 10(e) of Rule 2 provides that a Participant being subject to enhanced surveillance or being placed on the Watch List (1) will result in a more thorough monitoring of the Participant's financial condition and/or operational capability, including on-site visits or additional due diligence information requests, and (2) may be required make more frequent financial disclosures to DTC. Participants that are subject to enhanced surveillance are also reported to DTC's management committees and regularly reviewed by DTC senior management.

(iv) Proposed Rule Changes

A. Changes to Enhance DTC's Capital Requirements

As noted earlier, as a CSD, DTC is exposed to the credit risks of its Participants. The credit risks borne by DTC are mitigated, in part, by the capital maintained by Participants, which serves as a loss-absorbing buffer.

DTC's financial responsibility standards for Participants generally require Participants to have and maintain certain levels of capital.

As described in more detail below, DTC proposes to enhance its capital requirements for Participants as follows:

Rule 1 (Definitions; Governing Law)

In connection with its proposal to enhance capital requirements for Participants, DTC proposes to add to Rule 1 new defined terms of "CET1 Capital," "Excess Net Capital," "Tier 1 RBC Ratio" and "Well Capitalized," as discussed below.

Policy Statement, Section 1 (Policy Statement on the Admission of U.S. Entities as Participants)

U.S. Banks and Trust Companies That Are Banks

DTC proposes to (1) change the measure of capital requirements for U.S. banks and trust companies that are banks from equity capital to common equity tier 1 capital (“CET1 Capital”),¹⁴ (2) raise the minimum capital requirements for U.S. banks and trust companies that are banks, and (3) require U.S. banks and trust companies that are banks to be well capitalized (“Well Capitalized”) as defined in the capital adequacy rules and regulations of the Federal Deposit Insurance Corporation (“FDIC”).¹⁵

DTC proposes to change the measure of capital requirements for U.S. banks and trust companies that are banks from equity capital to CET1 Capital and raise the minimum capital requirements for U.S. banks and trust companies that are banks in order to align DTC’s capital requirements with banking regulators’ changes to regulatory capital requirements over the past several years, which have standardized and harmonized the calculation and measurement of bank capital and leverage throughout the world.¹⁶ Consistent with these changes by banking regulators, DTC believes that the appropriate capital measure for Participants that are U.S. banks and trust companies that are banks should be CET1 Capital and that DTC’s capital requirements for Participants should be enhanced in light of these increased regulatory capital requirements.

In addition, requiring U.S. banks and trust companies that are banks to be Well Capitalized ensures that Participants are well capitalized while also allowing adjusted capital to be relative to either the risk-weighted assets or average total assets of the bank or trust company. DTC proposes to have the definition of Well Capitalized expressly tied to the FDIC’s definition of “well capitalized” to ensure that the proposed requirement that U.S. banks and trust companies that are banks be Well Capitalized will keep pace with future changes to banking regulators’ regulatory capital requirements.

¹⁴ Under the proposal, CET1 Capital would be defined as an entity’s common equity tier 1 capital, calculated in accordance with such entity’s regulatory and/or statutory requirements.

¹⁵ See 12 CFR 324.403(b)(1).

¹⁶ Compare, e.g., 12 CFR 324.20(b) (FDIC’s definition of CET1 Capital), and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, Article 26, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0575> (European Union’s definition of CET1 Capital), with Basel Committee on Banking Supervision, Basel III Standards, CAP10.6, supra note 3 (Basel III Standards’ definition of CET1 Capital).

Under the proposal, an applicant or Participant that is a U.S. bank or a U.S. trust company that is a bank must have and maintain at all times at least \$15 million in CET1 Capital and be Well Capitalized at all times.

U.S. Banks Trust Companies That Are Not Banks

DTC does not propose to change the existing capital requirements applicable to an applicant or Participant that is a U.S. trust company that is not a bank, although DTC is proposing to make some clarifying and conforming language changes to improve the accessibility and transparency of these capital requirements, without substantive effect.

DTC treats U.S. trust companies that are banks and non-banks differently because they present different risks based on the attendant risks of their business activities, with trust companies engaging in banking activities (e.g., receiving deposits and making loans) being subject to greater risks than trust companies that limit their activities to trust activities (e.g., acting as a trustee, other fiduciary or transfer agent/registrar).

U.S. Broker-Dealers

DTC proposes to increase the minimum excess net capital (“Excess Net Capital”)¹⁷ requirements for applicants or Participants that are U.S. broker-dealers to \$1 million. This would double the current Excess Net Capital requirements applicable to Participants that are U.S. broker-dealers.

As described in more detail below, the proposed minimum Excess Net Capital increase will help ensure DTC’s ongoing compliance with regulatory requirements and expectations related to credit risk, such as those addressed in CCAS Rules 17Ad-22(e)(4)(i) and (e)(18).¹⁸

U.S. CSDs

DTC proposes to require that an applicant or Participant that is a U.S. CSD have and maintain at all times at least \$5 million in equity capital. DTC proposes that any clearing corporation would be deemed to be a CSD for the purposes of determining such applicant or Participant’s minimum financial requirements. DTC proposes to create a standard capital requirement for Participants that are U.S. CSDs due to the systemic importance of these Participants and the need to hold these Participants to a consistent, high standard to ensure that they have sufficient capital to fulfill their systemically important role.

¹⁷ Under the proposal, Excess Net Capital would be defined as a broker-dealer’s excess net capital, calculated in accordance with such broker-dealer’s regulatory and/or statutory requirements.

¹⁸ 17 CFR 240.17Ad-22(e)(4)(i) and (e)(18).

U.S. Securities Exchanges

DTC proposes to require that an applicant or Participant that is a national securities exchange registered under the Exchange Act must have and maintain at all times at least \$100 million in equity capital. DTC proposes to create a standard capital requirement for Participants that are national securities exchanges due to the systemic importance of these Participants and the need to hold these Participants to a consistent, high standard to ensure that they have sufficient capital to fulfill their systemically important role.

U.S. Settling Banks

DTC proposes to require that a Settling Bank or applicant to be a Settling Bank that, in accordance with such entity's regulatory and/or statutory requirements, calculates a Tier 1 RBC Ratio must have a Tier 1 RBC Ratio¹⁹ at all times equal to or greater than the Tier 1 RBC Ratio that would be required for such Settling Bank or applicant to be Well Capitalized.

Other U.S. Entities

For any other U.S. entity applicant or Participant that is not otherwise addressed above, (1) such applicant or Participant must maintain compliance with its regulator's minimum financial requirements at all times and (2) DTC may, based on information provided by or concerning an applicant or Participant, also assign minimum financial requirements to such applicant or Participant based on how closely it resembles another Participant type and its risk profile. Any such assigned minimum financial requirements would be promptly communicated to, and discussed with, the applicant or Participant.

At the end of Section 1 of the Policy Statement, DTC proposes to make explicit that, notwithstanding anything to the contrary in such section, an applicant or Participant must maintain compliance with its regulator's minimum financial requirements at all times.

Policy Statement, Section 2 (Policy Statement on the Admission of Non-U.S. Entities as Participants)

Non-U.S. Banks and Trust Companies

DTC proposes to require a Participant that is a non-U.S. bank or trust company (including a U.S. branch or agency) to (1) have and maintain at all times at least \$15 million in CET1 Capital and comply at all times with the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any Domestic Systemically Important Banks ("D-SIB") or Global Systemically Important Bank ("G-SIB") buffer, if applicable) and capital ratios required by its home country regulator, or, if greater, with such minimum capital requirements or capital ratios standards promulgated by the Basel

¹⁹ Under the proposal, Tier 1 RBC Ratio would be defined as the ratio of an entity's tier 1 capital to its total risk-weighted assets, calculated in accordance with such entity's regulatory and/or statutory requirements.

Committee on Banking Supervision,²⁰ (2) provide an attestation for itself, its parent bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator, (3) provide, no less than annually and upon request by DTC, an attestation for the Participant, its parent bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator and (4) notify DTC: (a) within two Business Days of any of their capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) or capital ratios falling below any minimum required by their home country regulator; and (b) within 15 calendar days of any such minimum capital requirement or capital ratio changing.

As described above, pursuant to Section 2 of the Policy Statement, the current minimum capital requirements for a Participant that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such Participant to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

The multiplier was designed to account for the less transparent nature of accounting standards other than U.S. GAAP. However, accounting standards have converged over the years (namely IFRS and U.S. GAAP).²¹ As such, DTC believes the multiplier is no longer necessary and its retirement would be a welcomed simplification for both DTC and its Participants.

²⁰ See Basel Committee on Banking Supervision, Basel III Standards, supra note 3.

²¹ The convergence between IFRS and U.S. GAAP began with the 2002 Norwalk Agreement. (Available at <https://www.ifrs.org/content/dam/ifrs/around-the-world/mous/norwalk-agreement-2002.pdf>.) Under that agreement, the Financial Accounting Standards Board (“FASB”) and the International Accounting Standards Board (“IASB”) signed a memorandum of understanding on the convergence of accounting standards. Between 2010 and 2013, FASB and IASB published several quarterly progress reports on their work to improve and achieve convergence of U.S. GAAP and IFRS. In 2013, the International Financial Reporting Standards Foundation established the Accounting Standards Advisory Forum (“ASAF”) to improve cooperation among worldwide standard setters and advise the IASB as it developed IFRS. (See <https://www.ifrs.org/groups/accounting-standards-advisory-forum/>.) FASB was selected as one of the ASAF’s twelve members. FASB’s membership on the ASAF helps represent U.S. interests in the IASB’s standard-setting process and continues the process of improving and converging U.S. GAAP and IFRS. In February 2013, the Journal of Accountancy published its view of the success of the convergence project citing converged or partially converged standards, including business combinations, discontinued operations, fair value measurement, and share-based payments. (Available at <https://www.journalofaccountancy.com/issues/2013/feb/20126984.html>.) Subsequent to the publication, IASB and FASB converge on revenue recognition. While IASB and

Accordingly, DTC proposes to delete the language in Section 2 of the Policy Statement providing that the minimum capital requirements for a Participant that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such Participants to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

As described above, DTC also proposes that non-U.S. banks be compliant with the minimum capital requirements and capital ratios in their home jurisdiction. Given the difficulty in knowing and monitoring compliance with various regulatory minimums for various jurisdictions, these Participants would be required to provide DTC with periodic attestations relating to the minimum capital requirements and capital ratios for their home jurisdiction.

Non-U.S. Broker-Dealers

DTC proposes to impose a minimum capital requirement of \$25 million in total equity capital for applicants or Participants that are non-U.S. broker-dealers.

Non-U.S. CSDs

DTC proposes to require that an applicant or Participant that is a non-U.S. CSD have and maintain at all times at least \$5 million in equity capital. DTC proposes that any non-U.S. entity clearing corporation would be deemed to be a CSD for the purposes of determining such applicant or Participant's minimum financial requirements. DTC proposes to create a standard capital requirement for Participants that are non-U.S. CSDs due to the systemic importance of these Participants and the need to hold these Participants to a consistent, high standard to ensure that they have sufficient capital to fulfill their systemically important role.

Non-U.S. Securities Exchanges

DTC proposes requiring that an applicant or Participant that is a non-U.S. securities exchange or multilateral trading facility must have and maintain at all times at least \$100 million in equity capital. DTC proposes to create a standard capital requirement for Participants that are non-U.S. securities exchanges due to the systemic importance of these Participants and the need to hold these Participants to a consistent, high standard to ensure that they have sufficient capital to fulfill their systemically important role.

Other Non-U.S. Entities

For any other non-U.S. entity applicant or Participant that is not otherwise addressed above, (1) such applicant or Participant must maintain compliance with its home country regulator's minimum financial requirements at all times and (2) DTC may, based on information provided by or concerning an applicant or Participant, also assign minimum financial requirements to such applicant or Participant based on how closely it resembles another

FASB have not achieved full convergence, DTC believes the accounting rules are sufficiently aligned such that the multiplier is no longer required.

Participant type and its risk profile. Any such assigned minimum financial requirements would be promptly communicated to, and discussed with, the applicant or Participant.

At the end of Section 2 of the Policy Statement, DTC proposes to make explicit that, notwithstanding anything to the contrary in such section, an applicant or Participant must maintain compliance with its home country regulator's minimum financial requirements at all times.

Other Proposed Changes to the Policy Statement

Introduction and General Changes

DTC proposes, without substantive effect, to improve the readability and accessibility of the Policy Statement by (i) adding appropriate headings and sub-headings and renumbering sections as appropriate, (ii) deleting undefined terms and replacing them with appropriate defined terms, including replacing references to "foreign entities" with references to "non-U.S. entities" and (iii) fixing typographical and other errors, in each case throughout the Policy Statement.

Section 1

In Section 1 of the Policy Statement, DTC proposes to make explicit that following a U.S. entity applicant's admission as a Participant, it will be required to remain in good standing as a Participant, meeting the required qualifications, financial responsibility, operational capability and character described in the Policy Statement and in the Rules.

DTC proposes to move under the newly added heading of "Qualifications" in Section 1.A of the Policy Statement the existing language providing that in the event an organization that is not subject to regulatory oversight desires to become a Participant, DTC may review with such organization the economic and operational implications of direct participation in DTC as well as how its participation could be structured to comply with the Policy Statement.

Section 2

DTC proposes to provide in Section 2 of the Policy Statement that a non-U.S. entity applicant that satisfies the qualifications for eligibility to become a Participant set forth under Section 1 of Rule 3 must comply with minimum financial resource requirements in order to qualify for admission. DTC proposes to make explicit in Section 2 of the Policy Statement that following a non-U.S. entity applicant's admission as a Participant, it will be required to remain in good standing as a Participant, meeting the required qualifications, financial responsibility, operational capability and character described in the Policy Statement and in the Rules.

B. Changes to DTC's Watch List and Enhanced Surveillance List

DTC proposes to redefine the Watch List and eliminate the separate enhanced surveillance list and instead implement a new Watch List that consists of a relatively smaller group of Participants that pose heightened risk to DTC and its Participants.

DTC believes that the current system of having both a Watch List and an enhanced surveillance list has confused various DTC stakeholders, while the proposed approach, as DTC understands from its experience, will be more consistent with industry practices and understanding of a “Watch List.”

The new Watch List would include Participants with a CRRM rating of 6 or 7, as well as Participants that are deemed by DTC to pose a heightened risk to it and its Participants. The separate enhanced surveillance list would be merged into the new Watch List, and references to the separate enhanced surveillance list would be deleted from the Rules.

In sum, the new Watch List would consist of Participants on the existing enhanced surveillance list, Participants with a CRRM rating of 6 or 7, and any other Participants that are deemed by DTC to pose a heightened risk to it and its Participants.

The proposed change will mean that Participants with a CRRM rating of 5 would no longer automatically be included on the Watch List. Participants with a CRRM rating of 5 represent the largest single CRRM rating category, but DTC does not believe all such Participants present heightened credit concerns.²² Nevertheless, DTC would continue to have the authority to place a Participant on the new Watch List if it is deemed to pose a heightened risk to DTC and its Participants and/or to downgrade the CRRM rating of a Participant.

DTC also proposes to clarify in Section 10(e) of Rule 2 that Participants on the Watch List are reported to DTC’s management committees and regularly reviewed by DTC’s senior management.

Participant Outreach

Beginning in June 2019, DTC conducted outreach to various Participants in order to provide them with advance notice of the proposed enhancements to DTC’s capital requirements, the proposed redefinition of the Watch List, and the proposed elimination of the enhanced surveillance list. DTC has been in communication with all Participants whose current capital levels are either below the proposed minimum capital requirements or only slightly above the proposed requirements. Any such Participants have been informed of the new requirement that would be in effect 12 months after approval of the proposed changes. Following approval, DTC again would contact any Participants that are either below or only slightly above the new minimum requirement to remind them of their new capital requirement and the 12-month grace period in which to come into compliance with the new requirement.

²² The majority of Participants with a CRRM rating of 5 are either rated “investment grade” by external rating agencies or, in the absence of external ratings, DTC believes are equivalent to investment grade, as many of these Participants are primary dealers and large foreign banks. A firm with a rating of “investment grade” is understood to be better able to make its payment obligations compared to a firm with a lesser rating, such as a rating of “speculative.” As such, among the total population, firms with investment grade ratings are generally considered good credit risk along a credit risk scale.

DTC has not conducted outreach to Participants providing them with advance notice of the proposed clarification changes to the Rules.

DTC has not received any written comments from Participants on the proposal.²³ The Commission will be notified of any written comments received.

Implementation Timeframe

Pending Commission approval, DTC would implement the proposed changes to enhance its capital requirements for Participants one year after the Commission's approval of this proposed rule change. During that one-year period, DTC would periodically provide Participants with estimates of their capital requirements, based on the approved changes, with more outreach expected for Participants impacted by the changes. The deferred implementation for all Participants and the estimated capital requirements for Participants are designed to give Participants the opportunity to assess the impact of their enhanced capital requirements on their business profile. All Participants would be advised of the implementation date of these proposed changes through issuance of a DTC Important Notice, posted to its website. DTC also would inform firms applying for participation of the new capital requirements. Participants and applicants should note that the methodology/processes used to set their initial capital requirements would be the same at implementation of the proposed changes as it would be on an ongoing basis.

DTC expects to implement the proposed changes to redefine the Watch List and eliminate the enhanced surveillance list within 90 days of Commission approval. All Participants would be advised of such implementation through issuance of a DTC Important Notice, posted to its website.

(b) Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Exchange Act²⁴ and Rules 17Ad-22(e)(4)(i) and (e)(18),²⁵ each as promulgated under the Exchange Act, for the reasons described below.

²³ DTC did receive written comments in relation to a proposal by one of its affiliated clearing agencies (National Securities Clearing Corporation) to enhance its own capital requirements; however, those comments do not relate to this proposal and are therefore not addressed in this rule filing.

²⁴ 15 U.S.C. 78q-1(b)(3)(F).

²⁵ 17 CFR 240.17Ad-22(e)(4)(i) and (e)(18).

Section 17A(b)(3)(F) of the Exchange Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.²⁶ As described above, the proposed rule changes would (1) enhance DTC's capital requirements for Participants (2) redefine the Watch List and eliminate the enhanced surveillance list, and (3) make clarification changes to the Rules. DTC believes that enhancing its capital requirements for Participants, including continuing to recognize and account for varying Participants and participation categories, would help ensure that Participants maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at DTC and otherwise, and would help DTC more effectively manage and mitigate the credit risks posed by its Participants, which would in turn help DTC be better able to withstand such credit risks and continue to meet its clearance and settlement obligations to its Participants. Similarly, DTC believes that redefining the Watch List and eliminating the enhanced surveillance list, as described above, would help DTC better allocate its resources for monitoring the credit risks posed by its Participants, which would in turn help DTC more effectively manage and mitigate such credit risks so that DTC is better able to withstand such credit risks and continue to meet its clearance and settlement obligations to its Participants. DTC believes that making clarification changes to the Rules, including through the use of new defined terms, would help ensure that the Rules remain clear and accurate, which would in turn help facilitate Participants' understanding of the Rules and provide Participants with increased predictability and certainty regarding their rights and obligations with respect to DTC's clearance and settlement activities. Therefore, DTC believes that these proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Exchange Act.

Rule 17Ad-22(e)(4)(i) under the Exchange Act requires that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.²⁷ As described above, DTC proposes to enhance its capital requirements for Participants, redefine the Watch List, and eliminate the enhanced surveillance list. DTC believes that enhancing its capital requirements for Participants (including through the use of new defined terms), would help ensure that Participants maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at DTC and otherwise, which would in turn help DTC more effectively manage and mitigate its credit exposures to its Participants and thereby help enhance the ability of DTC's financial resources to cover fully DTC's credit exposures to Participants with a high degree of confidence. DTC believes that redefining the Watch List and eliminating the enhanced surveillance list would help DTC better allocate its resources for monitoring its credit exposures to Participants. By helping to better allocate resources, the proposal would in turn help DTC more effectively manage and mitigate its credit exposures to its Participants, thereby helping to enhance the ability of DTC's financial resources to cover fully DTC's credit exposures to Participants with a high degree of confidence. Therefore, DTC believes that its proposal to enhance its capital requirements for Participants, redefine the Watch List, and

²⁶ 15 U.S.C. 78q-1(b)(3)(F).

²⁷ 17 CFR 240.17Ad-22(e)(4)(i).

eliminate the enhanced surveillance list is consistent with Rule 17Ad-22(e)(4)(i) under the Exchange Act.

Rule 17Ad-22(e)(18) under the Exchange Act requires that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.²⁸ As described above, DTC proposes to (1) enhance its capital requirements for Participants, (2) redefine the Watch List and eliminate the enhanced surveillance list, and (3) make clarification changes to the Rules, including through the use of new defined terms. DTC's proposed capital requirements would utilize objective measurements of Participant capital that would be fully disclosed in the Rules. The proposed capital requirements also would be risk-based and allow for fair and open access in that they would be based on the credit risks imposed by the Participant, such as its type of entity (including whether it is a non-U.S. entity). Accordingly, DTC's proposed capital requirements would establish objective, risk-based and publicly disclosed criteria for participation, which would permit fair and open access by Participants. The proposed capital requirements also would ensure that Participants maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at DTC and otherwise, which would help ensure that they have sufficient financial resources to meet the obligations arising from their participation at DTC. DTC's proposed redefinition of the Watch List and the elimination of the enhanced surveillance list would help DTC better allocate its resources for monitoring the credit risks posed by its Participants, including their ongoing compliance with DTC's proposed enhancements to its capital requirements. DTC's proposed clarification changes to the Rules, including new defined terms, would help ensure that the proposed changes to the capital requirements, Watch List, and enhanced surveillance list are clear and accurate, which would in turn help facilitate Participants' understanding of DTC's participation requirements and information related to participation. Therefore, DTC believes that its proposal to enhance its capital requirements for Participants, redefine the Watch List, and eliminate the enhanced surveillance list is consistent with Rule 17Ad-22(e)(18) under the Exchange Act.

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

DTC does not believe the proposed changes to enhance the capital requirements for its Participants will have an impact on competition because Participants largely already meet, and in most cases exceed, the proposed capital requirements. Nevertheless, DTC fully appreciates that for the few Participants that do not already meet the proposed requirements, the proposed rule change could have an impact upon competition because those Participants could be required to maintain capital in excess of their current capital levels. That impact could impose a burden on competition on some of those Participants because they may bear higher costs to raise capital in order to comply with the enhanced capital requirements. However, DTC does not believe the burden on competition would be significant because, again, only a few Participants do not

²⁸ 17 CFR 240.17Ad-22(e)(18).

already meet the proposed requirements. In any event, to the extent there would be a burden on competition, DTC believes it would be necessary and appropriate in furtherance of the purposes of the Exchange Act, as permitted by Section 17A(b)(3)(I) thereunder.²⁹

DTC believes the enhanced capital requirements are necessary because, in short, the current requirements are outdated. As noted above, the current minimum capital requirements for Participants have not been adjusted in over 20 years. Meanwhile, there have been significant changes to the industry (e.g., market structure, technology, and regulatory environment) within which DTC and all its Participants operate, exposing DTC and its Participants to more and different risks than 20 years ago.

There also have been significant Participant changes over the past 20 years. Numerous mergers, acquisitions, and new market entrants have created a diverse group of Participants that has expanded the credit-risk profiles that DTC must manage.

Moreover, as noted above, transaction values at DTC have increased significantly over the years.³⁰ Although the increase does not present more risk to DTC directly, as DTC's services are nonguaranteed and fully collateralized, DTC does have an interest in ensuring that its Participants have a certain minimum amount of capital to help support the increased activity.

There also has been heightened focus on legal, operational, and cyber risk, given the devastating impact that they could have today. Appreciation of these greater risks have manifested into new regulatory requirements for certain industry participants,³¹ including DTC, requiring DTC to maintain greater capital amounts and deploy enhanced risk management tools.³²

While DTC believes Participants must understand the risks that their capitalization presents to DTC and be prepared to monitor their capitalization and alter their behavior in order to minimize that risk, as necessary, DTC also appreciates and understands that Participants must be able to plan for their capital requirements. That is why DTC would not implement the proposed changes to any of the enhanced capital requirements until one year after the Commission's approval of the proposal. During that one-year period, DTC would periodically provide Participants with estimates of their capital requirements. The deferred implementation for all Participants and the estimated capital requirements for Participants are designed to give Participants the opportunity to assess the impact of their enhanced capital requirements on their business profile and make any changes that they deem necessary.

²⁹ 15 U.S.C. 78q-1(b)(3)(I).

³⁰ See supra note 7.

³¹ See, e.g., Basel Committee on Banking Supervision, Basel III Standards, supra note 3; Financial Stability Board, 2020 list of G-SIBs, supra note 4; U.S. Department of the Treasury, Designations, Financial Market Utility Designations, supra note 5.

³² See, e.g., CCAS, supra note 6.

DTC also believes the proposed changes are consistent with and would improve upon DTC's compliance with applicable regulatory requirements, as discussed above, including Section 17A(b)(3)(F) of the Exchange Act and Rules 17Ad-22(e)(4)(i) and (e)(18) promulgated thereunder.

Therefore, DTC believes the proposed changes to enhance the capital requirements for its Participants are appropriate in furtherance of the purposes of the Exchange Act, as permitted by Section 17A(b)(3)(I) thereunder,³³ as the proposed changes are purposely tailored and structured, provide for a one-year implementation period, and are consistent with applicable provisions of the Exchange Act and rules thereunder.

DTC does not believe that the proposed changes to redefine the Watch List and eliminate the enhanced surveillance list would impact competition. Redefining the Watch List and eliminating the enhanced surveillance list are simply intended to streamline and clarify these monitoring practices. If anything, by no longer automatically including Participants with a CRRM rating of 5 on the Watch List, as proposed, the change could promote competition for such Participants, as such Participants would no longer automatically be subject to increased scrutiny by DTC, including the possibility of increased financial and reporting obligations.

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.³⁴ If any written comments are received, DTC will amend this filing to publicly file such comments as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting written comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on *How to Submit Comments*, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

DTC reserves the right to not respond to any comments received.

³³ 15 U.S.C. 78q-1(b)(3)(I).

³⁴ See supra note 23.

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 Exchange Act³⁵ for Commission action.

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

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

Exhibit 1 – Not applicable.

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

Exhibit 2 – Not applicable.

Exhibit 3 – Confidential Supporting Information. **Omitted and filed separately with the Commission. Confidential treatment of this Exhibit 3 is being requested pursuant to 17 CFR 240.24b-2.**

Exhibit 4 – Not applicable.

Exhibit 5 – Proposed changes to the Rules.

³⁵ 15 U.S.C. 78s(b)(2).

EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[_____]; File No. SR-DTC-2021-017)

[DATE]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Enhance Capital Requirements and Make Other Changes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December __, 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 amendments to the Rules, By-Laws and Organization Certificate (“Rules”) of DTC in order to (i) enhance DTC’s capital requirements for Participants, (ii) redefine DTC’s Watch List and eliminate DTC’s enhanced surveillance list and (iii) make certain other clarifying, technical and supplementary changes in the Rules, including definitional updates, to accomplish items (i) and (ii), as described in greater detail below.³

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/~media/Files/Downloads/legal/rules/dtc_rules.pdf.

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 purpose of this proposed rule change is to (i) enhance DTC's capital requirements for Participants, (ii) redefine DTC's Watch List and eliminate DTC's enhanced surveillance list and (iii) make certain other clarifying, technical and supplementary changes in the Rules, including definitional updates, to accomplish items (i) and (ii).

(i) Background

Central securities depositories ("CSDs") play a key role in financial markets by mitigating counterparty credit risk on transactions of their participants. As a CSD, DTC is exposed to the credit risks of its Participants. The credit risks borne by DTC are mitigated, in part, by the capital maintained by Participants, which serves as a loss-absorbing buffer.

In accordance with Section 17A(b)(4)(B) of the Exchange Act,⁴ a registered clearing agency such as DTC may, among other things, deny participation to, or condition the participation of, any person on such person meeting such standards of financial responsibility prescribed by the rules of the registered clearing agency.

In furtherance of this authority, DTC requires applicants and Participants to meet the relevant financial responsibility standards prescribed by the Rules. These financial responsibility standards generally require Participants to have and maintain certain levels of capital, as more particularly described in the Rules and below.

DTC's capital requirements for Participants have not been updated in over 20 years. Since that time, there have been significant changes to the financial markets that warrant DTC revisiting its capital requirements. For example, the regulatory environment within which DTC and its Participants operate has undergone various changes. The implementation of the Basel III standards,⁵ the designation of many banks as systemically important by the Financial Stability Board,⁶ as well as the designation of DTC as a systemically important financial market utility ("SIFMU") by the Financial Stability Oversight Council,⁷ have significantly increased the regulatory requirements, including

⁴ 15 U.S.C. 78q-1(b)(4)(B).

⁵ Basel Committee on Banking Supervision, The Basel Framework, available at https://www.bis.org/basel_framework/index.htm?export=pdf ("Basel III Standards").

⁶ See Financial Stability Board, 2021 list of global systemically important banks, available at <https://www.fsb.org/wp-content/uploads/P231121.pdf>.

⁷ See U.S. Department of the Treasury, Designations, Financial Market Utility Designations, available at <https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/fsoc/designations>.

capital requirements, of many financial institutions and CSDs. Similarly, the Covered Clearing Agency Standards (“CCAS”) adopted by the Commission have raised the regulatory standards applicable to CSDs such as DTC.⁸

There also have been significant Participant changes over the past 20 years. Numerous mergers, acquisitions, and new market entrants have created a diverse group of Participants that has expanded the credit-risk profiles that DTC must manage.

Moreover, transaction values at DTC have increased significantly over the years.⁹ Although the increase does not present more risk to DTC directly, as DTC’s services are nonguaranteed and fully collateralized, DTC does have an interest in ensuring that its Participants have a certain minimum amount of capital to help support the increased activity.

Although these factors do not directly require DTC to increase capital requirements for Participants (e.g., there is no specific regulation or formula that prescribes a set capital requirement for participants of a CSD such as DTC), the overarching and collective focus of the regulatory changes noted above, in light of the many heightened risks to the financial industry, has been to increase the stability of the financial markets in order to reduce systemic risk. As a self-regulatory organization, a SIFMU, and being exposed to the new and increased risks over the past 20 years, DTC has a responsibility to do the same. Enhancing its capital requirements helps meet that

⁸ 17 CFR 240.17Ad-22(e).

⁹ See, e.g., DTCC Annual Reports, available at <https://www.dtcc.com/about/annual-report>. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). The DTCC Annual Reports highlight and track DTC transactional values year-over-year.

responsibility and improve DTC's credit risk management. Enhanced capital requirements also help mitigate other risks posed directly or indirectly by Participants such as legal risk, operational risk and cyber risk, as better capitalized Participants have greater financial resources in order to mitigate the effects of these and other risks.

As for setting the specific capital requirements proposed, again, there is no regulation or formula that requires or calculates a specific amount (i.e., there is no magic number). Instead, DTC considered several factors, including inflation and the capital requirements of other Financial Market Infrastructures ("FMIs"), both in the U.S. and abroad, to which the proposed requirements align.¹⁰

In light of these and other developments described below, DTC proposes to enhance its capital requirements for Participants, as described in more detail below.

DTC also proposes to redefine the Watch List, which is a list of Participants that are deemed by DTC to pose a heightened risk to it and its Participants based on credit

¹⁰ See The Options Clearing Corporation, OCC Rules, Rule 301(a), [available at https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules](https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules) (requiring broker-dealers to have initial net capital of not less than \$2,500,000); Chicago Mercantile Exchange Inc., CME Rulebook, Rule 970.A.1, [available at https://www.cmegroup.com/rulebook/CME/I/9/9.pdf](https://www.cmegroup.com/rulebook/CME/I/9/9.pdf) (requiring clearing members to maintain capital of at least \$5 million, with banks required to maintain minimum tier 1 capital of at least \$5 billion); LCH SA, LCH SA Clearing Rule Book, Section 2.3.2, [available at https://www.lch.com/resources/rulebooks/lch-sa](https://www.lch.com/resources/rulebooks/lch-sa) (requiring, with respect to securities clearing, capital of at least EUR 10 million for self-clearing members and at least EUR 25 million for members clearing for others, subject to partial satisfaction by a letter of credit) (1 EUR = \$0.8150 as of December 31, 2020; see <https://www.fiscal.treasury.gov/reports-statements/treasury-reporting-rates-exchange/current.html> (last visited January 14, 2021)).

Although the requirements of these FMIs are greater than what DTC proposes, DTC is choosing not to raise the requirement further given that it employs a fully collateralized model, which mitigates the level of risk that its Participants pose to DTC.

ratings and other factors. As part of the redefinition of the Watch List, DTC proposes to eliminate the separate enhanced surveillance list and implement a new Watch List that consists of a relatively smaller group of Participants that exhibit heightened credit risk, as described in more detail below.

(ii) Current DTC Capital Requirements

The current DTC capital requirements for Participants are set forth in DTC's Policy Statements on the Admission of Participants and Pledges (the "Policy Statement").¹¹

Policy Statement

The Policy Statement is divided into three sections. Section 1 of the Policy Statement concerns entities organized in the U.S. ("U.S. entities") applying to become Participants. Section 2 of the Policy Statement concerns entities organized in a country other than the U.S. and that are not otherwise subject to U.S. federal or state regulation ("non-U.S. entities") applying to become Participants. Section 3 of the Policy Statement concerns fees and time limits on applications to become a Participant or Pledgee.

As relevant to DTC's proposal to enhance its capital requirements for Participants:

Section 1

Section 1 of the Policy Statement provides that Rules 2 (Participants and Pledges) and 3 (Participants Qualifications) set forth the basic standards for the admission of Participants, including that the admission of a Participant is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility,

¹¹ See Policy Statement, supra note 3.

operational capability, and character at the time of its application and on an ongoing basis thereafter.

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

Subsection (d) of Section 1 of Rule 3 provides that a bank or trust company which is subject to supervision or regulation pursuant to the provisions of federal or state banking laws, or any subsidiary of such a bank or trust company or a bank holding company or any subsidiary of a bank holding company, is eligible to become a Participant.

Pursuant to the Policy Statement, any applicant or Participant that satisfies the qualifications of subsection (d) of Section 1 of Rule 3 is required to maintain equity capital in the amount of at least \$2 million based on the definition of equity capital provided in the form and instructions of the Consolidated Report of Conditions and Income maintained by the Federal Financial Institutions Examination Council.

Subsection (h)(ii) of Section 1 of Rule 3 provides that a broker-dealer registered under the Exchange Act is eligible to become a Participant.

Pursuant to the Policy Statement, any applicant or Participant that satisfies the qualifications of subsection (h)(ii) of Section 1 of Rule 3 is required to maintain a minimum amount of not less than \$500,000 in excess net capital over the greater of (i) the minimum capital requirement imposed on it pursuant to Exchange Act Rule

15c3-1, or (ii) such higher minimum capital requirement imposed by the registered broker-dealer's designated examining authority.

Section 2

Section 2 of the Policy Statement provides that non-U.S. entities are eligible to become Participants.

Section 2 of the Policy Statement requires that non-U.S. entities applying to become Participants provide to DTC, for financial monitoring purposes, audited financial statements prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") or other generally accepted accounting principles that are satisfactory to DTC.

In order to address the risk presented by the acceptance of financial statements not prepared in accordance with U.S. GAAP, Section 2 of the Policy Statement provides that the minimum financial requirements applicable to a non-U.S. entity will be subject to a specified premium, as follows:

- i. for financial statements prepared in accordance with International Financial Reporting Standards, the U.K. Companies Act of 1985 ("U.K. GAAP"), or Canadian generally accepted accounting principles – a premium of 1 ½ times the minimum financial requirements;
- ii. for financial statements prepared in accordance with a European Union country's generally accepted accounting principles, other than U.K. GAAP – a premium of 5 times the minimum financial requirements; and

iii. for financial statements prepared in accordance with any other type of generally accepted accounting principles – a premium of 7 times the minimum financial requirements.

Accordingly, a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP is required to meet financial requirements between 1 ½ to 7 times the minimum financial requirements that would otherwise be applicable to the non-U.S. entity. Given that, as noted above, the financial responsibility requirements generally require a Participant to have a certain level of capital, Section 2 of the Policy Statement has the effect of requiring a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

Section 2 of the Policy Statement also provides that a non-U.S. entity must be in compliance with the financial reporting and responsibility standards of its home country regulator.

(iii) Current DTC Watch List and Enhanced Surveillance List

DTC's Watch List is a list of Participants that are deemed by DTC to pose a heightened risk to it and its Participants based on credit ratings and other factors.¹²

Specifically, the Watch List is the list of Participants with credit ratings derived from DTC's Credit Risk Rating Matrix ("CRRM")¹³ of 5, 6 or 7, as well as Participants

¹² See Rule 1 (Definitions; Governing Law), supra note 3.

¹³ DTC's CRRM is a matrix of credit ratings of Participants specified in Section 10(a) of Rule 2. The CRRM is developed by DTC to evaluate the credit risk Participants pose to DTC and its Participants and is based on factors determined to be relevant by DTC from time to time, which factors are designed to collectively reflect the financial and operational condition of a Participant. These factors include (i) quantitative factors, such as capital, assets, earnings, and

that, based on DTC's consideration of relevant factors, including those set forth in Section 10 of Rule 2 (Participants and Pledges),¹⁴ are deemed by DTC to pose a heightened risk to it and its Participants.

In addition to the Watch List, DTC also maintains a separate list of Participants subject to enhanced surveillance in accordance with the provisions of Section 10(b) of Rule 2, as discussed below. The enhanced surveillance list is a list of Participants for which DTC has heightened credit concerns, which may include Participants that are already, or may soon be, on the Watch List. As described below, a Participant is subject to the same potential consequences from being subject to enhanced surveillance or being placed on the Watch List.

Rule 2 (Participants and Pledges)

Rule 2 (Participants and Pledges) specifies the ongoing participation requirements and monitoring applicable to Participants and Pledges.¹⁵

Section 10(b) of Rule 2 provides that a Participant that is (1) a U.S. bank or trust company that files the Consolidated Report of Condition and Income ("Call Report"), (2) a registered broker-dealer that files the Financial and Operational Combined Uniform Single Report ("FOCUS Report") or the equivalent with its regulator, or (3) a non-U.S. bank or trust company that has audited financial data that is publicly available, will be assigned a credit rating by DTC in accordance with the CRRM. A Participant's credit

liquidity, and (ii) qualitative factors, such as management quality, market position/environment, and capital and liquidity risk management. See Rule 1 (Definitions; Governing Law), supra note 3.

¹⁴ Rule 2 (Participants and Pledges), Section 10, supra note 3.

¹⁵ Rule 2 (Participants and Pledges), supra note 3.

rating is reassessed each time the Participant provides DTC with requested information pursuant to Section 1 of Rule 2 or as may be otherwise required under the Rules.

Section 10(b) further provides that because the factors used as part of the CRRM may not identify all risks that a Participant assigned a credit rating by DTC may present to DTC, DTC may, in its discretion, override such Participant's credit rating derived from the CRRM to downgrade the Participant. This downgrading may result in the Participant being placed on the Watch List and/or it may subject the Participant to enhanced surveillance based on relevant factors.

Section 10(c) of Rule 2 provides that Participants not assigned a credit rating by DTC will not be assigned a credit rating by the CRRM but may be placed on the Watch List and/or may be subject to enhanced surveillance based on relevant factors.

Section 10(d) of Rule 2 provides that the factors to be considered by DTC in determining whether a Participant is placed on the Watch List and/or subject to enhanced surveillance include (i) news reports and/or regulatory observations that raise reasonable concerns relating to the Participant, (ii) reasonable concerns around the Participant's liquidity arrangements, (iii) material changes to the Participant's organizational structure, (iv) reasonable concerns about the Participant's financial stability due to particular facts and circumstances, such as material litigation or other legal and/or regulatory risks, (v) failure of the Participant to demonstrate satisfactory financial condition or operational capability or if DTC has a reasonable concern regarding the Participant's ability to maintain applicable participation standards, and (vi) failure of the Participant to provide information required by DTC to assess risk exposure posed by the Participant's activity.

Section 10(e) of Rule 2 provides that a Participant being subject to enhanced surveillance or being placed on the Watch List (1) will result in a more thorough monitoring of the Participant's financial condition and/or operational capability, including on-site visits or additional due diligence information requests, and (2) may be required make more frequent financial disclosures to DTC. Participants that are subject to enhanced surveillance are also reported to DTC's management committees and regularly reviewed by DTC senior management.

(iv) Proposed Rule Changes

A. Changes to Enhance DTC's Capital Requirements

As noted earlier, as a CSD, DTC is exposed to the credit risks of its Participants. The credit risks borne by DTC are mitigated, in part, by the capital maintained by Participants, which serves as a loss-absorbing buffer.

DTC's financial responsibility standards for Participants generally require Participants to have and maintain certain levels of capital.

As described in more detail below, DTC proposes to enhance its capital requirements for Participants as follows:

Rule 1 (Definitions; Governing Law)

In connection with its proposal to enhance capital requirements for Participants, DTC proposes to add to Rule 1 new defined terms of "CET1 Capital," "Excess Net Capital," "Tier 1 RBC Ratio" and "Well Capitalized," as discussed below.

Policy Statement, Section 1 (Policy Statement on the Admission of U.S. Entities as Participants)

U.S. Banks and Trust Companies That Are Banks

DTC proposes to (1) change the measure of capital requirements for U.S. banks and trust companies that are banks from equity capital to common equity tier 1 capital (“CET1 Capital”),¹⁶ (2) raise the minimum capital requirements for U.S. banks and trust companies that are banks, and (3) require U.S. banks and trust companies that are banks to be well capitalized (“Well Capitalized”) as defined in the capital adequacy rules and regulations of the Federal Deposit Insurance Corporation (“FDIC”).¹⁷

DTC proposes to change the measure of capital requirements for U.S. banks and trust companies that are banks from equity capital to CET1 Capital and raise the minimum capital requirements for U.S. banks and trust companies that are banks in order to align DTC’s capital requirements with banking regulators’ changes to regulatory capital requirements over the past several years, which have standardized and harmonized the calculation and measurement of bank capital and leverage throughout the world.¹⁸ Consistent with these changes by banking regulators, DTC believes that the appropriate

¹⁶ Under the proposal, CET1 Capital would be defined as an entity’s common equity tier 1 capital, calculated in accordance with such entity’s regulatory and/or statutory requirements.

¹⁷ See 12 CFR 324.403(b)(1).

¹⁸ Compare, e.g., 12 CFR 324.20(b) (FDIC’s definition of CET1 Capital), and Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, Article 26, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0575> (European Union’s definition of CET1 Capital), with Basel Committee on Banking Supervision, Basel III Standards, CAP10.6, *supra* note 5 (Basel III Standards’ definition of CET1 Capital).

capital measure for Participants that are U.S. banks and trust companies that are banks should be CET1 Capital and that DTC's capital requirements for Participants should be enhanced in light of these increased regulatory capital requirements.

In addition, requiring U.S. banks and trust companies that are banks to be Well Capitalized ensures that Participants are well capitalized while also allowing adjusted capital to be relative to either the risk-weighted assets or average total assets of the bank or trust company. DTC proposes to have the definition of Well Capitalized expressly tied to the FDIC's definition of "well capitalized" to ensure that the proposed requirement that U.S. banks and trust companies that are banks be Well Capitalized will keep pace with future changes to banking regulators' regulatory capital requirements.

Under the proposal, an applicant or Participant that is a U.S. bank or a U.S. trust company that is a bank must have and maintain at all times at least \$15 million in CET1 Capital and be Well Capitalized at all times.

U.S. Banks Trust Companies That Are Not Banks

DTC does not propose to change the existing capital requirements applicable to an applicant or Participant that is a U.S. trust company that is not a bank, although DTC is proposing to make some clarifying and conforming language changes to improve the accessibility and transparency of these capital requirements, without substantive effect.

DTC treats U.S. trust companies that are banks and non-banks differently because they present different risks based on the attendant risks of their business activities, with trust companies engaging in banking activities (e.g., receiving deposits and making loans) being subject to greater risks than trust companies that limit their activities to trust activities (e.g., acting as a trustee, other fiduciary or transfer agent/registrar).

U.S. Broker-Dealers

DTC proposes to increase the minimum excess net capital (“Excess Net Capital”)¹⁹ requirements for applicants or Participants that are U.S. broker-dealers to \$1 million. This would double the current Excess Net Capital requirements applicable to Participants that are U.S. broker-dealers.

As described in more detail below, the proposed minimum Excess Net Capital increase will help ensure DTC’s ongoing compliance with regulatory requirements and expectations related to credit risk, such as those addressed in CCAS Rules 17Ad-22(e)(4)(i) and (e)(18).²⁰

U.S. CSDs

DTC proposes to require that an applicant or Participant that is a U.S. CSD have and maintain at all times at least \$5 million in equity capital. DTC proposes that any clearing corporation would be deemed to be a CSD for the purposes of determining such applicant or Participant’s minimum financial requirements. DTC proposes to create a standard capital requirement for Participants that are U.S. CSDs due to the systemic importance of these Participants and the need to hold these Participants to a consistent, high standard to ensure that they have sufficient capital to fulfill their systemically important role.

¹⁹ Under the proposal, Excess Net Capital would be defined as a broker-dealer’s excess net capital, calculated in accordance with such broker-dealer’s regulatory and/or statutory requirements.

²⁰ 17 CFR 240.17Ad-22(e)(4)(i) and (e)(18).

U.S. Securities Exchanges

DTC proposes to require that an applicant or Participant that is a national securities exchange registered under the Exchange Act must have and maintain at all times at least \$100 million in equity capital. DTC proposes to create a standard capital requirement for Participants that are national securities exchanges due to the systemic importance of these Participants and the need to hold these Participants to a consistent, high standard to ensure that they have sufficient capital to fulfill their systemically important role.

U.S. Settling Banks

DTC proposes to require that a Settling Bank or applicant to be a Settling Bank that, in accordance with such entity's regulatory and/or statutory requirements, calculates a Tier 1 RBC Ratio must have a Tier 1 RBC Ratio²¹ at all times equal to or greater than the Tier 1 RBC Ratio that would be required for such Settling Bank or applicant to be Well Capitalized.

Other U.S. Entities

For any other U.S. entity applicant or Participant that is not otherwise addressed above, (1) such applicant or Participant must maintain compliance with its regulator's minimum financial requirements at all times and (2) DTC may, based on information provided by or concerning an applicant or Participant, also assign minimum financial requirements to such applicant or Participant based on how closely it resembles another

²¹ Under the proposal, Tier 1 RBC Ratio would be defined as the ratio of an entity's tier 1 capital to its total risk-weighted assets, calculated in accordance with such entity's regulatory and/or statutory requirements.

Participant type and its risk profile. Any such assigned minimum financial requirements would be promptly communicated to, and discussed with, the applicant or Participant.

At the end of Section 1 of the Policy Statement, DTC proposes to make explicit that, notwithstanding anything to the contrary in such section, an applicant or Participant must maintain compliance with its regulator's minimum financial requirements at all times.

Policy Statement, Section 2 (Policy Statement on the Admission of Non-U.S. Entities as Participants)

Non-U.S. Banks and Trust Companies

DTC proposes to require a Participant that is a non-U.S. bank or trust company (including a U.S. branch or agency) to (1) have and maintain at all times at least \$15 million in CET1 Capital and comply at all times with the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any Domestic Systemically Important Banks ("D-SIB") or Global Systemically Important Bank ("G-SIB") buffer, if applicable) and capital ratios required by its home country regulator, or, if greater, with such minimum capital requirements or capital ratios standards promulgated by the Basel Committee on Banking Supervision,²² (2) provide an attestation for itself, its parent bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator, (3) provide, no less than annually and upon request by DTC, an attestation for the Participant, its parent

²² See Basel Committee on Banking Supervision, Basel III Standards, supra note 5.

bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator and (4) notify DTC: (a) within two Business Days of any of their capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) or capital ratios falling below any minimum required by their home country regulator; and (b) within 15 calendar days of any such minimum capital requirement or capital ratio changing.

As described above, pursuant to Section 2 of the Policy Statement, the current minimum capital requirements for a Participant that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such Participant to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

The multiplier was designed to account for the less transparent nature of accounting standards other than U.S. GAAP. However, accounting standards have converged over the years (namely IFRS and U.S. GAAP).²³ As such, DTC believes the

²³ The convergence between IFRS and U.S. GAAP began with the 2002 Norwalk Agreement. (Available at <https://www.ifrs.org/content/dam/ifrs/around-the-world/mous/norwalk-agreement-2002.pdf>.) Under that agreement, the Financial Accounting Standards Board (“FASB”) and the International Accounting Standards Board (“IASB”) signed a memorandum of understanding on the convergence of accounting standards. Between 2010 and 2013, FASB and IASB published several quarterly progress reports on their work to improve and achieve convergence of U.S. GAAP and IFRS. In 2013, the International Financial Reporting Standards Foundation established the Accounting Standards Advisory Forum (“ASAF”) to improve cooperation among worldwide standard setters and advise the IASB as it developed IFRS. (See

multiplier is no longer necessary and its retirement would be a welcomed simplification for both DTC and its Participants.

Accordingly, DTC proposes to delete the language in Section 2 of the Policy Statement providing that the minimum capital requirements for a Participant that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such Participants to have capital between 1 ½ to 7 times the otherwise-applicable capital requirement.

As described above, DTC also proposes that non-U.S. banks be compliant with the minimum capital requirements and capital ratios in their home jurisdiction. Given the difficulty in knowing and monitoring compliance with various regulatory minimums for various jurisdictions, these Participants would be required to provide DTC with periodic attestations relating to the minimum capital requirements and capital ratios for their home jurisdiction.

Non-U.S. Broker-Dealers

DTC proposes to impose a minimum capital requirement of \$25 million in total equity capital for applicants or Participants that are non-U.S. broker-dealers.

<https://www.ifrs.org/groups/accounting-standards-advisory-forum/>.) FASB was selected as one of the ASAF's twelve members. FASB's membership on the ASAF helps represent U.S. interests in the IASB's standard-setting process and continues the process of improving and converging U.S. GAAP and IFRS. In February 2013, the Journal of Accountancy published its view of the success of the convergence project citing converged or partially converged standards, including business combinations, discontinued operations, fair value measurement, and share-based payments. (Available at <https://www.journalofaccountancy.com/issues/2013/feb/20126984.html>.) Subsequent to the publication, IASB and FASB converge on revenue recognition. While IASB and FASB have not achieved full convergence, DTC believes the accounting rules are sufficiently aligned such that the multiplier is no longer required.

Non-U.S. CSDs

DTC proposes to require that an applicant or Participant that is a non-U.S. CSD have and maintain at all times at least \$5 million in equity capital. DTC proposes that any non-U.S. entity clearing corporation would be deemed to be a CSD for the purposes of determining such applicant or Participant's minimum financial requirements. DTC proposes to create a standard capital requirement for Participants that are non-U.S. CSDs due to the systemic importance of these Participants and the need to hold these Participants to a consistent, high standard to ensure that they have sufficient capital to fulfill their systemically important role.

Non-U.S. Securities Exchanges

DTC proposes requiring that an applicant or Participant that is a non-U.S. securities exchange or multilateral trading facility must have and maintain at all times at least \$100 million in equity capital. DTC proposes to create a standard capital requirement for Participants that are non-U.S. securities exchanges due to the systemic importance of these Participants and the need to hold these Participants to a consistent, high standard to ensure that they have sufficient capital to fulfill their systemically important role.

Other Non-U.S. Entities

For any other non-U.S. entity applicant or Participant that is not otherwise addressed above, (1) such applicant or Participant must maintain compliance with its home country regulator's minimum financial requirements at all times and (2) DTC may, based on information provided by or concerning an applicant or Participant, also assign minimum financial requirements to such applicant or Participant based on how closely it

resembles another Participant type and its risk profile. Any such assigned minimum financial requirements would be promptly communicated to, and discussed with, the applicant or Participant.

At the end of Section 2 of the Policy Statement, DTC proposes to make explicit that, notwithstanding anything to the contrary in such section, an applicant or Participant must maintain compliance with its home country regulator's minimum financial requirements at all times.

Other Proposed Changes to the Policy Statement

Introduction and General Changes

DTC proposes, without substantive effect, to improve the readability and accessibility of the Policy Statement by (i) adding appropriate headings and sub-headings and renumbering sections as appropriate, (ii) deleting undefined terms and replacing them with appropriate defined terms, including replacing references to "foreign entities" with references to "non-U.S. entities" and (iii) fixing typographical and other errors, in each case throughout the Policy Statement.

Section 1

In Section 1 of the Policy Statement, DTC proposes to make explicit that following a U.S. entity applicant's admission as a Participant, it will be required to remain in good standing as a Participant, meeting the required qualifications, financial responsibility, operational capability and character described in the Policy Statement and in the Rules.

DTC proposes to move under the newly added heading of "Qualifications" in Section 1.A of the Policy Statement the existing language providing that in the event an

organization that is not subject to regulatory oversight desires to become a Participant, DTC may review with such organization the economic and operational implications of direct participation in DTC as well as how its participation could be structured to comply with the Policy Statement.

Section 2

DTC proposes to provide in Section 2 of the Policy Statement that a non-U.S. entity applicant that satisfies the qualifications for eligibility to become a Participant set forth under Section 1 of Rule 3 must comply with minimum financial resource requirements in order to qualify for admission. DTC proposes to make explicit in Section 2 of the Policy Statement that following a non-U.S. entity applicant's admission as a Participant, it will be required to remain in good standing as a Participant, meeting the required qualifications, financial responsibility, operational capability and character described in the Policy Statement and in the Rules.

B. Changes to DTC's Watch List and Enhanced Surveillance List

DTC proposes to redefine the Watch List and eliminate the separate enhanced surveillance list and instead implement a new Watch List that consists of a relatively smaller group of Participants that pose heightened risk to DTC and its Participants.

DTC believes that the current system of having both a Watch List and an enhanced surveillance list has confused various DTC stakeholders, while the proposed approach, as DTC understands from its experience, will be more consistent with industry practices and understanding of a "Watch List."

The new Watch List would include Participants with a CRRM rating of 6 or 7, as well as Participants that are deemed by DTC to pose a heightened risk to it and its

Participants. The separate enhanced surveillance list would be merged into the new Watch List, and references to the separate enhanced surveillance list would be deleted from the Rules.

In sum, the new Watch List would consist of Participants on the existing enhanced surveillance list, Participants with a CRRM rating of 6 or 7, and any other Participants that are deemed by DTC to pose a heightened risk to it and its Participants.

The proposed change will mean that Participants with a CRRM rating of 5 would no longer automatically be included on the Watch List. Participants with a CRRM rating of 5 represent the largest single CRRM rating category, but DTC does not believe all such Participants present heightened credit concerns.²⁴ Nevertheless, DTC would continue to have the authority to place a Participant on the new Watch List if it is deemed to pose a heightened risk to DTC and its Participants and/or to downgrade the CRRM rating of a Participant.

DTC also proposes to clarify in Section 10(e) of Rule 2 that Participants on the Watch List are reported to DTC's management committees and regularly reviewed by DTC's senior management.

²⁴ The majority of Participants with a CRRM rating of 5 are either rated "investment grade" by external rating agencies or, in the absence of external ratings, DTC believes are equivalent to investment grade, as many of these Participants are primary dealers and large foreign banks. A firm with a rating of "investment grade" is understood to be better able to make its payment obligations compared to a firm with a lesser rating, such as a rating of "speculative." As such, among the total population, firms with investment grade ratings are generally considered good credit risk along a credit risk scale.

Participant Outreach

Beginning in June 2019, DTC conducted outreach to various Participants in order to provide them with advance notice of the proposed enhancements to DTC's capital requirements, the proposed redefinition of the Watch List, and the proposed elimination of the enhanced surveillance list. DTC has been in communication with all Participants whose current capital levels are either below the proposed minimum capital requirements or only slightly above the proposed requirements. Any such Participants have been informed of the new requirement that would be in effect 12 months after approval of the proposed changes. Following approval, DTC again would contact any Participants that are either below or only slightly above the new minimum requirement to remind them of their new capital requirement and the 12-month grace period in which to come into compliance with the new requirement.

DTC has not conducted outreach to Participants providing them with advance notice of the proposed clarification changes to the Rules.

DTC has not received any written comments from Participants on the proposal.²⁵ The Commission will be notified of any written comments received.

Implementation Timeframe

Pending Commission approval, DTC would implement the proposed changes to enhance its capital requirements for Participants one year after the Commission's approval of this proposed rule change. During that one-year period, DTC would

²⁵ DTC did receive written comments in relation to a proposal by one of its affiliated clearing agencies (National Securities Clearing Corporation) to enhance its own capital requirements; however, those comments do not relate to this proposal and are therefore not addressed in this rule filing.

periodically provide Participants with estimates of their capital requirements, based on the approved changes, with more outreach expected for Participants impacted by the changes. The deferred implementation for all Participants and the estimated capital requirements for Participants are designed to give Participants the opportunity to assess the impact of their enhanced capital requirements on their business profile. All Participants would be advised of the implementation date of these proposed changes through issuance of a DTC Important Notice, posted to its website. DTC also would inform firms applying for participation of the new capital requirements. Participants and applicants should note that the methodology/processes used to set their initial capital requirements would be the same at implementation of the proposed changes as it would be on an ongoing basis.

DTC expects to implement the proposed changes to redefine the Watch List and eliminate the enhanced surveillance list within 90 days of Commission approval. All Participants would be advised of such implementation through issuance of a DTC Important Notice, posted to its website.

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Exchange Act²⁶ and Rules 17Ad-22(e)(4)(i) and (e)(18),²⁷ each as promulgated under the Exchange Act, for the reasons described below.

²⁶ 15 U.S.C. 78q-1(b)(3)(F).

²⁷ 17 CFR 240.17Ad-22(e)(4)(i) and (e)(18).

Section 17A(b)(3)(F) of the Exchange Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.²⁸ As described above, the proposed rule changes would (1) enhance DTC's capital requirements for Participants (2) redefine the Watch List and eliminate the enhanced surveillance list, and (3) make clarification changes to the Rules. DTC believes that enhancing its capital requirements for Participants, including continuing to recognize and account for varying Participants and participation categories, would help ensure that Participants maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at DTC and otherwise, and would help DTC more effectively manage and mitigate the credit risks posed by its Participants, which would in turn help DTC be better able to withstand such credit risks and continue to meet its clearance and settlement obligations to its Participants. Similarly, DTC believes that redefining the Watch List and eliminating the enhanced surveillance list, as described above, would help DTC better allocate its resources for monitoring the credit risks posed by its Participants, which would in turn help DTC more effectively manage and mitigate such credit risks so that DTC is better able to withstand such credit risks and continue to meet its clearance and settlement obligations to its Participants. DTC believes that making clarification changes to the Rules, including through the use of new defined terms, would help ensure that the Rules remain clear and accurate, which would in turn help facilitate Participants' understanding of the Rules and provide Participants with increased predictability and certainty regarding their rights and obligations with respect to DTC's clearance and settlement activities. Therefore, DTC believes that these

²⁸ 15 U.S.C. 78q-1(b)(3)(F).

proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Exchange Act.

Rule 17Ad-22(e)(4)(i) under the Exchange Act requires that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.²⁹ As described above, DTC proposes to enhance its capital requirements for Participants, redefine the Watch List, and eliminate the enhanced surveillance list. DTC believes that enhancing its capital requirements for Participants (including through the use of new defined terms), would help ensure that Participants maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at DTC and otherwise, which would in turn help DTC more effectively manage and mitigate its credit exposures to its Participants and thereby help enhance the ability of DTC's financial resources to cover fully DTC's credit exposures to Participants with a high degree of confidence. DTC believes that redefining the Watch List and eliminating the enhanced surveillance list would help DTC better allocate its resources for monitoring its credit exposures to Participants. By helping to better allocate resources, the proposal would in turn help DTC more effectively manage and mitigate its credit exposures to its Participants, thereby helping to enhance the ability of DTC's financial resources to cover fully DTC's credit exposures to Participants with a high degree of confidence. Therefore, DTC believes that its proposal to enhance its capital

²⁹ 17 CFR 240.17Ad-22(e)(4)(i).

requirements for Participants, redefine the Watch List, and eliminate the enhanced surveillance list is consistent with Rule 17Ad-22(e)(4)(i) under the Exchange Act.

Rule 17Ad-22(e)(18) under the Exchange Act requires that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.³⁰ As described above, DTC proposes to (1) enhance its capital requirements for Participants, (2) redefine the Watch List and eliminate the enhanced surveillance list, and (3) make clarification changes to the Rules, including through the use of new defined terms. DTC's proposed capital requirements would utilize objective measurements of Participant capital that would be fully disclosed in the Rules. The proposed capital requirements also would be risk-based and allow for fair and open access in that they would be based on the credit risks imposed by the Participant, such as its type of entity (including whether it is a non-U.S. entity). Accordingly, DTC's proposed capital requirements would establish objective, risk-based and publicly disclosed criteria for participation, which would permit fair and open access by Participants. The proposed capital requirements also would ensure that Participants maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at DTC and otherwise, which would help ensure that they have sufficient financial resources to meet

³⁰ 17 CFR 240.17Ad-22(e)(18).

the obligations arising from their participation at DTC. DTC's proposed redefinition of the Watch List and the elimination of the enhanced surveillance list would help DTC better allocate its resources for monitoring the credit risks posed by its Participants, including their ongoing compliance with DTC's proposed enhancements to its capital requirements. DTC's proposed clarification changes to the Rules, including new defined terms, would help ensure that the proposed changes to the capital requirements, Watch List, and enhanced surveillance list are clear and accurate, which would in turn help facilitate Participants' understanding of DTC's participation requirements and information related to participation. Therefore, DTC believes that its proposal to enhance its capital requirements for Participants, redefine the Watch List, and eliminate the enhanced surveillance list is consistent with Rule 17Ad-22(e)(18) under the Exchange Act.

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

DTC does not believe the proposed changes to enhance the capital requirements for its Participants will have an impact on competition because Participants largely already meet, and in most cases exceed, the proposed capital requirements. Nevertheless, DTC fully appreciates that for the few Participants that do not already meet the proposed requirements, the proposed rule change could have an impact upon competition because those Participants could be required to maintain capital in excess of their current capital levels. That impact could impose a burden on competition on some of those Participants because they may bear higher costs to raise capital in order to comply with the enhanced capital requirements. However, DTC does not believe the burden on competition would be significant because, again, only a few Participants do not already meet the proposed

requirements. In any event, to the extent there would be a burden on competition, DTC believes it would be necessary and appropriate in furtherance of the purposes of the Exchange Act, as permitted by Section 17A(b)(3)(I) thereunder.³¹

DTC believes the enhanced capital requirements are necessary because, in short, the current requirements are outdated. As noted above, the current minimum capital requirements for Participants have not been adjusted in over 20 years. Meanwhile, there have been significant changes to the industry (e.g., market structure, technology, and regulatory environment) within which DTC and all its Participants operate, exposing DTC and its Participants to more and different risks than 20 years ago.

There also have been significant Participant changes over the past 20 years. Numerous mergers, acquisitions, and new market entrants have created a diverse group of Participants that has expanded the credit-risk profiles that DTC must manage.

Moreover, as noted above, transaction values at DTC have increased significantly over the years.³² Although the increase does not present more risk to DTC directly, as DTC's services are nonguaranteed and fully collateralized, DTC does have an interest in ensuring that its Participants have a certain minimum amount of capital to help support the increased activity.

There also has been heightened focus on legal, operational, and cyber risk, given the devastating impact that they could have today. Appreciation of these greater risks have manifested into new regulatory requirements for certain industry participants,³³

³¹ 15 U.S.C. 78q-1(b)(3)(I).

³² See supra note 9.

³³ See, e.g., Basel Committee on Banking Supervision, Basel III Standards, supra note 5; Financial Stability Board, 2020 list of G-SIBs, supra note 6; U.S.

including DTC, requiring DTC to maintain greater capital amounts and deploy enhanced risk management tools.³⁴

While DTC believes Participants must understand the risks that their capitalization presents to DTC and be prepared to monitor their capitalization and alter their behavior in order to minimize that risk, as necessary, DTC also appreciates and understands that Participants must be able to plan for their capital requirements. That is why DTC would not implement the proposed changes to any of the enhanced capital requirements until one year after the Commission's approval of the proposal. During that one-year period, DTC would periodically provide Participants with estimates of their capital requirements. The deferred implementation for all Participants and the estimated capital requirements for Participants are designed to give Participants the opportunity to assess the impact of their enhanced capital requirements on their business profile and make any changes that they deem necessary.

DTC also believes the proposed changes are consistent with and would improve upon DTC's compliance with applicable regulatory requirements, as discussed above, including Section 17A(b)(3)(F) of the Exchange Act and Rules 17Ad-22(e)(4)(i) and (e)(18) promulgated thereunder.

Therefore, DTC believes the proposed changes to enhance the capital requirements for its Participants are appropriate in furtherance of the purposes of the

Department of the Treasury, Designations, Financial Market Utility Designations, supra note 7.

³⁴ See, e.g., CCAS, supra note 8.

Exchange Act, as permitted by Section 17A(b)(3)(I) thereunder,³⁵ as the proposed changes are purposely tailored and structured, provide for a one-year implementation period, and are consistent with applicable provisions of the Exchange Act and rules thereunder.

DTC does not believe that the proposed changes to redefine the Watch List and eliminate the enhanced surveillance list would impact competition. Redefining the Watch List and eliminating the enhanced surveillance list are simply intended to streamline and clarify these monitoring practices. If anything, by no longer automatically including Participants with a CRRM rating of 5 on the Watch List, as proposed, the change could promote competition for such Participants, as such Participants would no longer automatically be subject to increased scrutiny by DTC, including the possibility of increased financial and reporting obligations.

(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.³⁶ If any written comments are received, DTC will amend this filing to publicly file such comments as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting written comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4,

³⁵ 15 U.S.C. 78q-1(b)(3)(I).

³⁶ See supra note 25.

the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on *How to Submit Comments*, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

DTC reserves the right to not respond to any comments received.

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.

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 Exchange 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-2021-017 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-2021-017. 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-2021-017 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.³⁷

Secretary

³⁷ 17 CFR 200.30-3(a)(12).

Confidential Supporting Information

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Bold, underlined text indicates proposed additions.

~~Bold, strikethrough~~ text indicates proposed deletions.

RULES

BY-LAWS

ORGANIZATION CERTIFICATE

THE DEPOSITORY TRUST COMPANY

RULE 1

DEFINITIONS; GOVERNING LAW

[Changes to this Rule, as amended by File No. SR-DTC-2021-017, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 12 months from date of approval], these changes will be implemented and this legend will automatically be removed from this Rule.]

* * *

Certificated Security

The term “Certificated Security” has the meaning given to the term “certificated security” in Section 8-102 of the NYUCC.

CET1 Capital

The term “CET1 Capital” means an entity’s common equity tier 1 capital, calculated in accordance with such entity’s regulatory and/or statutory requirements.

* * *

Entitlement Order

The term “Entitlement Order” has the meaning given to the term “entitlement order” in Section 8-102 of the NYUCC. An instruction from a Participant or Pledgee to the Corporation with respect to a Delivery, Pledge, Release or Withdrawal of a Security credited to a Securities Account is an Entitlement Order.

Excess Net Capital

The term “Excess Net Capital” means a broker-dealer’s excess net capital, calculated in accordance with such broker-dealer’s regulatory and/or statutory requirements.

* * *

Tier 1 RBC Ratio

The term “Tier 1 RBC Ratio” means the ratio of an entity’s tier 1 capital to its total risk-weighted assets, calculated in accordance with such entity’s regulatory and/or statutory requirements.

Uncertificated Security

The term “Uncertificated Security” has the meaning given to the term “uncertificated security” in Section 8-102 of the NYUCC.

* * *

Watch List^[1]

The term “Watch List” means, at any time and from time to time, the list of Participants whose credit ratings derived from the Credit Risk Rating Matrix are 5, 6 or 7, as well as Participants that, based on the Corporation’s consideration of relevant factors, including those set forth in Section 10 of Rule 2, are deemed by the Corporation to pose a heightened risk to the Corporation and its Participants.

Well Capitalized

The term “Well Capitalized” shall have the meaning given that term in the capital adequacy rules and regulations of the Federal Deposit Insurance Corporation.

* * *

RULE 2

PARTICIPANTS AND PLEDGEEES

[Changes to this Rule, as amended by File No. SR-DTC-2021-017, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. These changes will be implemented on or prior to [date 90 days from date of approval]. The Corporation will issue an Important Notice when these changes are implemented, and this legend will automatically be removed from this Rule.]

* * *

Section 10.

(a) All Participants will be monitored and reviewed by the Corporation on an ongoing and periodic basis, which may include monitoring of news and market developments and review of financial reports and other public information.

- (b) (i) A Participant that is (A) qualified to be a Participant pursuant to (x) Rule 3, Section 1(d) and files the Consolidated Report of Condition and Income (“Call Report”) or (y) Rule 3, Section 1(h)(ii) and files the Financial and Operational Combined Uniform Single Report (“FOCUS Report”) or the equivalent with its regulator or (B) a non-U.S. bank or trust company qualified to be a Participant

[¹ The change to the defined term “Watch List” will not be subject to the 12-month implementation delay; rather, the change will be implemented on or prior to [date 90 days from date of approval]. The Corporation will issue an Important Notice when this change is implemented, and this footnote will automatically be removed from this Rule.]

pursuant to the Policy Statement on the Admission of Participants, Section 2, and that has audited financial data that is publicly available, will be assigned a credit rating by the Corporation in accordance with the Credit Risk Rating Matrix. Such Participant's credit rating will be reassessed each time the Participant provides the Corporation with requested information pursuant to Section 1 of Rule 2, or as may be otherwise required under the Rules and Procedures (including this Rule 2, Section 10).

- (ii) Because the factors used as part of the Credit Risk Rating Matrix may not identify all risks that a Participant specified in paragraph (b)(i) of this Section 10 may present to the Corporation, the Corporation may, in its discretion, override such Participant's credit rating derived from the Credit Risk Rating Matrix to downgrade the Participant. This downgrading may result in the Participant being placed on the Watch List, ~~and/or it may subject the Participant to enhanced surveillance~~ based on relevant factors, including those set forth in paragraph (d) below. The Corporation may also take such additional actions with regard to the Participant as are permitted by the Rules and Procedures.

(c) Participants other than those specified in paragraph (b)(i) of this Section 10 will not be assigned a credit rating by the Credit Risk Rating Matrix but may be placed on the Watch List ~~and/or may be subject to enhanced surveillance~~ based on relevant factors, including those set forth in paragraph (d) below, as the Corporation deems necessary to protect the Corporation and its Participants.

(d) The factors to be considered by the Corporation under paragraphs (b)(ii) and (c) of this Section 10 include, but are not limited to, (i) news reports and/or regulatory observations that raise reasonable concerns relating to the Participant, (ii) reasonable concerns around the Participant's liquidity arrangements, (iii) material changes to the Participant's organizational structure, (iv) reasonable concerns of the Corporation about the Participant's financial stability due to particular facts and circumstances, such as material litigation or other legal and/or regulatory risks, (v) failure of the Participant to demonstrate satisfactory financial condition or operational capability or if the Corporation has a reasonable concern regarding the Participant's ability to maintain applicable participation standards and (vi) failure of the Participant to provide information required by the Corporation to assess risk exposure posed by the Participant's activity (including information requested by the Corporation pursuant to Section 1 of this Rule 2).

(e) A Participant ~~being subject to enhanced surveillance or~~ being placed on the Watch List shall result in more thorough monitoring of the Participant's financial condition and/or operational capability, which could include, for example, on-site visits or additional due diligence information requests from the Corporation. In addition, the Corporation may require a Participant placed on the Watch List ~~and/or subject to enhanced surveillance~~ to make more frequent financial disclosures, including, without limitation, interim and/or pro forma reports. Participants that are ~~subject to enhanced~~

surveillance on the Watch List are also reported to the Corporation's management committees and regularly reviewed by a cross-functional team comprised of senior management of the Corporation. The Corporation may also take such additional actions with regard to any Participant (including a Participant placed on the Watch List ~~and/or subject to enhanced surveillance~~) as are permitted by the Rules and Procedures.

* * *

POLICY STATEMENTS ON THE ADMISSION OF PARTICIPANTS AND PLEDGEEES

[Changes to this Policy Statement, as amended by File No. SR-DTC-2021-017, are available at <https://www.dtcc.com/legal/sec-rule-filings>. These changes have been approved by the SEC but have not yet been implemented. On [date 12 months from date of approval], these changes will be implemented and this legend will automatically be removed from this Policy Statement.]

*Section 1. Policy Statement on the Admission of U.S. Entities as **Direct Depository Participants**;*

A. Qualification

~~DTC~~ Rules 2 and 3 set forth the basic standards for the admission of ~~DTC~~ Participants. These rules provide, among other things, that the admission of a Participant is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility, operational capability, and character at the time of its application and on an ongoing basis thereafter.

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

Any applicant that satisfies the qualifications for eligibility to become a Participant set forth under ~~subsections (d) or (h)(ii) of~~ Section 1 of Rule 3 must comply with minimum financial resource requirements in order to qualify ~~to be admitted, and continue for admission.~~ **Following an applicant's admission as a Participant, it shall be required to remain** in good standing, as a Participant, ~~as follows:~~ **meeting the required qualifications, financial responsibility, operational capability and character described in Section 1.B of this policy statement and in the Rules and Procedures.**

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

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

Except for organizations specifically enumerated in Section 17A(b)(3)(B) of the ~~Securities Exchange Act of 1934, as amended~~, unless an applicant ~~organization~~ is subject to regulatory agency oversight, it will not qualify for ~~admittance~~ **admission** inasmuch as the application of ~~DTC~~ **the Corporation**'s own resources could not provide an adequate substitute for the ~~kind level~~ of ~~continuing ongoing~~ regulatory oversight described **above in this Section 1.A.**

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

B. Financial Responsibility

The following financial requirements apply to applicants and Participants that are U.S. entities:

i. U.S. Banks and U.S. Trust Companies that are banks:

Any applicant or Participant that is a U.S. bank or a U.S. trust company that is a bank qualifying for admission under Section 1(d) of Rule 3 must (i) have and maintain at all times CET1 Capital of at least \$15 million and (ii) be Well Capitalized at all times.

ii. U.S. Trust Companies that are not banks:

Any applicant or Participant that is a U.S. trust company that is not a bank qualifying for admission under Section 1(d) of Rule 3 but that is a member of the Federal Reserve System or is subject to supervision or regulation pursuant to the provisions of federal or state banking laws must have and maintain at all times at least \$2 million in equity capital.

iii. U.S. Broker-Dealers:

Any applicant or Participant that is a U.S. broker-dealer qualifying for admission under Section 1(h)(ii) of Rule 3 must have and maintain at all times minimum Excess Net Capital of at least \$1 million.

iv. U.S. Central Securities Depositories (“CSDs”):

Any applicant or Participant that is a CSD qualifying for admission under Section 1(c) of Rule 3 must have and maintain at all times at least \$5 million in equity capital.

Any clearing corporation shall be deemed to be a CSD for the purposes of determining the applicant’s or Participant’s minimum financial requirements.

v. U.S. Securities Exchanges:

Any applicant or Participant that is a national securities exchange registered under the Exchange Act qualifying for admission under Section 1(h)(1) of Rule 3 must have and maintain at all times at least \$100 million in equity capital.

vi. U.S. Settling Bank:

Any Settling Bank or applicant to be a Settling Bank that, in accordance with such entity’s regulatory and/or statutory requirements, calculates a Tier 1 RBC Ratio must have a Tier 1 RBC Ratio at all times equal to or greater than the Tier 1 RBC Ratio that would be required for such Settling Bank or applicant to be Well Capitalized.

vii. Others:

Any U.S. entity applicant or Participant that is not otherwise addressed in this Section 1.B must maintain compliance with its regulator’s minimum financial requirements at all times. The Corporation may, based on information provided by or concerning a U.S. entity applicant or Participant, also assign minimum financial requirements for the U.S. entity applicant or Participant based on (i) how closely the applicant or Participant resembles an existing type of Participant and (ii) the

applicant's or Participant's risk profile. Any such assigned minimum financial requirements will be promptly communicated to, and discussed with, the applicant or Participant.

Notwithstanding anything to the contrary in this Section 1.B, an applicant or Participant must maintain compliance with its regulator's minimum financial requirements at all times.

Section 2. Policy Statement on the Admission of Non-U.S. Entities as ~~Direct Depository~~ Participants.

A. Qualification

This ~~The~~ policy permits entities that are organized in a country other than the United States and that are not otherwise subject to U.S. federal or state regulation ("non-U.S. entities") to be eligible to become ~~direct~~ **DTC Participant**s. Under the policy, ~~DTC~~ **the Corporation** will require that the non-U.S. entity execute the standard ~~DTC~~ Participant's Agreement and enter into an additional series of undertakings and agreements that are designed to address jurisdictional concerns, and to assure that ~~DTC~~ **the Corporation** is provided with audited financial information that is acceptable to ~~DTC~~ **the Corporation**. Certain of these criteria may be waived where inappropriate ~~to~~ **for** a particular **non-U.S. entity applicant or Participant** or class of **non-U.S. entity applicants (e.g., a foreign government, international or national central securities depositories) or Participants.**

Any non-U.S. entity applicant that satisfies the qualifications for eligibility to become a Participant set forth under Section 1 of Rule 3 must comply with minimum financial resource requirements in order to qualify for admission. Following a non-U.S. entity applicant's admission as a Participant, it shall be required to remain in good standing as a Participant, meeting the required qualifications, financial responsibility, operational capability and character described in Section 2.B of this policy statement and in the Rules and Procedures.

B. Financial Responsibility

The following financial requirements apply to applicants and Participants that are non-U.S. entities:

i. Non-U.S. Banks and Trust Companies:

Any applicant or Participant that is a non-U.S. bank or trust company (including a U.S. branch or agency) qualifying for admission under Section 1(h)(i) of Rule 3 must: (i) have and maintain at all times CET1 Capital of at least \$15 million, (ii) comply at all times with the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any domestic systemically important bank (D-SIB) or global systemically important bank (G-SIB) buffer, if applicable) and capital ratios required by its home country regulator, or, if greater, with such minimum capital requirements or capital ratios

standards promulgated by the Basel Committee on Banking Supervision, (iii) provide an attestation for itself, its parent bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator, (iv) provide, no less than annually and upon request by the Corporation, an attestation for the applicant or Participant, its parent bank and its parent bank holding company (as applicable) detailing the minimum capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) and capital ratios required by their home country regulator and (v) notify the Corporation: (a) within two Business Days of any of their capital requirements (including, but not limited to, any capital conservation buffer, countercyclical buffer, and any D-SIB or G-SIB buffer, if applicable) or capital ratios falling below any minimum required by their home country regulator; and (b) within 15 calendar days of any such minimum capital requirement or capital ratio changing.

ii. Non-U.S. Broker-Dealers:

Any applicant or Participant that is a non-U.S. broker-dealer qualifying for admission under Sections 1(h)(i) or 1(h)(ii) of Rule 3 must have and maintain at all times at least \$25 million in equity capital.

iii. Non-U.S. CSDs:

Any applicant or Participant that is a non-U.S. CSD qualifying for admission under Section 1(c) of Rule 3 must have and maintain at all times at least \$5 million in equity capital.

Any non-U.S. entity clearing corporation shall be deemed to be a CSD for the purposes of determining the applicant's or Participant's minimum financial requirements.

iv. Non-U.S. Securities Exchanges:

Any applicant or Participant that is a non-U.S. securities exchange or multilateral trading facility qualifying for admission under Section 1(h)(1) of Rule 3 must have and maintain at all times at least \$100 million in equity capital.

v. Others:

Any non-U.S. entity applicant or Participant that is not otherwise addressed in this Section 2.B must maintain compliance with its home country regulator's minimum financial requirements at all times. The Corporation may, based on information provided by or concerning a non-

U.S. entity applicant or Participant, also assign minimum financial requirements for the non-U.S. entity applicant or Participant based on (i) how closely the applicant or Participant resembles an existing type of Participant and (ii) the applicant's or Participant's risk profile. Any such assigned minimum financial requirements will be promptly communicated to, and discussed with, the applicant or Participant.

Notwithstanding anything to the contrary in this Section 2.B, a non-U.S. entity applicant or Participant must maintain compliance with its home country regulator's minimum financial requirements at all times.

C. Undertakings and Agreements

In addition to executing the standard ~~DTC Participants~~ **Participant's** Agreement, the ~~foreign non-U.S.~~ entity must agree to:

- ~~i.~~ **(a)** ~~in~~ **with** respect ~~of~~ **to** any action brought by ~~DTC~~ **the Corporation** to enforce the entity's obligations under the ~~Participants~~ **Participant's** Agreement;
- ~~(i)~~ **(a)** irrevocably waive all immunity from ~~DTC~~ **the Corporation**'s attachment of the entity's own assets in the U.S.;
- ~~(ii)~~ **(b)** irrevocably submit to the jurisdiction of a court in the U.S.;
- ~~(iii)~~ **(c)** irrevocably waive any objection to the laying of venue in a court in the U.S.; and
- ~~(iv)~~ **(d)** state that any judgment obtained against the ~~foreign non-U.S.~~ entity by ~~DTC~~ **the Corporation** may be enforced in the courts of any jurisdiction where the ~~foreign non-U.S.~~ entity or its property may be located, and that the ~~foreign non-U.S.~~ entity will irrevocably submit to the jurisdiction of each such courts;
- ~~ii.~~ **(b)** pay to ~~DTC~~ **the Corporation** a fee as specified in the Procedures relating to ~~DTC~~ **the Corporation** obtaining an opinion of foreign counsel satisfactory to ~~DTC~~ **the Corporation** providing, among other things, that the agreements described above may be enforced against the ~~foreign non-U.S.~~ entity in the courts of its home country or other jurisdictions where the entity or its property may be found*;
- ~~iii.~~ **(e)** designate a person in New York as its agent to receive service of process;
- ~~iv.~~ **(d)** provide to ~~DTC~~ **the Corporation**, for financial monitoring purposes, audited financial statements prepared in accordance with U.S. generally

* ~~DTC~~ **The Corporation** reserves the right to require the entity to deposit additional amounts to ~~DTC's~~ **the** Participants Fund and to post a letter of credit in an instance where ~~DTC~~ **the Corporation**, in its sole discretion, believes the entity presents legal risk.

accepted accounting principles or other generally accepted accounting principles that are satisfactory to the Corporation; and DTC. ~~In order to address the risk presented by the acceptance of financial statements prepared in non-U.S. GAAP, the existing minimum financial requirements for non-U.S. GAAP standards will each have a specific premium applied as follows:~~

- ~~(i) for financial statements prepared in accordance with International Financial Reporting Standards (“IFRS”), the Companies Act of 1985 (“UK GAAP”), or Canadian GAAP a premium of 1 ½ times the existing requirement;~~
 - ~~(ii) for financial statements prepared in accordance with a European Union (“EU”) country GAAP other than UK GAAP a premium of 5 times the existing requirement; and~~
 - ~~(iii) for financial statements prepared in accordance with any other type of GAAP a premium of 7 times the existing requirement.~~
- v. ~~(e)~~ provide all financial reports or other information requested by ~~DTC~~ the Corporation in English, with monetary amounts stated in U.S. dollar equivalents indicating the conversion rate and date used.

D. Regulatory Status of **Foreign Non-U.S.** Entity

In addition to the above requirements of Section 2, the non-U.S. entity must also:

- i.** ~~(a) The foreign entity would have to~~ be subject to regulation in its home country, and its home country regulator must have entered into a Bilateral Information Sharing Arrangement or Memorandum of Understanding with the ~~U.S. Securities and Exchange Commission~~ SEC regarding the sharing or exchange of information;
- ii.** ~~(b) The foreign entity must be in~~ maintain compliance with ~~the its home country regulator’s~~ financial reporting and responsibility standards ~~of its home country regulator.~~ at all times;
- iii.** ~~(c) The foreign entity must~~ be eligible to become a member of its home country ~~central securities depository~~ CSD, if any; and
- iv.** ~~(d) The Non-US entity must~~ provide ~~suffieient~~ sufficient the Corporation with information ~~to DTC in order~~ sufficient to evaluate ~~AML~~ anti-money laundering risk, including whether the ~~Non-US~~ non-U.S. entity in its home country jurisdiction is subject to ~~comparable~~ comparable AML anti-money laundering requirements ~~(comparable to those imposed in the US) in its home country jurisdiction~~ U.S.

E. FATCA Compliance

The **foreign non-U.S.** entity, if treated as a non-U.S. entity for federal income tax purposes, must satisfy the conditions set forth in the Rules of the Corporation with respect to compliance with The Foreign Account Tax Compliance Act, and the Treasury Regulations or other official interpretations thereunder, as in effect from time to time (collectively “FATCA”).

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