would be identified and described in its Recovery Plan, including the authority provided to it in the proposed Force Majeure Rule, would meet the criteria identified within guidance published by the Commission in connection with the adoption of Rule 17Ad–22(e)(3)(ii).[65]

Therefore, DTC believes the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad–22(e)(3)(ii).[66]

Rule 17Ad–22(e)(15)(ii) under the Act requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient LNA to cover potential general business losses so that DTC can continue operations and services as a going concern if those losses materialize, including by holding LNA equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency.[67] While the Capital Policy addresses how DTC holds LNA in compliance with these requirements, the Wind-down Plan would include an analysis that would estimate the amount of time and the costs to achieve a recovery or orderly wind-down of DTC's critical operations and services, and would provide that the Board review and approve this analysis and estimation annually. The Wind-down Plan would also provide that the estimate would be the ''Recovery/Wind-down Capital Requirement'' under the Capital Policy. Under that policy, the General Business Risk Capital Requirement, which is the sufficient amount of LNA that DTC should hold to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialize, is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement. Therefore, DTC believes the R&W Plan, as it interrelates with the Capital Policy, is consistent with Rule 17Ad–22(e)(15)(ii).[68]

III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its website of proposed changes that are implemented.

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2017–803 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2017–803. This file number should be included on the subject line if email 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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice 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–2017–803 and should be submitted on or before August 21, 2018.

By the Commission.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16708 Filed 8–3–18; 8:45 am]

BILLING CODE 8011–01–P

[65] *Supra* note 41.

[66] 17 CFR 240.17Ad–22(e)(3)(ii).

[67] *Id.* at 240.17Ad–22(e)(15)(ii).

[68] *Id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83746; File No. SR–DTC–2017–804]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Amendment No. 1 to an Advance Notice To Amend the Loss Allocation Rules and Make Other Changes

July 31, 2018.

On December 18, 2017, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–DTC–2017–804 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act'').[1] The

[1] 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively. On December 18, 2017, DTC filed the Advance Notice as a proposed rule change (SR–DTC–2017–022) with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder (''Proposed Rule Change''). (17 CFR 240.19b–4 and 17 CFR 240.19b–4, respectively.) The Proposed Rule Change was published in the **Federal Register** on January 8, 2018. *See* Securities Exchange Act Release No. 82426 (January 2, 2018), 83 FR 913 (January 8, 2018) (SR–DTC–2017–022). On February 8, 2018, the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change. *See*

Continued

notice of filing and extension of the review period of the Advance Notice was published for comment in the **Federal Register** on January 30, 2018.[2]

On April 10, 2018, the Commission required additional information from DTC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act, which tolled the Commission's period of review of the Advance Notice.[3] On June 28, 2018, DTC filed Amendment No. 1 to the Advance Notice to amend and replace in its entirety the Advance Notice as originally submitted on December 18, 2017, and on July 6, 2018, submitted a response to the Commission's request for additional information in consideration of the Advance Notice, which added a further 60-days to the review period pursuant to Section 806(e)(1)(E) and (G) of the Clearing Supervision Act.[4]

The Advance Notice, as amended by Amendment No. 1, is described in Items I and II below, which Items have been prepared by DTC. The Commission is publishing this notice to solicit comments on the Advance Notice, as amended by Amendment No. 1, from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is filed by The Depository Trust Company (''DTC'') in connection with proposed modifications to the Rules, By-Laws and Organization Certificate of DTC (''Rules'').[5] The proposed rule change would revise Rule 4 (Participants Fund and Participants Investment) to (i) provide separate sections for (x) the use of the Participants Fund as a liquidity resource for settlement and (y) loss allocation among Participants of losses and liabilities arising out of Participant defaults or due to non-default events; and (ii) enhance the resiliency of DTC's loss allocation process so that DTC can take timely action to contain multiple loss events that occur in succession during a short period of time. In connection therewith, the proposed rule change would (i) align the loss allocation rules of the three clearing agencies of The Depository Trust & Clearing Corporation (''DTCC''), namely DTC, National Securities Clearing Corporation (''NSCC''), and Fixed Income Clearing Corporation (''FICC'') (collectively, the ''DTCC Clearing Agencies''), so as to provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies, (ii) increase transparency and accessibility of the provisions relating to the use of the Participants Fund as a liquidity resource for settlement and the loss allocation provisions, by enhancing their readability and clarity, (iii) require a defined corporate contribution to losses and liabilities that are incurred by DTC prior to any allocation among Participants, whether such losses and liabilities arise out of Participant defaults or due to non-default events, (iv) reduce the time within which DTC is required to return a former Participant's Actual Participants Fund Deposit, and (v) make conforming and technical changes. In addition, the proposed rule change would amend Section 6 of Rule 4 to clarify the requirements for a Participant that wants to voluntarily terminate its business with DTC, and to align, where appropriate, with the proposed voluntary termination provisions of the NSCC and FICC rules. The proposed rule change would also amend Rule 1 (Definitions; Governing Law) to add cross-references to terms that would be defined in proposed Rule 4, and would amend Rule 2 (Participants and Pledgees), in relevant part, to align with proposed Section 6 of Rule 4, as discussed below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

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

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

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

(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act

Description of Amendment No. 1

This filing constitutes Amendment No. 1 (''Amendment'') to the Advance Notice previously filed by DTC on December 18, 2017.[6] This Amendment amends and replaces the Advance Notice in its entirety. DTC submits this Amendment in order to further clarify the operation of the proposed rule changes on loss allocation by providing additional information and examples. This Amendment would also clarify the requirements for a Participant that wants to voluntarily terminate its business with DTC. In particular, this Amendment would:

(i) Clarify that the term ''Participant Default,'' referring to the failure of a Participant to satisfy any obligation to

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Securities Exchange Act Release No. 82670 (February 8, 2018), 83 FR 6626 (February 14, 2018) (SR–DTC–2017–022; SR–FICC–2017–022; SR–NSCC–2017–018). On March 20, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change. *See* Securities Exchange Act Release No. 82914 (March 20, 2018), 83 FR 12978 (March 26, 2018) (SR–DTC–2017–022). On June 25, 2018, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change. Therefore, September 5, 2018 is the date by which the Commission should either approve or disapprove the Proposed Rule Change. *See* Securities Exchange Act Release Nos. 83510 (June 25, 2018), 83 FR 30791 (June 29, 2018) (SR–DTC–2017–022; SR–FICC–2017–022; SR–NSCC–2017–018). On June 28, 2018, DTC filed Amendment No. 1 to the Proposed Rule Change. *See* Securities Exchange Act Release No. 83629 (July 13, 2018), 83 FR 34246 (July 19, 2018) (SR–DTC–2017–022). As of the date of this release, the Commission has not received any comments on the Proposed Rule Change.

[2] Securities Exchange Act Release No. 82582 (January 24, 2018), 83 FR 4297 (January 30, 2018) (SR–DTC–2017–804). Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. 12 U.S.C. 5465(e)(1)(H). The Commission found that the Advance Notice raised complex issues and, accordingly, extended the review period of the Advance Notice for an additional 60 days until April 17, 2018, pursuant to Section 806(e)(1)(H). *Id.*

[3] 12 U.S.C. 5465(e)(1)(D); *See* Memorandum from the Office of Clearance and Settlement Supervision, Division of Trading and Markets, titled ''Commission's Request for Additional Information,'' *available at http://www.sec.gov/rules/sro/dtc-an.shtml.*

[4] To promote the public availability and transparency of its post-notice amendment, DTC submitted a copy of Amendment No. 1 through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 1 has been posted on the Commission's website at *http://www.sec.gov/rules/sro/dtc-an.shtml* and thus been publicly available since June 29, 2018. 12 U.S.C. 5465(e)(1)(E) and (G); *see* Memorandum from the Office of Clearance and Settlement Supervision, Division of Trading and Markets, titled ''Response to the Commission's Request for Additional Information,'' *available at http://www.sec.gov/rules/sro/dtc-an.shtml.*

[5] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[6] *See* Securities Exchange Act Release No. 82582 (January 24, 2018), 83 FR 4297 (January 30, 2018) (SR–DTC–2017–804).

DTC, includes the failure of a Defaulting Participant to satisfy its obligations as provided in Rule 9(B).[7]

(ii) Add the defined term ''CTA Participant,'' which would be defined as a Participant for which the Corporation has ceased to act pursuant to Rule 10 (Discretionary Termination), Rule 11 (Voluntary Termination) or Rule 12 (Insolvency).

(iii) Clarify which Participants would be subject to loss allocation with respect to Default Loss Events (defined below) and Declared Non-Default Loss Events (defined below) occurring during an Event Period (defined below). Specifically, pursuant to the Amendment, proposed Section 5 of Rule 4 would provide that each Participant that is a Participant on the first day of an Event Period would be obligated to pay its pro rata share of losses and liabilities arising out of or relating to each Default Loss Event (other than a Default Loss Event with respect to which it is the CTA Participant) and each Declared Non-Default Loss Event occurring during the Event Period. In addition, proposed Section 5 of Rule 4 would make it clear that any CTA Participant for which DTC ceases to act on a non-Business Day, triggering an Event Period that commences on the next Business Day, would be deemed to be a Participant on the first day of that Event Period.

(iv) Clarify the obligations and Loss Allocation Cap (defined below) of a Participant that terminates its business with DTC in respect of a loss allocation round. Specifically, pursuant to the Amendment, the Participant would nevertheless remain obligated for its pro rata share of losses and liabilities with respect to any Event Period for which it is otherwise obligated under Rule 4; however, its aggregate obligation would be limited to the amount of its Loss Allocation Cap, as fixed in the loss allocation round for which it withdrew.

(v) Clarify that each CTA Participant would be obligated to DTC for the entire amount of any loss or liability incurred by DTC arising out of or relating to any Default Loss Event with respect to such CTA Participant. To the extent that such loss or liability is not satisfied pursuant to proposed Section 3 of Rule 4, DTC would apply a Corporate Contribution and charge the remaining amount of such loss or liability as provided in proposed Section 5 of Rule 4.

(vi) Clarify that, although a CTA Participant would not be allocated a ratable share of losses and liabilities arising out of or relating to its own Default Loss Event, it would remain obligated to DTC for such losses and liabilities. More particularly, pursuant to the Amendment, the proposed rule change would provide that no loss allocation under proposed Rule 4 would constitute a waiver of any claim DTC may have against a Participant for any losses or liabilities to which the Participant is subject under DTC Rules and Procedures, including, without limitation, any loss or liability to which it may be subject under proposed Rule 4.

(vii) For enhanced transparency and to align, where appropriate, with the rules of NSCC and FICC, clarify the process for the Voluntary Retirement (defined below) of a Participant.

In addition, pursuant to the Amendment, DTC is making other clarifying and technical changes to the proposed rule change, as proposed herein.

Nature of the Proposed Change

The proposed rule change would revise Rule 4 (Participants Fund and Participants Investment) to (i) provide separate sections for (x) the use of the Participants Fund as a liquidity resource for settlement and (y) loss allocation among Participants of losses and liabilities arising out of Participant defaults or due to non-default events; and (ii) enhance the resiliency of DTC's loss allocation process so that DTC can take timely action to contain multiple loss events that occur in succession during a short period of time. In connection therewith, the proposed rule change would (i) align the loss allocation rules of the DTCC Clearing Agencies, so as to provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies,[8] (ii) increase transparency and accessibility of the provisions relating to the use of the Participants Fund as a liquidity resource for settlement and the loss allocation provisions, by enhancing their readability and clarity, (iii) require a defined corporate contribution to losses and liabilities that are incurred by DTC prior to any allocation among Participants, whether such losses and liabilities arise out of Participant defaults or due to non-default events, (iv) reduce the time within which DTC is required to return a former Participant's Actual Participants Fund Deposit, and (v) make conforming and technical changes. In addition, the proposed rule change would amend Section 6 of Rule 4 to clarify the requirements for a Participant that wants to voluntarily terminate its business with DTC, and to align, where appropriate, with the proposed voluntary termination provisions of the NSCC and FICC rules. The proposed rule change would also amend Rule 1 (Definitions; Governing Law) to add cross-references to terms that would be defined in proposed Rule 4, and would amend Rule 2 (Participants and Pledgees), in relevant part, to align with proposed Section 6 of Rule 4, as discussed below.

(i) Background

Current Rule 4 provides a single set of tools and a common process for the use of the Participants Fund for both liquidity purposes to complete settlement among non-defaulting Participants, if one or more Participants fails to settle,[9] and for the satisfaction of

[7] Although Rule 4 is being amended to align with NSCC and FICC, where appropriate, a ''Defaulting Participant'' is not analogous to a ''Defaulting Member'' under the proposed NSCC and FICC rules. This is because the term ''Defaulting Participant'' already has a specific meaning pursuant to Rule 9(B) which is necessary and appropriate to that Rule. Instead, the proposed new term ''CTA Participant'' would be analogous to the NSCC and FICC proposed term ''Defaulting Member.''

[8] On December 18, 2017, NSCC and FICC submitted proposed rule changes and advance notices to enhance their rules regarding allocation of losses. Securities Exchange Act Release Nos. 82428 (January 2, 2018), 83 FR 897 (January 8, 2018) (SR–NSCC–2017–018), and 82584 (January 24, 2018), 83 FR 4377 (January 30, 2018) (SR–NSCC–2017–806); Securities Exchange Act Release Nos. 82427 (January 2, 2018), 83 FR 854 (January 8, 2018) (SR–FICC–2017–022) and 82583 (January 24, 2018), 83 FR 4358 (January 30, 2018) (SR–FICC–2017–806). On June 28, 2018, NSCC and FICC filed proposed amendments to the proposed rule changes and advance notices with the Commission and the Board of Governors of the Federal Reserve System, respectively, *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[9] DTC is a central securities depository providing key services that are structured to support daily settlement of book-entry transfers of securities, in accordance with its Rules and Procedures. In particular, Rule 9(A) (Transactions in Securities and Money Payments), Rule 9(B) (Transactions in Eligible Securities), Rule 9(C) (Transactions in MMI Securities), Rule 9(D) (Settling Banks), and Rule 9(E) (Clearing Agency Agreements) provide the mechanism to achieve a ''DVP Model 2 Deferred Net Settlement System'' (as defined in Annex D of the Principles for Financial Market Infrastructures issued by The Committee on Payments and Market Infrastructures and the Technical Committee of the International Organization of Securities Commissions (April 2012), *available at https://www.bis.org/cpmi/publ/d101a.pdf.* Briefly, in relevant part, Rule 9(B) provides that ''[e]ach Participant and the Corporation shall settle the balance of the Settlement Account of the Participant on a daily basis in accordance with these Rules and the Procedures. Except as provided in the Procedures, the Corporation shall not be obligated to make any settlement payments to any Participants until the Corporation has received all of the settlement payments that Settling Banks and Participants are required to make to the Corporation.'' *Supra* note 5. Pursuant to these provisions of Rule 9(B), securities will be delivered to Participants that satisfy their settlement obligations in the end-of-day net settlement process.

losses and liabilities due to Participant defaults [10] or certain other losses or liabilities incident to the business of DTC.[11] The proposed rule change would amend and add provisions to separate use of the Participants Fund as a liquidity resource to complete settlement, reflected in proposed Section 4 of Rule 4, and for loss allocation, reflected in proposed Section 5 of Rule 4. There wouldn't be any substantive change to the rights and obligations of Participants under proposed Sections 4 and 5 of Rule 4.[12]

The proposed rule changes reinforce the distinction, conceptual and sequential, between the mechanisms to complete settlement on a Business Day and to mutualize losses that may result from a failure to settle, or other loss-generating events. The change is also proposed so that the loss allocation provisions of proposed Section 5 of Rule 4 more closely align to similar provisions of the NSCC and FICC rules, to the extent appropriate.

The proposed rule change would retain the core principles of current Rule 4 for both application of the Participants Fund as a liquidity resource to complete settlement and for loss allocation, while clarifying or refining certain provisions and introducing certain new concepts relating to loss allocation. In connection with the use of the Participants Fund as a liquidity resource to complete settlement when a Participant fails to settle, the proposed rule would introduce the term ''pro rata settlement charge,'' for the use of the Participants Fund to complete settlement as apportioned among non-defaulting Participants. The existing term generically applied to such a use or to a loss allocation is simply a ''pro rata charge''.[13]

For loss allocation, the proposed rule change, like current Rule 4, would continue to apply to both default and non-default losses and liabilities, and, to the extent allocated among Participants, would be charged ratably in accordance with their Required Participants Fund Deposits.[14] A new provision would require DTC to contribute to a loss or liability, either arising from a Participant default or non-default event, prior to any allocation among Participants. The proposed rule change would also introduce the new concepts of an ''Event Period'' and a ''round'' to address the allocation of losses arising from multiple events that occur in succession during a short period of time. These proposed rule changes would be substantially similar in these respects to analogous proposed rule changes for NSCC and FICC.

Current Rule 4 Provides for Application of the Participants Fund Through Pro Rata Charges

Current Rule 4 addresses the Participants Fund and Participants Investment requirements and, among other things, the permitted uses of the Participants Fund and Participants Investment.[15] Pursuant to current Rule 4, DTC maintains a cash Participants Fund. The Required Participants Fund Deposit for any Participant is based on the liquidity risk it poses to DTC relative to other Participants.

Default of a Participant. Under current Section 3 of Rule 4, if a Participant is obligated to DTC and fails to satisfy any obligation, DTC may, in such order and in such amounts as DTC shall determine in its sole discretion: (a) Apply some or all of the Actual Participants Fund Deposit of such Participant to such obligation; (b) Pledge some or all of the shares of Preferred Stock of such Participant to its lenders as collateral security for a loan under the End-of-Day Credit Facility; [16] and/or (c) sell some or all of the shares of Preferred Stock of such Participant to other Participants (who shall be required to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and apply the proceeds of such sale to satisfy such obligation.

Application of the Participants Fund. Current Section 4 of Rule 4 addresses the application of the Participants Fund if DTC incurs a loss or liability, which would include application of the Participants Fund to complete settlement [17] or the allocation of losses once determined, including non-default losses. For both liquidity and loss scenarios, current Section 4 of Rule 4

[10] The failure of a Participant to satisfy its settlement obligation constitutes a liability to DTC. Insofar as DTC undertakes to complete settlement among Participants other than the Participant that failed to settle, that liability may give rise to losses as well. DTC is designed to provide settlement finality at the end of the day and notwithstanding the failure to settle of a Participant or Affiliated Family of Participants with the largest net settlement obligation, a ''cover 1'' standard. There are no reversals of deliveries; a Participant that fails to settle will not receive securities that were intended to be delivered to it, because it has not paid for them. These securities, among others, serve as collateral for DTC to use to secure a borrowing of funds in order, in accordance with its Rules and Procedures, to settle with non-defaulting Participants (including those delivering Participants that delivered to the non-settling Participant). To this end, delivery versus payment transactions (''DVP'') will not be processed intraday to a receiving Participant that will incur a related payment obligation unless that Participant satisfies risk management controls. The two risk management controls are the Collateral Monitor and Net Debit Cap. Net Debit Caps limit the potential settlement obligation of any Participant to an amount for which DTC has sufficient liquidity resources to cover this risk. The Collateral Monitor tests whether a Participant has sufficient collateral for DTC to pledge or liquidate if that Participant were to fail to meet its settlement obligation. To process a DVP, the value of the delivery that is debited to the receiving Participant cannot cause the net debit balance of the Participant to exceed its Net Debit Cap, and the amount of the net debit balance after giving effect to the debit must be fully collateralized. Accordingly, DTC may incur a liability or loss whenever it completes settlement despite the failure to settle of a Participant, or Affiliated Family of Participants, because it is either using the Participants Fund deposits of other Participants in the manner specified in existing and proposed Rule 4 and/or borrowing the necessary funds. DTC obligations under the line of credit include the obligation to pay interest on loans outstanding and to repay the loan; the Participants Fund is designed as not only a direct liquidity resource but as a back-up liquidity resource to satisfy these liabilities. As to the Participants Fund itself, DTC undertakes in Section 9 of existing and proposed Rule 4, to restore funds to Participants whose deposits may have been charged if there is ultimately any excess recovery. It should be noted that the Defaulting Participant remains principally obligated for all losses, costs and expenses associated with its Participant Default and, so, a recovery out of the estate of a Defaulting Participant is at least a hypothetical possibility.

[11] Section 1(f) of Rule 4 defines the term ''business'' with respect to DTC as ''the doing of all things in connection with or relating to the Corporation's performance of the services specified in the first and second paragraphs of Rule 6 or the cessation of such services.'' *Supra* note 5.

[12] It may be noted that absent extreme circumstances, DTC believes that it is unlikely that DTC would need to act under proposed Sections 4 or 5 of Rule 4.

[13] *See* Rule 4, Section 5, *supra* note 5.

[14] It may be noted that for NSCC and FICC, the proposed rule changes for loss allocation include a ''look-back'' period to calculate a member's pro rata share and cap. The concept of a look-back or average is already built into DTC's calculation of Participants Fund requirements, which are based on a rolling sixty (60) day average of a Participant's six highest intraday net debit peaks.

[15] Each Participant is required to invest in DTC Series A Preferred Stock, ratably on a basis calculated in substantially the same manner as the Required Participants Fund Deposit. The Preferred Stock constitutes capital of DTC and is also available for use as provided in current and proposed Section 3 of Rule 4. This proposed rule change does not alter the Required Preferred Stock Investment.

[16] As part of its liquidity risk management regime, DTC maintains a 364-day committed revolving line of credit with a syndicate of commercial lenders, renewed every year. The committed aggregate amount of the End-of-Day Credit Facility (currently $1.9 billion) together with the Participants Fund constitute DTC's liquidity resources for settlement. Based on these amounts, DTC sets Net Debit Caps that limit settlement obligations.

[17] In contrast to NSCC and FICC, DTC is not a central counterparty and does not guarantee obligations of its membership. The Participants Fund is a mutualized pre-funded liquidity and loss resource. As such, in contrast to NSCC and FICC, DTC does not have an obligation to ''repay'' the Participants Fund, and the application of the Participants Fund does not convert to a loss. *See supra* note 10.

provides that an application of the Participants Fund would be apportioned among Participants ratably in accordance with their Required Participants Fund Deposits, less any additional amount that a Participant was required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A).[18] It also provides for the optional use of an amount of DTC's retained earnings and undivided profits.

After the Participants Fund is applied pursuant to current Section 4, DTC must promptly notify each Participant and the Commission of the amount applied and the reasons therefor.

Current Rule 4 further requires Participants whose Actual Participants Fund Deposits have been ratably charged to restore their Required Participants Fund Deposits, if such charges create a deficiency. Such payments are due upon demand. Iterative pro rata charges relating to the same loss or liability are permitted in order to satisfy the loss or liability.

Rule 4 currently provides that a Participant may, within ten (10) Business Days after receipt of notice of any pro rata charge, notify DTC of its election to terminate its business with DTC, and the exposure of the terminating Participant for pro rata charges would be capped at the greater of (a) the amount of its Aggregate Required Deposit and Investment, as fixed immediately prior to the time of the first pro rata charge, plus 100% of the amount thereof, or (b) the amount of all prior pro rata charges attributable to the same loss or liability with respect to which the Participant has not timely exercised its right to terminate.

Overview of the Proposed Rule Changes

A. Application of Participants Fund to Participant Default and for Settlement

Proposed Section 3 of Rule 4 would retain the concept that when a Participant is obligated to DTC and fails to satisfy such obligation, which would be defined as a ''Participant Default,'' DTC may apply the Actual Participants Fund Deposit of the Participant to such obligation to satisfy the Participant Default. The proposed rule change would reflect that the defined term ''Participant Default,'' referring to the failure of a Participant to satisfy any obligation to DTC, includes the failure of a Defaulting Participant to satisfy its obligations as provided in Rule 9(B) (where ''Defaulting Participant'' is defined). The proposed definition of ''Participant Default'' is for drafting clarity and use in related provisions of proposed Rule 4.

Proposed Section 4 would address the situation of a Defaulting Participant failure to settle (which is one type of Participant Default) if the application of the Actual Participants Fund Deposit of that Defaulting Participant, pursuant to proposed Section 3, is not sufficient to complete settlement among Participants other than the Defaulting Participant (each, a ''non-defaulting Participant'').[19]

Proposed Section 4 would expressly state that the Participants Fund shall constitute a liquidity resource which may be applied by DTC, in such amounts as it may determine, in its sole discretion, to fund settlement among non-defaulting Participants in the event of the failure of a Defaulting Participant to satisfy its settlement obligation on any Business Day. Such an application of the Participants Fund would be charged ratably to the Actual Participants Fund Deposits of the non-defaulting Participants on that Business Day. The pro rata charge per non-defaulting Participant would be based on the ratio of its Required Participants Fund Deposit to the sum of the Required Participants Fund Deposits of all such Participants on that Business Day (excluding any Additional Participants Fund Deposits in both the numerator and denominator of such ratio). The proposed rule change would identify this as a ''pro rata settlement charge,'' in order to distinguish application of the Participants Fund to fund settlement from pro rata loss allocation charges that would be established in proposed Section 5 of Rule 4.

The calculation of each non-defaulting Participant's pro rata settlement charge would be similar to the current Section 4 calculation of a pro rata charge except that, for greater simplicity, it would not include the current distinction for common members of another clearing agency pursuant to a Clearing Agency Agreement.[20] For enhanced clarity as to the date of determination of the ratio, it would be based on the Required Participants Fund Deposits as fixed on the Business Day of the application of the Participants Fund, as opposed to the current language ''at the time the loss or liability was discovered.'' [21]

The proposed rule change would retain the concept that requires DTC, following the application of the Participants Fund to complete settlement, to notify each Participant and the Commission of the charge and the reasons therefor (''Settlement Charge Notice'').

The proposed rule change also would retain the concept of providing each non-defaulting Participant an opportunity to elect to terminate its business with DTC and thereby cap its exposure to further pro rata settlement charges. The proposed rule change would shorten the notification period for the election to terminate from ten (10) Business Days to five (5) Business Days,[22] and would also change the beginning date of such notification period from the receipt of the notice to the date of the issuance of the Settlement Charge Notice.[23] A Participant that elects to terminate its business with DTC would, subject to its cap, remain responsible for (i) its pro rata settlement charge that was the subject of the Settlement Charge Notice

[18] Section 2 of Rule 9(A) provides, in part, ''At the request of the Corporation, a Participant or Pledgee shall immediately furnish the Corporation with such assurances as the Corporation shall require of the financial ability of the Participant or Pledgee to fulfill its commitments and shall conform to any conditions which the Corporation deems necessary for the protection of the Corporation, other Participants or Pledgees, including deposits to the Participants Fund . . .'' *Supra* note 5. Pursuant to the proposed rule change, the additional amount that a Participant is required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A) would be defined as an ''Additional Participants Fund Deposit.'' This is not a new concept, only the addition of a defined term for greater clarity.

[19] As described above, proposed Rule 4 splits the liquidity and loss provisions to more closely align to similar loss allocation provisions in NSCC and FICC rules. Pursuant to the proposed rule change, DTC would also align, where appropriate, the liquidity and loss provisions within proposed Rule 4. DTC would retain the existing Rule 4 concepts of calculating the ratable share of a Participant, charging each non-defaulting Participant a pro rata share of an application of the Participants Fund to complete settlement, providing notice to Participants of such charge, and providing each Participant the option to cap its liability for such charges by electing to terminate its business with DTC. However, pursuant to the proposed rule change, DTC would modify these concepts and certain associated processes to more closely align with the analogous proposed loss allocation provisions in proposed Rule 4 (*e.g.,* Loss Allocation Notice, Loss Allocation Termination Notification Period, and Loss Allocation Cap).

[20] Rule 4, Section 4(a)(1), *supra* note 5. DTC has determined that this option is unnecessary because, in practice, DTC would never have liability under a Clearing Agency Agreement that exceeds the excess assets of the Participant that defaulted.

[21] DTC believes that this change would provide an objective date that is more appropriate for the application of the Participants Fund to complete settlement, because the ''time the loss or liability was discovered'' would necessarily have to be the day the Participants Fund was applied to complete settlement.

[22] DTC believes this shorter period would be sufficient for a Participant to decide whether to give notice to terminate its business with DTC in response to a settlement charge. In addition, a five (5) Business Day pro rata settlement charge notification period would conform to the proposed loss allocation notification period in this proposed rule change and in the proposed rule changes for NSCC and FICC. *See infra* note 37.

[23] DTC believes that setting the start date of the notification period to an objective date would enhance transparency and provide a common timeframe to all affected Participants.

and (ii) all other pro rata settlement charges until the Participant Termination Date (as defined below and in the proposed rule change). The proposed cap on pro rata settlement charges of a Participant that has timely notified DTC of its election to terminate its business with DTC would be the amount of its Aggregate Required Deposit and Investment, as fixed on the day of the pro rata settlement charge that was the subject of the Settlement Charge Notice, plus 100% of the amount thereof (''Settlement Charge Cap''). The proposed Settlement Charge Cap would be no greater than the current cap.[24]

The pro rata application of the Actual Participants Fund Deposits of non-defaulting Participants to complete settlement when there is a Participant Default is not the allocation of a loss. A pro rata settlement charge would relate solely to the completion of settlement. New proposed loss allocation concepts described below, including, but not limited to, a ''round,'' ''Event Period,'' and ''Corporate Contribution,'' would not apply to pro rata settlement charges.[25]

B. Changes To Enhance Resiliency of DTC's Loss Allocation Process

In order to enhance the resiliency of DTC's loss allocation process and to align, to the extent practicable and appropriate, its loss allocation approach to that of the other DTCC Clearing Agencies, DTC proposes to introduce certain new concepts and to modify other aspects of its loss allocation waterfall. The proposed rule change would adopt an enhanced allocation approach for losses, whether arising from Default Loss Events or Declared Non-Default Loss Events (as defined below and in the proposed rule change). In addition, the proposed rule change would clarify the loss allocation process as it relates to losses arising from or relating to multiple default or non-default events in a short period of time.

Accordingly, DTC is proposing four (4) key changes to enhance DTC's loss allocation process:

(1) Mandatory Corporate Contribution

Current Section 4 of Rule 4 provides that if there is an unsatisfied loss or liability, DTC may, in its sole discretion and in such amount as DTC would determine, ''charge the existing retained earnings and undivided profits'' of DTC.

Under the proposed rule change, DTC would replace the discretionary application of an unspecified amount of retained earnings and undivided profits with a mandatory, defined Corporate Contribution (as defined below and in the proposed rule change). The Corporate Contribution would be used for losses and liabilities that are incurred by DTC with respect to an Event Period (as defined below and in the proposed rule change), whether arising from a Default Loss Event or Declared Non-Default Loss Event, before the allocation of losses to Participants.

The proposed ''Corporate Contribution'' would be defined to be an amount equal to fifty percent (50%) of DTC's General Business Risk Capital Requirement.[26] DTC's General Business Risk Capital Requirement, as defined in DTC's Clearing Agency Policy on Capital Requirements,[27] is, at a minimum, equal to the regulatory capital that DTC is required to maintain in compliance with Rule 17Ad–22(e)(15) under the Securities Exchange Act of 1934, as amended (the ''Act'').[28] The proposed Corporate Contribution would be held in addition to DTC's General Business Risk Capital Requirement.

The proposed Corporate Contribution would apply to losses arising from Default Loss Events and Declared Non-Default Loss Events, and would be a mandatory contribution of DTC prior to any allocation among Participants.[29] As proposed, if the proposed Corporate Contribution is fully or partially used against a loss or liability relating to an Event Period, the Corporate Contribution would be reduced to the remaining unused amount, if any, during the following two hundred fifty (250) Business Days in order to permit DTC to replenish the Corporate Contribution.[30] To ensure transparency, Participants would receive notice of any such reduction to the Corporate Contribution.

By requiring a defined contribution of DTC corporate funds towards losses and liabilities arising from Default Loss Events and Declared Non-Default Loss Events, the proposed rule change would limit Participant obligations to the extent of such Corporate Contribution and thereby provide greater clarity and transparency to Participants as to the calculation of their exposure to losses and liabilities.

Proposed Rule 4 would also further clarify that DTC can voluntarily apply amounts greater than the Corporate Contribution against any loss or liability (including non-default losses) of DTC, if the Board of Directors, in its sole discretion, believes such to be appropriate under the factual situation existing at the time.

The proposed rule changes relating to the calculation and mandatory application of the Corporate

[24] Current Section 8 of Rule 4 provides for a cap that is equal to the greater of (a) the amount of its Aggregate Required Deposit and Investment, as fixed immediately prior to the time of the first pro rata charge, plus 100% of the amount thereof, or (b) the amount of all prior pro rata charges attributable to the same loss or liability with respect to which the Participant has not timely exercised its right to limit its obligation as provided above. *Supra* note 5. The alternative limit in clause (b) would be eliminated in proposed Section 8(a) in favor of a single defined standard.

[25] Proposed Sections 3, 4 and 5 of Rule 4 together relate, in whole or in part, to what may happen when there is a Participant Default. Proposed Section 3 is the basic provision of remedies if a Participant fails to satisfy an obligation to DTC. Proposed Section 4 is a specific remedy for a failure to settle by a Defaulting Participant, *i.e.,* a specific type of Participant Default. Proposed Section 5 is also a remedial provision for a Participant Default when, additionally, DTC ceases to act for the Participant and there are remaining losses or liabilities. If a Participant Default occurs, the application of proposed Section 3 would be required, the application of proposed Section 4 would be at the discretion of DTC. Whether or not proposed Section 4 has been applied, once there is a loss due to a Participant Default and DTC ceases to act for the Participant, proposed Section 5 would apply. *See supra* note 10.

A principal type of Participant Default is a failure to settle. A Participant's obligation to pay any amount due in settlement is secured by Collateral of the Participant. When the Defaulting Participant fails to pay its settlement obligation, under Rule 9(B), Section 2, DTC has the right to Pledge or sell such Collateral to satisfy the obligation. *Supra* note 5. (It is more likely that DTC would borrow against the Collateral to complete settlement on the Business Day, because it is unlikely to be able to liquidate Collateral for same day funds in time to settle on that Business Day.) If DTC Pledges the Collateral to secure a loan to fund settlement (*e.g.,* under the End-of-Day Credit Facility), the Collateral would have to be sold to obtain funds to repay the loan. In any such sale of the Collateral, there is a risk, heightened in times of market stress, that the proceeds of the sale would be insufficient to repay the loan. That deficiency would be a liability or loss to which proposed Section 5 of Rule 4 would apply, *i.e.,* a Default Loss Event.

[26] DTC calculates its General Business Risk Capital Requirement as the amount equal to the greatest of (i) an amount determined based on its general business profile, (ii) an amount determined based on the time estimated to execute a recovery or orderly wind-down of DTC's critical operations, and (iii) an amount determined based on an analysis of DTC's estimated operating expenses for a six (6) month period.

[27] *See* Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR–DTC–2017–003).

[28] 17 CFR 240.17Ad–22(e)(15).

[29] The proposed rule change would not require a Corporate Contribution with respect to a pro rata settlement charge. However, as discussed above, if, after a Participant Default, the proceeds of the sale of the Collateral of the Participant are insufficient to repay the lenders under the End-of-Day Credit Facility, and DTC has ceased to act for the Participant, the shortfall would be a loss arising from a Default Loss Event, subject to the Corporate Contribution.

[30] DTC believes that two hundred fifty (250) Business Days would be a reasonable estimate of the time frame that DTC would require to replenish the Corporate Contribution by equity in accordance with DTC's Clearing Agency Policy on Capital Requirements, including a conservative additional period to account for any potential delays and/or unknown exigencies in times of distress.

Contribution are set forth in proposed Section 5 of Rule 4.

(2) Introducing an Event Period

The proposed rule change would clearly define the obligations of DTC and its Participants regarding the allocation of losses or liabilities relating to or arising out of a Default Loss Event or a Declared Non-Default Loss Event. The proposed rule change would define ''Default Loss Event'' as the determination by DTC to cease to act for a Participant pursuant to Rule 10, Rule 11, or Rule 12 (such Participant, a ''CTA Participant''). ''Declared Non-Default Loss Event'' would be defined as the determination by the Board of Directors that a loss or liability incident to the clearance and settlement business of DTC may be a significant and substantial loss or liability that may materially impair the ability of DTC to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among Participants in order to ensure that DTC may continue to offer clearance and settlement services in an orderly manner. In order to balance the need to manage the risk of sequential loss events against Participants' need for certainty concerning maximum loss allocation exposures, DTC is proposing to introduce the concept of an ''Event Period'' to address the losses and liabilities that may arise from or relate to multiple Default Loss Events and/or Declared Non-Default Loss Events that arise in quick succession. Specifically, the proposal would group Default Loss Events and Declared Non-Default Loss Events occurring in a period of ten (10) Business Days (''Event Period'') for purposes of allocating losses to Participants in one or more rounds, subject to the limits of loss allocation set forth in the proposed rule change and as explained below.[31] In the case of a loss or liability arising from or relating to a Default Loss Event, an Event Period would begin on the day on which DTC notifies Participants that it has ceased to act for a Participant (or the next Business Day, if such day is not a Business Day). In the case of a Declared Non-Default Loss Event, the Event Period would begin on the day that DTC notifies Participants of the Declared Non-Default Loss Event (or the next Business Day, if such day is not a Business Day). If a subsequent Default Loss Event or Declared Non-Default Loss Event occurs within the Event Period, any losses or liabilities arising out of or relating to any such subsequent event would be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period. An Event Period may include both Default Loss Events and Declared Non-Default Loss Events, and there would not be separate Event Periods for Default Loss Events or Declared Non-Default Loss Events occurring within overlapping ten (10) Business Day periods.

The amount of losses that may be allocated by DTC, subject to the required Corporate Contribution, and to which a Loss Allocation Cap would apply for any Participant that elects to terminate its business with DTC in respect of a loss allocation round, would include any and all losses from any Default Loss Events and any Declared Non-Default Loss Events during the Event Period, regardless of the amount of time, during or after the Event Period, required for such losses to be crystallized and allocated.[32]

The proposed rule changes relating to the implementation of an Event Period are set forth in proposed Section 5 of Rule 4.

(3) Introducing the Concept of ''Rounds'' and Loss Allocation Notice

Pursuant to the proposed rule change, a loss allocation ''round'' would mean a series of loss allocations relating to an Event Period, the aggregate amount of which is limited by the sum of the Loss Allocation Caps of affected Participants (a ''round cap''). When the aggregate amount of losses allocated in a round equals the round cap, any additional losses relating to the applicable Event Period would be allocated in one or more subsequent rounds, in each case subject to a round cap for that round. DTC would continue the loss allocation process in successive rounds until all losses from the Event Period are allocated among Participants that have not submitted a Termination Notice (as defined below and in the proposed rule change) in accordance with proposed Section 6(b) of Rule 4.

Each loss allocation would be communicated to Participants by the issuance of a notice that advises each Participant of the amount being allocated to it (each, a ''Loss Allocation Notice''). The calculation of each Participant's pro rata allocation charge would be similar to the current Section 4 calculation of a pro rata charge except that, for greater simplicity, it would not include the current distinction for common members of another clearing agency pursuant to a Clearing Agency Agreement.[33] In addition, for enhanced clarity as to the date of determination of the ratio, it would be based on the Required Participants Fund Deposits as fixed on the first day of the Event Period, as opposed to the current language ''at the time the loss or liability was discovered.''[34]

Each Loss Allocation Notice would specify the relevant Event Period and the round to which it relates. Participants would receive two (2) Business Days' notice of a loss allocation,[35] and Participants would be required to pay the requisite amount no later than the second Business Day following the issuance of such notice.[36] Multiple Loss Allocation Notices may

[31] DTC believes that having a ten (10) Business Day Event Period would provide a reasonable period of time to encompass potential sequential Default Loss Events and/or Declared Non-Default Loss Events that are likely to be closely linked to an initial event and/or a severe market dislocation episode, while still providing appropriate certainty for Participants concerning their maximum exposure to allocated losses with respect to such events.

[32] As discussed below, each Participant that is a Participant on the first day of an Event Period would be obligated to pay its pro rata share of losses and liabilities arising out of or relating to each Default Loss Event (other than a Default Loss Event with respect to which it is the CTA Participant) and each Declared Non-Default Loss Event occurring during the Event Period.

[33] *See supra* note 20.

[34] DTC believes that this change would provide an objective date that is appropriate for the new proposed loss allocation process, which would be designed to allocate aggregate losses relating to an Event Period, rather than one loss at a time.

[35] DTC believes allowing Participants two (2) Business Days to satisfy their loss allocation obligations would provide Participants sufficient notice to arrange funding, if necessary, while allowing DTC to address losses in a timely manner.

[36] Current Section 4 of Rule 4 provides that if the Participants Fund is applied to a loss or liability, DTC must notify each Participant of the charge and the reasons therefor. Proposed Section 5 would modify this process to (i) require DTC to give *prior* notice; and (ii) require Participants to pay loss allocation charges, rather than directly charging their Required Participants Fund Deposits. DTC believes that shifting from the two-step methodology of applying the Participants Fund and then requiring Participants to immediately replenish it to requiring direct payment would increase efficiency, while preserving the right to charge the Settlement Account of the Participant in the event the Participant doesn't timely pay. Such a failure to pay would be, self-evidently, a Participant Default, triggering recourse to the Actual Participants Fund Deposit of the Participant under proposed Section 3 of Rule 4. In addition, this change would provide greater stability for DTC in times of stress by allowing DTC to retain the Participants Fund, its critical pre-funded resource, while charging loss allocations. DTC believes doing so would allow DTC to retain the Participants Fund as a liquidity resource which may be applied to fund settlement among non-defaulting Participants, if a Defaulting Participant fails to settle. By being able to manage its liquidity resources throughout the loss allocation process, DTC would be able to continue to provide its critical operations and services during what would be expected to be a stressful period.

be issued with respect to each round, up to the round cap.

The first Loss Allocation Notice in any first, second, or subsequent round would expressly state that such Loss Allocation Notice reflects the beginning of the first, second, or subsequent round, as the case may be, and that each Participant in that round has five (5) Business Days [37] from the issuance [38] of such first Loss Allocation Notice for the round (such period, a ''Loss Allocation Termination Notification Period'') to notify DTC of its election to terminate its business with DTC (such notification, whether with respect to a Settlement Charge Notice or Loss Allocation Notice, a ''Termination Notice'') pursuant to proposed Section 8(b) of Rule 4 and thereby benefit from its Loss Allocation Cap.

The round cap of any second or subsequent round may differ from the first or preceding round cap because there may be fewer Participants in a second or subsequent round if Participants elect to terminate their business with DTC as provided in proposed Section 8(b) of Rule 4 following the first Loss Allocation Notice in any round.

For example, for illustrative purposes only, after the required Corporate Contribution, if DTC has a $4 billion loss determined with respect to an Event Period and the sum of Loss Allocation Caps for all Participants subject to the loss allocation is $3 billion, the first round would begin when DTC issues the first Loss Allocation Notice for that Event Period. DTC could issue one or more Loss Allocation Notices for the first round until the sum of losses allocated equals $3 billion. Once the $3 billion is allocated, the first round would end and DTC would need a second round in order to allocate the remaining $1 billion of loss. DTC would then issue a Loss Allocation Notice for the $1 billion and this notice would be the first Loss Allocation Notice for the second round. The issuance of the Loss Allocation Notice for the $1 billion would begin the second round.

[37] Current Section 8 of Rule 4 provides that the time period for a Participant to give notice of its election to terminate its business with DTC in respect of a pro rata charge is ten (10) Business Days after receiving notice of a pro rata charge. DTC believes that it is appropriate to shorten such time period from ten (10) Business Days to five (5) Business Days because DTC needs timely notice of which Participants would not be terminating their business with DTC for the purpose of calculating the loss allocation for any subsequent round. DTC believes that five (5) Business Days would provide Participants with sufficient time to decide whether to cap their loss allocation obligations by terminating their business with DTC.

[38] *See supra* note 23.

The proposed rule change would link the Loss Allocation Cap to a round in order to provide Participants the option to limit their loss allocation exposure at the beginning of each round. As proposed, a Participant could limit its loss allocation exposure to its Loss Allocation Cap by providing notice of its election to terminate its business with DTC within five (5) Business Days after the issuance of the first Loss Allocation Notice in any round.

The proposed rule changes relating to the implementation of ''rounds'' and Loss Allocation Notices are set forth in proposed Section 5 of Rule 4.

(4) Capping Terminating Participants' Loss Allocation Exposure and Related Changes

As discussed above, the proposed rule change would continue to provide Participants the opportunity to limit their loss allocation exposure by offering a termination option; however, the associated termination process would be modified.

As proposed, if a Participant timely provides notice of its election to terminate its business with DTC as provided in proposed Section 8(b) of Rule 4, its maximum payment obligation with respect to any loss allocation round would be the amount of its Aggregate Required Deposit and Investment, as fixed on the first day of the Event Period, plus 100% of the amount thereof (''Loss Allocation Cap''),[39] provided that the Participant complies with the requirements of the termination process in proposed Section 6(b) of Rule 4. DTC may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap. If a Participant's Loss Allocation Cap exceeds the Participant's then-current Required Participants Fund Deposit, it must still pay the excess amount.

As proposed, Participants would have five (5) Business Days from the issuance of the first Loss Allocation Notice in any round to decide whether to terminate its business with DTC, and thereby benefit from its Loss Allocation Cap. The start of each round [40] would allow a Participant the opportunity to notify DTC of its election to terminate its business with DTC after satisfaction of the losses allocated in such round.

Specifically, the first round and each subsequent round of loss allocation would allocate losses up to a round cap of the aggregate of all Loss Allocation Caps of those Participants included in the round. If a Participant provides notice of its election to terminate its business with DTC, it would be subject to loss allocation in that round, up to its Loss Allocation Cap. If the first round of loss allocation does not fully cover DTC's losses, a second round will be noticed to those Participants that did not elect to terminate in the previous round. As noted above, the amount of any second or subsequent round cap may differ from the first or preceding round cap because there may be fewer Participants in a second or subsequent round if Participants elect to terminate their business with DTC as provided in proposed Section 8(b) of Rule 4 following the first Loss Allocation Notice in any round.

Pursuant to the proposed rule change, in order to avail itself of its Loss Allocation Cap, the Participant would need to follow the requirements in proposed Section 6(b) of Rule 4. In addition to retaining the substance of the existing requirements for any termination that are set forth in current Section 6 of Rule 4, proposed Section 6 also would provide that a Participant that provides a Termination Notice in connection with a loss allocation must: (1) Specify in the Termination Notice an effective date of termination (''Participant Termination Date''), which date shall be no later than ten (10) Business Days following the last day of the applicable Loss Allocation Termination Notification Period; (2) cease all activities and use of the Corporation's services other than activities and services necessary to terminate the business of the Participant with DTC; and (3) ensure that all activities and use of DTC services by such Participant cease on or prior to the Participant Termination Date.

The proposed rule changes are designed to enable DTC to continue the loss allocation process in successive rounds until all of DTC's losses are allocated. Until all losses related to an Event Period are allocated and paid, DTC may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap.

The proposed rule changes relating to capping terminating Participants' loss allocation exposure and related changes to the termination process are set forth in proposed Sections 5, 6, and 8 of Rule 4.

[39] The alternative limit in clause (b) would be eliminated in proposed Section 8(b) in favor of a single defined standard. *See supra* note 24.

[40] *i.e.,* a Participant will only have the opportunity to terminate after the first Loss Allocation Notice in any round, and *not* after each Loss Allocation Notice in any round.

C. Clarifying Changes Relating to Loss Allocation for Non-Default Events

The proposed rule changes are intended to make the provisions in the Rules governing loss allocation more transparent and accessible to Participants. In particular, DTC is proposing the following change relating to loss allocation to provide clarity around the governance for the allocation of losses arising from a non-default event.[41]

Currently, DTC can use the Participants Fund to satisfy losses and liabilities arising from a Participant Default or arising from an event that is not due to a Participant Default (*i.e.,* a non-default loss), provided that such loss or liability is incident to the business of DTC.[42]

DTC is proposing to clarify the governance around non-default losses that would trigger loss allocation to Participants by specifying that the Board of Directors would have to determine that there is a non-default loss that may be a significant and substantial loss or liability that may materially impair the ability of DTC to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among the Participants in order to ensure that DTC may continue to offer clearance and settlement services in an orderly manner. The proposed rule change would provide that DTC would then be required to promptly notify Participants of this determination, which is referred to in the proposed rule as a Declared Non-Default Loss Event, as discussed above.

Finally, as previously discussed, pursuant to the proposed rule change, proposed Rule 4 would include language to clarify that (i) the Corporate Contribution would apply to losses or liabilities arising from a Default Loss Event or a Declared Non-Default Loss Event, and (ii) the loss allocation waterfall would be applied in the same manner regardless of whether a loss arises from a Default Loss Event or a Declared Non-Default Loss Event.

The proposed rule changes relating to Declared Non-Default Loss Events and Participants' obligations for such events are set forth in proposed Section 5 of Rule 4.

[41] Non-default losses may arise from events such as damage to physical assets, a cyber-attack, or custody and investment losses.

[42] *See supra* note 11.

D. Loss Allocation Waterfall Comparison

The following example illustrates the differences between the current and proposed loss allocation provisions:

Assumptions:

(i) Participant A defaults on a Business Day (Day 1). On the same day, DTC ceases to act for Participant A, and notifies Participants of the cease to act. After applying Participant A's Participants Fund and liquidating Participant A's Collateral, DTC has a loss of $350 million.

(ii) Participant X voluntarily retires from membership five Business Days after DTC ceases to act for Participant A (Day 6).

(iii) Participant B defaults seven Business Days after DTC ceases to act for Participant A (Day 8). On the same day, DTC ceases to act for Participant B, and notifies Participants of the cease to act. After applying Participant B's Participants Fund and liquidating Participant B's Collateral, DTC has a loss of $350 million.

(iv) The current DTC loss allocation provisions do not require a corporate contribution. DTC may, in its sole discretion and in such amounts as DTC may determine, charge the existing retained earnings and undivided profits of DTC. For the purposes of this example, it is assumed that DTC has determined, in its discretion, that DTC will contribute 25% of its retained earnings and undivided profits. The amount of DTC's retained earnings and undivided profits is $364 million.

(v) DTC's General Business Risk Capital Requirement is $158 million.

Current Loss Allocation:

Under the current loss allocation provisions, with respect to the losses arising out of Participant A's default, DTC will contribute $91 million ($364 million * 25%) from retained earnings and undivided profits, and then allocate the remaining loss of $259 million ($350 million − $91 million) to Participants.

With respect to the losses arising out of Participant B's default, DTC will contribute $68 million (($364 million − $91 million) * 25%) from the balance of its retained earnings and undivided profits, and then allocate the remaining loss of $282 million ($350 million − $68 million) to Participants. Because Participant X voluntarily retired before DTC ceased to act for Participant B, Participant X is not subject to loss allocation with respect to losses arising out of Participant B's default.

Altogether, with respect to the losses arising out of defaults of Participant A and Participant B, DTC will contribute $159 million of retained earnings and undivided profits, and will allocate losses of $541 million to Participants.

Proposed Loss Allocation:

Under the proposed loss allocation provisions, a Default Loss Event with respect to Participant A's default would have occurred on Day 1, and a Default Loss Event with respect to Participant B's default would have occurred on Day 8. Because the Default Loss Events occurred during a 10-Business Day period they would be grouped together into an Event Period for purposes of allocating losses to Participants. The Event Period would begin on the 1st Business Day and end on the 10th Business Day.

With respect to losses arising out of Participant A's default, DTC would apply a Corporate Contribution of $79 million ($158 million * 50%) and then allocate the remaining loss of $271 million ($350 million − $79 million) to Participants. With respect to losses arising out of Participant B's default, DTC would not apply a Corporate Contribution since it would have already contributed the maximum Corporate Contribution of 50% of its General Business Risk Capital Requirement. DTC would allocate the loss of $350 million arising out of Participant B's default to Participants. Because Participant X was a Participant on the first day of the Event Period, it would be subject to loss allocation with respect to all events occurring during the Event Period, even if the event occurred after its retirement. Therefore, Participant X would be subject to loss allocation with respect to Participant B's default.

Altogether, with respect to the losses arising out of defaults of Participant A and Participant B, DTC would apply a Corporate Contribution of $79 million and allocate losses of $621 million to Participants.

The principal differences in the above example are due to: (i) The proposed changes to the calculation and application of Corporate Contribution, and (ii) the proposed introduction of an Event Period.

E. Clarifying Changes Regarding Voluntary Retirement

Section 1 of Rule 2 provides that a Participant may terminate its business with DTC by notifying DTC in the appropriate manner.[43] To provide

[43] Section 1 of Rule 2 provides, in relevant part, that ''[a] Participant may terminate its business with the Corporation by notifying the Corporation as provided in Sections 7 or 8 of Rule 4 or, if for a reason other than those specified in said Sections 7 and 8, by notifying the Corporation thereof; the Participant shall, upon receipt of such notice by the

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additional transparency to Participants with respect to the voluntary retirement of a Participant, and to align, where appropriate, with the proposed rule changes of NSCC and FICC with respect to voluntary termination, DTC is proposing to add proposed Section 6(a) to Rule 4, which would be titled, ''Upon Any Voluntary Retirement.'' Proposed Section 6(a) of Rule 4 would (i) clarify the requirements [44] for a Participant that wants to voluntarily terminate its business with DTC, and (ii) address the situation where a Participant submits a Voluntary Retirement Notice (defined below) and subsequently receives a Settlement Charge Notice or the first Loss Allocation Notice in a round on or prior to the Voluntary Retirement Date (defined below).

Specifically, DTC is proposing that if a Participant elects to terminate its business with DTC pursuant to Section 1 of Rule 2 for reasons other than those specified in proposed Section 8 (a ''Voluntary Retirement''), the Participant would be required to:

(1) Provide a written notice of such termination to DTC (''Voluntary Retirement Notice''), as provided for in Section 1 of Rule 2;

(2) specify in the Voluntary Retirement Notice a desired date for the termination of its business with DTC (''Voluntary Retirement Date'');

(3) cease all activities and use of DTC services other than activities and services necessary to terminate the business of the Participant with DTC; and

(4) ensure that all activities and use of DTC services by the Participant cease on or prior to the Voluntary Retirement Date.[45]

Proposed Section 6(a) of Rule 4 would provide that if the Participant fails to comply with the requirements of proposed Section 6(a), its Voluntary Retirement Notice would be deemed void.[46]

Further, proposed Section 6(a) of Rule 4 would provide that if a Participant submits a Voluntary Retirement Notice and subsequently receives a Settlement Charge Notice or the first Loss Allocation Notice in a round on or prior to the Voluntary Retirement Date, such Participant must timely submit a Termination Notice in order to benefit from its Settlement Charge Cap or Loss Allocation Cap, as the case may be. In such a case, the Termination Notice would supersede and void the pending Voluntary Retirement Notice submitted by the Participant.

F. Changes to the Retention Time for the Actual Participants Fund Deposit of a Former Participant

Current Rule 4 provides that after three months from when a Person has ceased to be a Participant, DTC shall return to such Person (or its successor in interest or legal representative) the amount of the Actual Participants Fund Deposit of the former Participant plus accrued and unpaid interest to the date of such payment (including any amount added to the Actual Participants Fund Deposit of the former Participant through the sale of the Participant's Preferred Stock), provided that DTC receives such indemnities and guarantees as DTC deems satisfactory with respect to the matured and contingent obligations of the former Participant to DTC. Otherwise, within four years after a Person has ceased to be a Participant, DTC shall return to such Person (or its successor in interest or legal representative) the amount of the Actual Participants Fund Deposit of the former Participant plus accrued and unpaid interest to the date of such payment, except that DTC may offset against such payment the amount of any known loss or liability to DTC arising out of or related to the obligations of the former Participant to DTC.

DTC is proposing to reduce the time, after a Participant ceases to be a Participant, at which DTC would be required to return the amount of the Actual Participants Fund Deposit of the former Participant plus accrued and unpaid interest, whether the Participant ceases to be such because it elected to terminate its business with DTC in response to a Settlement Charge Notice or Loss Allocation Notice or otherwise. Pursuant to the proposed rule change, the time period would be reduced from four (4) years to two (2) years. All other requirements relating to the return of the Actual Participants Fund Deposit would remain the same.

The four (4) year retention period was implemented at a time when there were more deposits and processing of physical certificates, as well as added risks related to manual processing, and related claims could surface many years after an alleged event. DTC believes that the change to two (2) years is appropriate because, currently, as DTC and the industry continue to move toward automation and dematerialization, claims typically surface more quickly. Therefore, DTC believes that a shorter retention period of two (2) years would be sufficient to maintain a reasonable level of coverage for possible claims arising in connection with the activities of a former Participant, while allowing DTC to provide some relief to former Participants by returning their Actual Participants Fund Deposits more quickly.

(ii) Proposed Rule Changes

The foregoing changes as well as other changes (including a number of technical and conforming changes) that DTC is proposing in order to improve the transparency and accessibility of Rule 4 are described in detail below.

A. Changes Relating To Participant Default, Pro Rata Settlement Charges and Loss Allocation

Section 3

As discussed above, current Section 3 of Rule 4 provides that, if a Participant fails to satisfy an obligation to DTC, DTC may, in such order and in such amounts as DTC determines, apply the Actual Participants Fund Deposit of the defaulting Participant, Pledge the shares of Preferred Stock of the defaulting Participant to its lenders as collateral security for a loan, and/or sell the shares of Preferred Stock of the defaulting Participant to other Participants. Pursuant to the proposed rule change, Section 3 would retain most of these provisions, with the following modifications:

Corporation, cease to be a Participant. In the event that a Participant shall cease to be a Participant, the Corporation shall thereupon cease to make sits services available to the Participant, except that the Corporation may perform services on behalf of the Participant or its successor in interest necessary to terminate the business of the Participant or its successor with the Corporation, and the Participant or its successor shall pay to the Corporation the fees and charges provided by these Rules with respect to services performed by the Corporation subsequent to the time when the Participant ceases to be a Participant.'' *Supra* note 5. DTC is proposing to modify the provision to clarify that the termination would be subject to proposed Section 6 of Rule 4.

[44] The requirements would reflect current practice.

[45] Typically, a Participant would ultimately submit a notice after having ceased its transactions and transferred all securities out of its Account.

[46] The purpose of this proposed provision is to clarify that a failure of a Participant to comply with proposed Section 6(a) of Rule 4 would mean that the Participant would continue to be a Participant, as if the Voluntary Retirement Notice had not been received by DTC. For example, Participant A submits a Voluntary Retirement Notice to DTC on April 1st and indicates a Voluntary Retirement Date of April 15th, but fails to comply with the requirements of proposed Section 6(a) of Rule 4 by the Voluntary Retirement Date. The Participant would continue to be a Participant after the Voluntary Retirement Date. If an Event Period subsequently occurs before the Participant submits a new Voluntary Retirement Notice and voluntarily retires in compliance with proposed Section 6(a), such Participant would be obligated to pay its pro rata shares of losses and liabilities arising from that Event Period.

DTC proposes to add the term ''Participant Default'' in proposed Section 3 as a defined term for the failure of a Participant to satisfy an obligation to DTC, for drafting clarity and use in related provisions. The proposed rule change would reflect that the defined term ''Participant Default,'' referring to the failure of a Participant to satisfy any obligation to DTC, includes the failure of a Defaulting Participant to satisfy its obligations as provided in Rule 9(B). In addition, the proposed rule change clarifies that, in the case of a Participant Default, DTC would first apply the Actual Participants Fund Deposit of the Participant to any unsatisfied obligations, before taking any other actions. This proposed clarification would reflect the current practice of DTC, and would provide Participants with enhanced transparency into the actions DTC would take with respect to the Participants Fund deposits and Participants Investment of a Participant that has failed to satisfy its obligations to DTC.

DTC proposes to correct the term ''End-of-Day Facility,'' to the existing defined term ''End-of-Day Credit Facility.'' DTC further proposes to clarify that, if DTC Pledges some or all of the shares of Preferred Stock of a Participant to its lenders as collateral security for a loan under the End-of-Day Credit Facility, DTC would apply the proceeds of such loan to the obligation the Participant had failed to satisfy, which is not expressly stated in current Section 3 of Rule 4.

In addition, DTC is proposing to make three ministerial changes to enhance readability by: (i) Removing the duplicative ''in,'' in the phrase ''in such order and in such amounts,'' (ii) replacing the word ''eliminate'' with ''satisfy,'' and (iii) to conform to proposed changes, renumbering the list of actions that DTC may take when there is a Participant Default.

DTC is also proposing to add the heading ''Application of Participants Fund Deposits and Preferred Stock Investments to Participant Default'' to Section 3.

Section 4 and Section 5

As noted above, current Section 4 of Rule 4 provides that if DTC incurs a loss or liability which is not satisfied by charging the Participant responsible for the loss pursuant to Section 3 of Rule 4, then DTC may, in any order and in any amount as DTC may determine, in its sole discretion, to the extent necessary to satisfy such loss or liability, ratably apply some or all of the Actual Participants Fund Deposits of all other Participants to such loss or liability and/or charge the existing retained earnings and undivided profits of DTC. This provision relates to losses and liabilities that may be due to the failure of a Participant to satisfy obligations to DTC, if the Actual Participants Fund Deposit of that Participant does not fully satisfy the obligation, or to losses and liabilities for which no single Participant is obligated, *i.e.,* a ''non-default loss.''

As discussed above, current Rule 4 currently provides a single set of tools and common processes for using the Participants Fund as both a liquidity resource and for the satisfaction of other losses and liabilities. The proposed rule change would provide separate liquidity and loss allocation provisions. More specifically, proposed Section 4 of Rule 4 would reflect the process for a ''pro rata settlement charge,'' the application of the Actual Participants Fund Deposits of non-defaulting Participants for liquidity purposes in order to complete settlement, when a Defaulting Participant fails to satisfy its settlement obligation and the amount charged to its Actual Participants Fund Deposit by DTC pursuant to Section 3 of Rule 4 is insufficient to complete settlement. Proposed Section 5 of Rule 4 would contain the proposed loss allocation provisions.

Proposed Section 4

Pursuant to the proposed rule change, current Section 4 would be replaced in its entirety by proposed Section 4, and titled ''Application of Participants Fund Deposits of Non-Defaulting Participants.'' First, for clarity, proposed Section 4 would expressly state that ''[t]he Participants Fund shall constitute a liquidity resource which may be applied by the Corporation in such amounts as the Corporation shall determine, in its sole discretion, to fund settlement if there is a Defaulting Participant and the amount charged to the Actual Participants Fund Deposit of the Defaulting Participant pursuant to Section 3 of this Rule is not sufficient to complete settlement. In that case, the Corporation may apply the Actual Participants Fund Deposits of Participants other than the Defaulting Participant (each, a ''non-defaulting Participant'') as provided in this Section and/or apply such other liquidity resources as may be available to the Corporation from time to time, including the End-of-Day Credit Facility.''

Proposed Section 4 would retain the current principle that DTC must notify Participants and the Commission when it applies the Participants Fund deposits of non-defaulting Participants, by stating that if the Actual Participants Fund Deposits of non-defaulting Participants are applied to complete settlement, DTC must promptly notify each Participant and the Commission of the amount of the charge and the reasons therefor, and would define such notice as a Settlement Charge Notice.

Proposed Section 4 would retain the current calculation of pro rata charges by providing that each non-defaulting Participant's pro rata share [47] of any such application of the Participants Fund, defined as a ''pro rata settlement charge,'' would be equal to (i) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the Business Day of such application [48] less its Additional Participants Fund Deposit, if any, on that day, divided by (ii) the sum of the Required Participants Fund Deposits of all non-defaulting Participants, as such Required Participants Fund Deposits were fixed on that day, less the sum of the Additional Participants Fund Deposits, if any, of such non-defaulting Participants on that day.

Proposed Section 4 would also provide a period of time within which a Participant could notify DTC of its election to terminate its business with DTC and thereby cap its liability, by providing that a Participant would have a period of five (5) Business Days following the issuance of a Settlement Charge Notice (''Settlement Charge Termination Notification Period'') to notify DTC of its election to terminate its business with DTC pursuant to proposed Section 8(a), and thereby benefit from its Settlement Charge Cap, as set forth in proposed Section 8(a).[49] Proposed Section 4 would also require that any Participant that gives DTC notice of its election to terminate its business with DTC must comply with proposed Section 6(b) of Rule 4,[50] and if it does not, its election to terminate would be deemed void.

Proposed Section 4 would further provide that DTC may retain the entire amount of the Actual Participants Fund Deposit of a Participant subject to a pro rata settlement charge, up to the amount of the Participant's Settlement Charge Cap in accordance with proposed Section 8(a) of Rule 4.

Current Section 5 of Rule 4 provides that ''[e]xcept as provided in Section 8 of this Rule, if a pro rata charge is made pursuant to Section 4 of the current Rule against the Required Participants Fund Deposit of a Participant, and, as a

[47] *See supra* note 20.

[48] *See supra* note 21.

[49] *See supra* note 22.

[50] Proposed Section 6(b) is discussed below.

consequence, the Actual Participants Fund Deposit of such Participant is less than its Required Participants Fund Deposit, the Participant shall, upon the demand of the Corporation, within such time as the Corporation shall require, Deposit to the Participants Fund the amount in cash needed to eliminate any resulting deficiency in its Required Participants Fund Deposit. If the Participant shall fail to make such deposit to the Participants Fund, the Corporation may take disciplinary action against the Participant pursuant to these Rules. Any disciplinary action which the Corporation takes pursuant to these Rules, or the voluntary or involuntary cessation of participation by the Participant, shall not affect the obligations of the Participant to the Corporation or any remedy to which the Corporation may be entitled under applicable law.''

Proposed Section 4 would incorporate current Section 5 of Rule 4, modified as follows: (i) Conformed to reflect the consolidation of Section 5 into proposed Section 4, (ii) replacement of ''Except as provided in'' with ''Subject to,'' to harmonize with language used elsewhere in proposed Rule 4, and (iii) corrections of two typographical errors, in order to accurately reflect that the Actual Participants Fund Deposit of a Participant would be applied, and not the Required Participants Fund Deposit, and to capitalize the word ''deposit'' because it is a defined term.

Proposed Section 5

Proposed Section 5 of Rule 4 would address the substantially new and revised proposed loss allocation, which would apply to losses and liabilities relating to or arising out of a Default Loss Event or a Declared Non-Default Loss Event. Pursuant to the proposed rule change, DTC would restructure and modify its existing loss allocation waterfall as described below. The heading ''Loss Allocation Waterfall'' would be added to proposed Section 5.

Proposed Section 5 would establish the concept of an ''Event Period'' to provide for a clear and transparent way of handling multiple loss events occurring in a period of ten (10) Business Days, which would be grouped into an Event Period. As stated above, both Default Loss Events and Declared Non-Default Loss Events could occur within the same Event Period.

The Event Period with respect to a Default Loss Event would begin on the day on which DTC notifies Participants that it has ceased to act for the Participant (or the next Business Day, if such day is not a Business Day). In the case of a Declared Non-Default Loss Event, the Event Period would begin on the day that DTC notifies Participants of the Declared Non-Default Loss Event (or the next Business Day, if such day is not a Business Day). Proposed Section 5 would provide that if a subsequent Default Loss Event or Declared Non-Default Loss Event occurs during an Event Period, any losses or liabilities arising out of or relating to any such subsequent event would be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period.

As proposed, each CTA Participant would be obligated to DTC for the entire amount of any loss or liability incurred by DTC arising out of or relating to any Default Loss Event with respect to such CTA Participant. Under the proposal, to the extent that such loss or liability is not satisfied pursuant to proposed Section 3 of Rule 4, DTC would apply a Corporate Contribution thereto and charge the remaining amount of such loss or liability as provided in proposed Section 5.

Under proposed Section 5, the loss allocation waterfall would begin with a new mandatory Corporate Contribution from DTC. Rule 4 currently provides that the use of any retained earnings and undivided profits by DTC is a voluntary contribution of a discretionary amount of its retained earnings. Proposed Section 5 of Rule 4 would, instead, require a defined corporate contribution to losses and liabilities that are incurred by DTC with respect to an Event Period. As proposed, the Corporate Contribution to losses or liabilities that are incurred by DTC with respect to an Event Period would be defined as an amount that is equal to fifty percent (50%) of the amount calculated by DTC in respect of its General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the Event Period.[51] DTC's General Business Risk Capital Requirement, as defined in DTC's Clearing Agency Policy on Capital Requirements,[52] is, at a minimum, equal to the regulatory capital that DTC is required to maintain in compliance with Rule 17Ad–22(e)(15) under the Act.[53]

If DTC applies the Corporate Contribution to a loss or liability arising out of or relating to one or more Default Loss Events or Declared Non-Default Loss Events relating to an Event Period, then for any subsequent Event Periods that occur during the next two hundred fifty (250) Business Days, the Corporate Contribution would be reduced to the remaining unused portion of the Corporate Contribution amount that was applied for the first Event Period.[54] Proposed Section 5 would require DTC to notify Participants of any such reduction to the Corporate Contribution.

Proposed Section 5 of Rule 4 would provide that nothing in the Rules would prevent DTC from voluntarily applying amounts greater than the Corporate Contribution against any DTC loss or liability, if the Board of Directors, in its sole discretion, believes such to be appropriate under the factual situation existing at the time.

Proposed Section 5 of Rule 4 would provide that DTC shall apply the Corporate Contribution to losses and liabilities that arise out of or relate to one or more Default Loss Events and/or Declared Non-Default Loss Events that occur within an Event Period. The proposed rule change also provides that if losses and liabilities with respect to such Event Period remain unsatisfied following application of the Corporate Contribution, DTC would allocate such losses and liabilities to Participants, as described below.

Proposed Section 5 of Rule 4 would state that each Participant that is a Participant on the first day of an Event Period would be obligated to pay its pro rata share of losses and liabilities arising out of or relating to each Default Loss Event (other than a Default Loss Event with respect to which it is the CTA Participant) and each Declared Non-Default Loss Event occurring during the Event Period. In addition, proposed Section 5 of Rule 4 would make it clear that any CTA Participant for which DTC ceases to act on a non-Business Day, triggering an Event Period that commences on the next Business Day, would be deemed to be a Participant on the first day of that Event Period. In addition, DTC is proposing to clarify that after a first round of loss allocations with respect to an Event Period, only Participants that have not submitted a Termination Notice in accordance with proposed Section 6(b) of Rule 4 would be subject to loss allocations with respect to subsequent rounds relating to that Event Period. The proposed change would also provide that DTC may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap in accordance with proposed Section 8(b) of Rule 4.

Pursuant to the proposed rule change, DTC would notify Participants subject to loss allocation of the amounts being allocated to them by a Loss Allocation Notice in successive rounds of loss

[51] *See supra* note 26.

[52] *See supra* note 27.

[53] 17 CFR 240.17Ad–22(e)(15).

[54] *See supra* note 30.

allocations. Proposed Section 5 would state that a loss allocation ''round'' would mean a series of loss allocations relating to an Event Period, the aggregate amount of which is limited by the sum of the Loss Allocation Caps of affected Participants (a ''round cap''). When the aggregate amount of losses allocated in a round equals the round cap, any additional losses relating to the applicable Event Period would be allocated in one or more subsequent rounds, in each case subject to a round cap for that round. DTC may continue the loss allocation process in successive rounds until all losses from the Event Period are allocated among Participants that have not submitted a Termination Notice in accordance with proposed Section 6(b) of Rule 4.

Each Loss Allocation Notice would specify the relevant Event Period and the round to which it relates. The first Loss Allocation Notice in any first, second, or subsequent round would expressly state that such Loss Allocation Notice reflects the beginning of the first, second, or subsequent round, as the case may be, and that each Participant in that round has five (5) Business Days from the issuance of such first Loss Allocation Notice for the round [55] to notify DTC of its election to terminate its business with DTC pursuant to proposed Section 8(b) of Rule 4, and thereby benefit from its Loss Allocation Cap.[56]

Loss allocation obligations would continue to be calculated based upon a Participant's pro rata share of the loss.[57] As proposed, each Participant's pro rata share of losses and liabilities to be allocated in any round would be equal to (i) (A) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the first day of the Event Period,[58] less (B) its Additional Participants Fund Deposit, if any, on such day, divided by (ii) (A) the sum of the Required Participants Fund Deposits of all Participants subject to loss allocation in such round, as such Required Participants Fund Deposits were fixed on such day, less (B) the sum of any Additional Participants Fund Deposits, if any, of all Participants subject to loss allocation in such round on such day.[59]

As proposed, Participants would have two (2) Business Days after DTC issues a first round Loss Allocation Notice to pay the amount specified in any such notice. In contrast to the current Section 4, under which DTC may apply the Actual Participants Fund Deposits of Participants directly to the satisfaction of loss allocation amounts, under proposed Section 5, DTC would require Participants to pay their loss allocation amounts (leaving their Actual Participants Fund Deposits intact).[60] On a subsequent round (*i.e.,* if the first round did not cover the entire loss of the Event Period because DTC was only able to allocate up to the sum of the Loss Allocation Caps of those Participants included in the round), Participants would also have two (2) Business Days after notice by DTC to pay their loss allocation amounts (again subject to their Loss Allocation Caps), unless a Participant timely notified (or will timely notify) DTC of its election to terminate its business with DTC with respect to a prior loss allocation round.

Under the proposal, if a Participant fails to make its required payment in respect of a Loss Allocation Notice by the time such payment is due, DTC would have the right to proceed against such Participant as a Participant that has failed to satisfy an obligation in accordance with proposed Section 3 of Rule 4 described above. For additional clarity, proposed Section 5 of Rule 4 would state that all amounts due from a Participant pursuant to proposed Section 5 of Rule 4 may be debited from the Settlement Account of such Participant. Proposed Section 5 of Rule 4 would also provide that DTC may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap in accordance with Section 8(b) of Rule 4. Participants that wish to terminate their business with DTC would be required to comply with the requirements in proposed Section 6(b) of Rule 4, described further below. Specifically, proposed Section 5 would provide that if, after notifying DTC of its election to terminate its business with DTC pursuant to proposed Section 8(b) of Rule 4, the Participant fails to comply with the provisions of proposed Section 6(b) of Rule 4, its notice of termination would be deemed void and any further losses resulting from the applicable Event Period may be allocated against it as if it had not given such notice.

Section 6

Section 6 of Rule 4 currently provides that whenever a Participant ceases to be such, it continues to be obligated (a) to satisfy any deficiency in the amount of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including (i) any deficiency resulting from a pro rata charge with respect to which the Participant has given notice to DTC of its election to terminate its business with DTC pursuant to Section 8 of Rule 4 and (ii) any deficiency the Participant is required to satisfy pursuant to Sections 3 (an obligation that a Participant failed to satisfy) or 5 (the requirement of a Participant to eliminate the deficiency in its Required Participants Fund Deposit) of Rule 4 and (b) to discharge any liability of the Participant to DTC resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant.

The heading ''Obligations of Participant Upon Termination'' would be added to Section 6 of Rule 4. As discussed above, DTC is proposing to add proposed Section 6(a) to Rule 4, which would (i) clarify the requirements for the Voluntary Retirement of a Participant, and (ii) address the situation where a Participant submits a Voluntary Retirement Notice and subsequently receives a Settlement Charge Cap or the first Loss Allocation Notice in a round on or prior to the Voluntary Retirement Date. Proposed Section 6(a) of Rule 4 would also provide that if a Participant submits a Voluntary Retirement Notice and subsequently receives a Settlement Charge Notice or the first Loss Allocation Notice in a round on or prior to the Voluntary Retirement Date, such Participant must timely submit a Termination Notice in order to benefit from its Settlement Charge Cap or Loss Allocation Cap, respectively. In such a case, the Termination Notice would supersede and void the pending Voluntary Retirement Notice submitted by the Participant.

DTC is proposing to add Proposed Section 6(b), titled ''Upon Termination Following Settlement Charge or Loss Allocation.'' Proposed Section 6(b) would state that if a Participant timely notifies DTC of its election to terminate its business with DTC in respect of a pro rata settlement charge as set forth in proposed Section 4 of Rule 4 or a loss allocation as set forth in proposed Section 5 of Rule 4, defined as a ''Termination Notice'', the Participant would be required to: (1) Specify in the Termination Notice a Participant Termination Date, which date shall be no later than ten Business Days following the last day of the applicable Settlement Charge Termination Notification Period or Loss Allocation Termination Notification Period; (2)

[55] *i.e.,* the Loss Allocation Termination Notification Period for that round.

[56] *See supra* note 37.

[57] *See supra* note 20.

[58] *See supra* note 21.

[59] *See supra* note 16.

[60] *See supra* note 36.

cease all activities and use of the Corporation's services other than activities and services necessary to terminate the business of the Participant with DTC; and (3) ensure that all activities and use of DTC services by such Participant cease on or prior to the Participant Termination Date.

Proposed Section 6(b) of Rule 4 would provide that a Participant that terminates its business with DTC in compliance with proposed Section 6(b) would remain obligated for its pro rata share of losses and liabilities with respect to any Event Period for which it is otherwise obligated; however, its aggregate obligation would be limited to the amount of its Loss Allocation Cap (as fixed in the round for which it withdrew).

DTC is proposing to include a sentence in proposed Section 6(b) to make it clear that if the Participant fails to comply with the requirements set forth in this section, its Termination Notice will be deemed void, and the Participant will remain subject to further pro rata settlement charges pursuant to proposed Section 4 of Rule 4 or loss allocations pursuant to proposed Section 5 of Rule 4, as applicable, as if it had not given such notice.

For clarity, DTC is proposing to consolidate the requirements from current Section 6 of Rule 4 into proposed Section 6(c) of Rule 4, titled ''After Any Termination,'' and modify them to conform to other proposed rule changes. In particular, DTC is proposing to clarify that a Participant that ceases to be such would continue to be subject to proposed Section 5 of Rule 4 for any Event Period for which it was a Participant on the first day of the Event Period. Proposed Section 6(c) of Rule 4 would state that whenever a Participant ceases to be such, it would continue to be obligated (i) to satisfy any deficiency in the amounts of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including any deficiency the Participant is required to satisfy pursuant to proposed Sections 3 or 4 of Rule 4, (ii) subject to proposed Section 8, to satisfy any loss allocation pursuant to proposed Section 5 of Rule 4, and (iii) to discharge any liability of the Participant to DTC resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant.

Section 8

Pursuant to the proposed rule change, Section 8 would be titled ''Termination; Obligation for Pro Rata Settlement Charges and Loss Allocations,'' and would be divided among proposed Section 8(a) ''Settlement Charges,'' proposed Section 8(b) ''Loss Allocations,'' proposed Section 8(c) ''Maximum Obligation,'' and proposed Section 8(d) ''Obligation to Replenish Deposit.''

Pursuant to proposed Section 8(a), if a Participant, within five (5) Business Days after issuance of a Settlement Charge Notice pursuant to proposed Section 4 of Rule 4, gives notice to DTC of its election to terminate its business with DTC, the Participant would remain obligated for (i) its pro rata settlement charge that was the subject of such Settlement Charge Notice and (ii) all other pro rata settlement charges made by DTC until the Participant Termination Date. Subject to proposed Section 8(c), the terminating Participant's obligation would be limited to the amount of its Aggregate Required Deposit and Investment, as fixed on the day of the pro rata settlement charge that was the subject of the Settlement Charge Notice, plus 100% of the amount thereof, which is substantively the same limitation as provided for pro rata charges in current Section 8 of Rule 4.[61]

Pursuant to proposed Section 8(b), if a Participant, within five (5) Business Days after the issuance of a first Loss Allocation Notice for any round pursuant to proposed Section 5 of Rule 4 gives notice to DTC of its election to terminate its business with DTC, the Participant would remain liable for (i) the loss allocation that was the subject of such notice and (ii) all other loss allocations made by DTC with respect to the same Event Period. Subject to proposed Section 8(c), the obligation of a Participant which elects to terminate its business with DTC would be limited to the amount of its Aggregate Required Deposit and Investment, as fixed on the first day of the Event Period, plus 100% of the amount thereof, which is substantively the same limitation as provided for pro rata charges in current Section 8 of Rule 4.[62]

Proposed Section 8(c) would provide that under no circumstances would the aggregate obligation of a Participant under proposed Section 8(a) and proposed Section 8(b) exceed the amount of its Aggregate Required Deposit and Investment, as fixed on the earlier of the (i) day of the pro rata settlement charge that was the subject of the Settlement Charge Notice giving rise to a Termination Notice, and (ii) first day of the Event Period that was the subject of the first Loss Allocation Notice in a round giving rise to a Termination Notice, plus 100% of the amount thereof. The purpose of proposed Section 8(c) is to address a situation where a Participant could otherwise be subject to both a Settlement Charge Cap and Loss Allocation Cap.

Proposed Section 8(d) would retain the last paragraph in current Section 8 of Rule 4, replacing ''pro rata charge'' with ''pro rata settlement charge'' and ''loss allocation.''[63] Proposed Section 8(d) would provide that if the amount of the Actual Participants Fund Deposit of a Participant is insufficient to satisfy a pro rata settlement charge pursuant to proposed Section 4 and proposed Section 8(a) or a loss allocation pursuant to proposed Section 5 and proposed Section 8(b), the Participant would be obligated to Deposit the amount of any such deficiency to the Participants Fund notwithstanding the fact that the Participant subsequently ceases to be a Participant.

Section 9

Pursuant to the proposed rule change, proposed Section 9 of Rule 4 would provide that the recovery and repayment provisions in current Rule 4 apply to both pro rata settlement charges and loss allocations.[64] Specifically, proposed Section 9 would provide that if an amount is charged ratably pursuant to proposed Section 4 or allocated ratably pursuant to proposed Section 5 and such amount is recovered by DTC, in whole or in part, the net amount of the recovery shall be repaid ratably (on the same basis that it was originally charged or allocated) to the Persons against which the amount was originally charged or allocated by (i) crediting the appropriate amounts to the Actual Participants Fund Deposits of Persons which are still Participants and (ii) paying the appropriate amounts in cash to Persons which are not still Participants. In addition, proposed Section 9 would clarify that no loss allocation under proposed Rule 4 would constitute a waiver of any claim DTC may have against a Participant for any

[61] *See supra* note 24.

[62] *See supra* note 39.

[63] This is a ministerial change because this paragraph currently applies to current Section 4 of Rule 4, which includes charges to complete settlement and for loss allocation, as would be provided in proposed Section 4 and proposed Section 5 of Rule 4.

[64] This is a ministerial change because Section 9 currently applies to current Section 4 of Rule 4, which includes charges to complete settlement and for loss allocation, as would be provided in proposed Section 4 and proposed Section 5 of Rule 4.

losses or liabilities to which the Participant is subject under DTC Rules and Procedures, including, without limitation, any loss or liability to which it may be subject under proposed Rule 4.

DTC further proposes to add the heading ''No Waiver; Recovery and Repayment'' to proposed Section 9.

B. Other Proposed Clarifying, Conforming and Technical Changes to Rule 4

Section 1

Section 1(a) and Section 1(b). Section 1(a) addresses, among other things, the formula for determining the Required Participants Fund Deposits of Participants. DTC is proposing to insert the words ''or wind-down'' to make it clear that the formulas for determining the Required Participants Fund Deposits of Participants and the amount of the minimum Required Participants Fund Deposit would be fixed by DTC so as to assure that the aggregate amount of Required Participants Fund Deposits of Participants will be increased to provide for the costs and expenses incurred by it incidental to the wind-down of DTC, in addition to the voluntary liquidation of DTC.[65] Further, DTC proposes to delete the extraneous phrase ''if any.'' For increased clarity and readability, DTC is proposing to consolidate Section 1(b) into Section 1(a), and to relocate the sentences ''The Corporation may require a Participant to Deposit an additional amount to the Participants Fund pursuant to Section 2 of Rule 9(A). Any such additional amount shall be part of the Required Participants Fund Deposit of such Participant.'' from Section 1(a) to a new proposed Section 1(b). In addition to the relocation, DTC would add a defined term for such additional amount, as ''Additional Participants Fund Deposit,'' for drafting convenience and transparency throughout proposed Rule 4. Further, DTC proposes to add the headings ''Required Participants Fund Deposits'' and ''Additional Participants Fund Deposits'' to Section 1(a) and proposed Section 1(b), respectively.

Section 1(c). For enhanced readability, DTC is proposing to add the heading ''Voluntary Participants Fund Deposits'' to Section 1(c) of Rule 4, and to replace the word ''as'' with ''in the manner.''

Section 1(d). For enhanced clarity, DTC is proposing to modify Section 1(d) to make it clear that any Additional Participants Fund Deposit is required to be in cash. DTC is also proposing to delete the extraneous phrase ''pursuant to this Section'' and to replace language regarding Section 2 of Rule 9(A) with the proposed defined term ''Additional Participants Fund Deposit.'' Further, DTC proposes to add the heading ''Cash Participants Fund'' to Section 1(d) of Rule 4.

Section 1(e). For enhanced clarity, DTC is proposing to add the language ''among Account Families'' to clarify the scope of the allocation described in Section 1(e). In addition, DTC proposes to add the heading ''Allocation of Participants Fund Deposits Among Account Families'' to Section 1(e) of Rule 4.

Section 1(f). Section 1(f) addresses, among other things, the permitted use of the Participants Fund. For consistency with the balance of Section 1(f), the first paragraph would be amended to state that the Actual Participants Fund Deposits of Participants ''may be used or invested'' instead of stating ''shall be applied.'' Section 1(f) provides, in part, that the Participants Fund is limited to the satisfaction of losses or liabilities of DTC incident to the business of DTC. Section 1(f) currently defines ''business'' with respect to DTC as ''the doing of all things in connection with or relating to [DTC's] performance of the services specified in the first and second paragraphs of Rule 6 or the cessation of such services.'' For enhanced transparency of the permitted uses of the Participants Fund, proposed Section 1(f) would be amended to explicitly state that the Actual Participants Fund Deposits of Participants may be used (i) to satisfy the obligations of Participants to DTC, as provided in proposed Section 3, (ii) to fund settlement among non-defaulting Participants, as provided in proposed Section 4 and (iii) to satisfy losses and liabilities of DTC incident to the business of DTC, as provided in proposed Section 5. Section 1(f) would also be amended to make the definition of ''business'' applicable to the entirety of Rule 4, instead of just Section 1(f), as the term would appear elsewhere in the rule pursuant to the proposed rule change. In addition, DTC proposes to add the heading ''Maintenance, Permitted Use and Investment of Participants Fund'' to Section 1(f) of Rule 4.

Section 1(g) (consolidated into proposed Section 1(f)). Pursuant to the proposed rule change, DTC would consolidate current Section 1(g) into proposed Section 1(f), and modify language to make it clear that DTC may invest cash in the Participants Fund in accordance with the Clearing Agency Investment Policy adopted by DTC.[66] Further, language would be streamlined by replacing ''securities, repurchase agreements or deposits'' with ''financial assets,'' and ''securities and repurchase agreements in which such cash is invested'' with ''its investment of such cash.''

Section 1(h) (proposed Section 1(g)). As discussed above, DTC is proposing to replace ''four'' years with ''two'' years, in order to reduce the time within which DTC would be required to return the Actual Participants Fund Deposit of a former Participant. In addition, DTC is proposing to (i) add the heading ''Return of Participants Fund Deposits to Participants'' to proposed Section 1(g), (ii) update a cross reference, and (iii) correct two typographical errors.

Section 2

Pursuant to the proposed rule change, Section 2 of Rule 4 would be titled ''Participants Investment.''

Section 2(a)–2(d) (Proposed Section 2(a)). For clarity, DTC is proposing to consolidate Sections 2(b)–2(d) into proposed Section 2(a) and would add the heading ''Required Preferred Stock Investments'' to proposed Section 2(a). In addition, DTC proposes to modify certain language to update references and cross-references to specific subsections to reflect the proposed changes to the numbering of the

[65] On December 18, 2017, DTC submitted a proposed rule change and advance notice to adopt the Recovery & Wind-down Plan of DTC, and amend the Rules in order to adopt Rule 32(A) (Wind-down of the Corporation) and Rule 38 (Market Disruption and Force Majeure). *See* Securities Exchange Act Release Nos. 82432 (January 2, 2018), 83 FR 884 (January 8, 2018) (SR–DTC–2017–021) and 82579 (January 24, 2018), 83 FR 4310 (January 30, 2018) (SR–DTC–2017–803). On June 28, 2018, DTC filed amendments to the proposed rule change and advance notice with the Commission and the Board of Governors of the Federal Reserve System, respectively, *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[66] *See* Securities Exchange Act Release No. 79528 (December 12, 2016), 81 FR 91232 (December 16, 2016) (SR–DTC–2016–007). The Clearing Agency Investment Policy (the ''Policy'') governs the management, custody, and investment of cash deposited to the Participants Fund, the proprietary liquid net assets (cash and cash equivalents) of DTC and other funds held by DTC. The Policy sets forth guiding principles for the investment of those funds, which include adherence to a conservative investment philosophy that places the highest priority on maximizing liquidity and avoiding risk, as well as mandating the segregation and separation of funds. The Policy also addresses the process for evaluating credit ratings of counterparties and identifies permitted investments within specified parameters. In general, assets are required to be held by regulated and creditworthy financial institution counterparties and invested in financial instruments that, with respect to the Participants Fund, may include deposits with banks, including the Federal Reserve Bank of New York, collateralized reverse-repurchase agreements, direct obligations of the U.S. government and money-market mutual funds.

subsections in proposed Section 2 of Rule 4.

Section 2(e) (Proposed Section 2(b)). For enhanced clarity, DTC is proposing to add the language ''among Account Families'' to clarify the scope of the allocation described in proposed Section 2(b). In addition, DTC proposes to add the heading ''Allocation of Preferred Stock Investments Among Account Families'' to proposed Section 2(b) of Rule 4.

Section 2(f) (Proposed Section 2(c)). DTC is proposing to add language to clarify that when any Pledge of a Preferred Stock Security Interest pursuant to proposed Section 2(c) of Rule 4 is made by appropriate entries on the books of DTC, the Rules, in addition to such entries, shall be deemed to be a security agreement for purposes of the New York Uniform Commercial Code. In addition, DTC proposes to update a cross-reference to proposed Section 2(c). In addition, DTC proposes to add the heading ''Security Interest in Preferred Stock Investments of Participants'' to proposed Section 2(c).

Sections 2(g)–2(i) (Proposed Sections 2(d)–2(f)). DTC proposes to add the headings ''Dividends on Preferred Stock Investments of Participants,'' ''Sale of Preferred Stock Investments of Participants,'' and ''Permitted Transfers of Preferred Stock Investments of Participants'' to proposed Sections 2(d), 2(e), and 2(f), respectively. Proposed Sections 2(e) and 2(f) would be modified to update cross-references to certain subsections. In addition, proposed Section 2(f) would be modified to renumber paragraphs and internal lists for consistency with the numbering schemes in Rule 4.

Section 7. For clarity, DTC is proposing to amend Section 7 of Rule 4 to (i) replace language referencing Additional Participants Fund Deposits with the proposed defined term, (ii) update cross-references to reflect proposed renumbering, and (iii) add the headings ''Increased Participants Fund Deposits and Preferred Stock Investments,'' ''Required Participants Fund Deposits,'' and ''Required Preferred Stock Investments'' to proposed Sections 7, 7(a) and 7(b) of Rule 4, respectively.

C. Proposed Changes to Rule 1

DTC is proposing to amend Rule 1 (Definitions; Governing Law) to add cross-references to proposed terms that would be defined in Rule 4, and to delete one defined term. The defined terms to be added are: ''Additional Participants Fund Deposit,'' ''Corporate Contribution,'' ''CTA Participant,'' ''Declared Non-Default Loss Event,'' ''Default Loss Event,'' ''Event Period,'' ''Loss Allocation Cap,'' ''Loss Allocation Notice,'' ''Loss Allocation Termination Notification Period,'' ''Participant Default,'' ''Participant Termination Date,'' ''Settlement Charge Cap,'' ''Settlement Charge Notice,'' ''Settlement Charge Termination Notification Period,'' ''Termination Notice,'' ''Voluntary Retirement,'' Voluntary Retirement Date,'' and ''Voluntary Retirement Notice''. The term ''Section 8 Pro Rata Charge'' would be deleted from Rule 1, because it would be deleted from proposed Rule 4 as no longer necessary.

D. Proposed Changes to Rule 2

Section 1. The proposed rule change would modify Section 1 of Rule 2 by adding ''subject to Section 6 of Rule 4'' to the end of the following provision: ''A Participant may terminate its business with the Corporation by notifying the Corporation as provided in Sections 7 or 8 of Rule 4 or, if for a reason other than those specified in said Sections 7 and 8, by notifying the Corporation thereof; the Participant shall, upon receipt of such notice by the Corporation, cease to be a Participant.'' DTC is proposing to add this language in order to clarify that the termination would be subject to the requirements in proposed Section 6 of Rule 4.

Participant Outreach

Beginning in August 2017, DTC has conducted outreach to Participants in order to provide them with advance notice of the proposed changes. As of the date of this filing, no written comments relating to the proposed changes have been received in response to this outreach. The Commission will be notified of any written comments received.

Implementation Timeframe

Pending Commission approval, DTC expects to implement this proposal within two (2) Business Days after approval. Participants would be advised of the implementation date of this proposal through issuance of a DTC Important Notice.

Expected Effect on Risks to the Clearing Agency, Its Participants and the Market

DTC believes that the proposed rule changes to clarify the remedies available to DTC with respect to a Participant Default, including the application of the Participants Fund as a liquidity resource, and by clarifying and providing the related processes, would provide clarity as to the application of the Participants Fund to fund settlement and would mitigate any risk to settlement finality due to Participant Default.

DTC believes that the proposed rule change to enhance the resiliency of DTC's loss allocation process and to shorten the time within which DTC is required to return the Actual Participants Fund Deposit of a former Participant would reduce the risk of uncertainty to DTC, its Participants and the market overall.

By replacing the discretionary application of DTC retained earnings to losses and liabilities with a mandatory and defined amount of the Corporate Contribution, the proposed rule change is designed to provide enhanced transparency and accessibility to Participants as to how much DTC would contribute in the event of a loss or liability. The proposed rule change also clarifies that the proposed Corporate Contribution would apply to both Default Loss Events and Declared Non-Default Loss Events. The proposed rule change would provide greater transparency as to the proposed replenishment period for the Corporate Contribution, which would allow Participants to better assess the adequacy of DTC's loss allocation process. Taken together, the proposed rule changes with respect to the Corporate Contribution would enhance the overall resiliency of DTC's loss allocation process by specifying the calculation and application of DTC's Corporate Contribution, including the proposed replenishment period, and would allow Participants to better assess the adequacy of DTC's loss allocation process.

By introducing the concept of an Event Period, DTC would be able to group Default Loss Events and Declared Non-Default Loss Events occurring within a period of ten (10) Business Days for purposes of allocating losses to Participants. DTC believes that the Event Period would provide a defined structure for the loss allocation process to encompass potential sequential Default Loss Events or Declared Non-Default Loss Events that may or may not be closely linked to an initial event and/or a market dislocation episode. Having this structure would enhance the overall resiliency of DTC's loss allocation process because the proposed rule would expressly address losses that may arise from multiple Default Loss Events and/or Declared Non-Default Loss Events that arise in quick succession. Moreover, the proposed Event Period structure would provide certainty for Participants concerning their maximum exposure to mutualized loss allocation with respect to such events.

By introducing the concept of ''rounds'' (and accompanying Loss Allocation Notices) and applying this concept to the timing of loss allocation payments and the Participant termination process in connection with the loss allocation process, DTC would (i) set forth a defined amount that it would allocate to Participants during each round (*i.e.,* the round cap), (ii) advise Participants of loss allocation obligation information as well as round information through the issuance of Loss Allocation Notices, and (iii) provide Participants with the option to limit their loss allocation exposure after the issuance of the first Loss Allocation Notice in each round. These proposed rule changes would enhance the overall resiliency of DTC's loss allocation process because they would expressly permit DTC to continue the loss allocation process in successive rounds until all of DTC's losses are allocated and enable DTC to identify continuing Participants for purposes of calculating subsequent loss allocation obligations in successive rounds. Moreover, the proposed rule changes would define for Participants a clear manner and process in which they could cap their loss allocation exposure to DTC.

By reducing the time within which DTC is required to return the Actual Participants Fund Deposit of a former Participant, DTC would enable firms that have exited DTC to have access to their funds sooner than under current Rule 4 while maintaining the protection of DTC and its provision of clearance and settlement services. DTC would continue to be protected under the proposed rule change, which will maintain the provision that DTC may offset the return of funds against the amount of any loss or liability of DTC arising out of or relating to the obligations of the former Participant to DTC, and would provide that DTC could retain the funds for up to two (2) years. As such, DTC would maintain a necessary level of coverage for possible claims arising in connection with the DTC activities of a former Participant.

Management of Identified Risks

DTC is proposing the rule changes as described in detail above in order to (i) provide clarity as to the application of the Participants Fund to fund settlement when a Participant fails to settle, (ii) enhance the resiliency of DTC's loss allocation process, (iii) provide clarity and certainty to Participants regarding DTC's loss allocation process, (iv) provide clarity with respect to the Voluntary Retirement of a Participant.

Consistency With the Clearing Supervision Act

The proposed rule change would be consistent with Section 805(b) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'').[67] The objectives and principles of Section 805(b) of the Clearing Supervision Act are to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.[68]

The proposed rule change would provide clarity and certainty around the use of the Participants Fund in connection with a Participant Default by expressly providing for the application of the Actual Participants Fund Deposit of the defaulting Participant to its unpaid obligations, and by providing a defined process for pro rata settlement charges to non-defaulting Participants that is separate from the loss allocation process. Together, these proposed rule changes more clearly specify the rights and obligations of DTC and its Participants in respect of the application of the Participants Fund. Reducing the risk of uncertainty to DTC, its Participants, and the market overall would promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system. Therefore, DTC believes that the proposed rule changes to provide clarity and certainty around the use of the Participants Fund in connection with a Participant Default, and to provide a defined process for pro rata settlement charges to the Actual Participants Fund Deposits of non-defaulting Participants, are consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

The proposed rule change would enhance the resiliency of DTC's loss allocation process by (1) requiring a defined contribution of DTC corporate funds to a loss, (2) introducing an Event Period, and (3) introducing the concept of ''rounds'' (and accompanying Loss Allocation Notices) and applying this concept to the timing of loss allocation payments and the Participant termination process in connection with the loss allocation process. Together, these proposed rule changes would (i) create greater certainty for Participants regarding DTC's obligation towards a loss, (ii) more clearly specify DTC's and Participants' obligations toward a loss and balance the need to manage the risk of sequential defaults and other potential loss events against Participants' need for certainty concerning their maximum exposures, and (iii) provide Participants the opportunity to limit their exposure to DTC by capping their exposure to loss allocation. Reducing the risk of uncertainty to DTC, its Participants and the market overall would promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system. Therefore, DTC believes that the proposed rule change to enhance the resiliency of DTC's loss allocation process is consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

By reducing the time within which DTC is required to return the Actual Participants Fund Deposit of a former Participant, DTC would enable firms that have exited DTC to have access to their funds sooner than under current Rule 4 while maintaining the protection of DTC and its provision of clearance and settlement services. DTC would continue to be protected under the proposed rule change, which will maintain the provision that DTC may offset the return of funds against the amount of any loss or liability of DTC arising out of or relating to the obligations of the former Participant to DTC, and would provide that DTC could retain the funds for up to two (2) years. As such, DTC would maintain a necessary level of coverage for possible claims arising in connection with the DTC activities of a former Participant. Enabling DTC to continue to meet its clearance and settlement obligations would promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system. Therefore, DTC believes that this proposed rule change is consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

The proposed rule change is also consistent with Rules 17Ad–22(e)(7)(i), 17Ad–22(e)(13), and 17Ad–22 (e)(23)(i), promulgated under the Act.[69]

Rule 17Ad–22(e)(7)(i) under the Act requires, in part, that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by DTC, including measuring,

[67] 12 U.S.C. 5464(b).

[68] *Id.*

[69] 17 CFR 240.17Ad–22(e)(7)(i), (e)(13) and (e)(23)(i).

monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity, by maintaining sufficient liquid resources to effect same-day settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios.[70] By clarifying the remedies available to DTC with respect to a Participant Default, including the application of the Participants Fund as a liquidity resource, and by clarifying and providing the related processes, the proposed rule change is designed so that DTC may manage its settlement and funding flows on a timely basis and apply the Participants Fund as a liquid resource in order to effect same day settlement of payment obligations with a high degree of confidence. Therefore, DTC believes that the proposed rule changes with respect to the application of the Actual Participants Fund Deposits of non-defaulting Participants to complete settlement are consistent with Rule 17Ad–22(e)(7)(i) under the Act.

Rule 17Ad–22(e)(13) under the Act requires, in part, that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure DTC has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations.[71] The proposed rule changes to (1) require a defined Corporate Contribution to a loss, (2) introduce an Event Period, (3) introduce the concept of ''rounds'' (and accompanying Loss Allocation Notices) and apply this concept to the timing of loss allocation payments and the Participant termination process in connection with the loss allocation process, taken together, are designed to enhance the resiliency of DTC's loss allocation process. Having a resilient loss allocation process would help ensure that DTC can effectively and timely address losses relating to or arising out of Default Loss Events and/or Declared Non-Default Loss Events, which in turn would help DTC contain losses and continue to conduct its clearance and settlement business. In addition, by providing clarity as to the application of the Participants Fund to fund settlement in the event of a Participant Default, the proposed rule change is designed to clarify that DTC is authorized to use the Participants Fund to fund settlement. Therefore, DTC believes that the proposed rule changes to enhance the resiliency of DTC's loss allocation process, and to provide clarity as to the application of the Participants Fund to fund settlement, are consistent with Rule 17Ad–22(e)(13) under the Act.

Rule 17Ad–22(e)(23)(i) under the Act requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures, including key aspects of DTC's default rules and procedures.[72] The proposed rule changes to (i) separate the provisions for the use of the Participants Fund for settlement and for loss allocation, (ii) make clarifying changes to the provisions regarding the application of the Participants Fund to complete settlement and for the allocation of losses, (iii) further align the loss allocation rules of the DTCC Clearing Agencies, (iv) improve the overall transparency and accessibility of the provisions in the Rules governing loss allocation, and (v) make technical and conforming changes, would not only ensure that DTC's loss allocation rules are, to the extent practicable and appropriate, consistent with the loss allocation rules of the other DTCC Clearing Agencies, but also would help to ensure that DTC's loss allocation rules are transparent and clear to Participants. Aligning the loss allocation rules of the DTCC Clearing Agencies would provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies. Having transparent and clear loss allocation rules would enable Participants to better understand the key aspects of DTC's Rules and Procedures relating to Participant Default, as well as non-default events, and provide Participants with increased predictability and certainty regarding their exposures and obligations. As such, DTC believes that the proposed rule changes with respect to pro rata settlement charges, and to align the loss allocation rules across the DTCC Clearing Agencies and to improve the overall transparency and accessibility of DTC's loss allocation rules are consistent with Rule 17Ad-22(e)(23)(i) under the Act.

The proposed rule changes to clarify the Voluntary Retirement of a Participant would improve the clarity of the Rules and help to ensure that DTC's Voluntary Retirement process is transparent and clear to Participants. Having clear Voluntary Retirement provisions would enable Participants to better understand the Voluntary Retirement process and provide Participants with increased predictability and certainty regarding their rights and obligations with respect to such process. As such, DTC believes that the proposed rule changes with respect to Voluntary Retirement are also consistent with Rule 17Ad–22(e)(23)(i) under the Act.

III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its website of proposed changes that are implemented.

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

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 email to *rule-comments@sec.gov*. Please include File Number SR–DTC–2017–804 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2017–804. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use

[70] *Id.* at 240.17Ad–22(e)(7)(i).

[71] *Id.* at 240.17Ad–22(e)(13).

[72] *Id.* at 240.17Ad–22(e)(23)(i).

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 Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice 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–2017–804 and should be submitted on or before August 21, 2018.

By the Commission.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2018–16714 Filed 8–3–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83748; File No. SR–NSCC–2017–806]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Amendment No. 1 to an Advance Notice To Amend the Loss Allocation Rules and Make Other Changes

July 31, 2018.

On December 18, 2017, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–NSCC–2017–806 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act'').[1] The notice of filing and extension of the review period of the Advance Notice was published for comment in the **Federal Register** on January 30, 2018.[2]

On April 10, 2018, the Commission required additional information from NSCC pursuant to Section 806(e)(1)(D) of the Clearing Supervision Act, which tolled the Commission's period of review of the Advance Notice.[3] On June 28, 2018, NSCC filed Amendment No. 1 to the Advance Notice to amend and replace in its entirety the Advance Notice as originally submitted on December 18, 2017, and on July 6, 2018, submitted a response to the Commission's request for additional information in consideration of the Advance Notice, which added a further 60-days to the review period pursuant to Section 806(e)(1)(E) and (G) of the Clearing Supervision Act.[4]

The Advance Notice, as amended by Amendment No. 1, is described in Items I and II below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the Advance Notice, as amended by Amendment No. 1, from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This Advance Notice consists of proposed modifications to NSCC's Rules and Procedures (''Rules'') in order to amend provisions in the Rules regarding loss allocation as well as make other changes, as described in greater detail below.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

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

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

Written comments relating to this proposal have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

[1] 12 U.S.C. 5465(e)(1) and 17 CFR 240.19b–4(n)(1)(i), respectively. On December 18, 2017, NSCC filed the Advance Notice as a proposed rule change (SR–NSCC–2017–018) with the Commission pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder (''Proposed Rule Change''). (17 CFR 240.19b–4 and 17 CFR 240.19b–4, respectively.) The Proposed Rule Change was published in the **Federal Register** on January 8, 2018. *See* Securities Exchange Act Release No. 82428 (January 2, 2018), 83 FR 897 (January 8, 2018) (SR–NSCC–2017–018). On February 8, 2018, the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change. *See* Securities Exchange Act Release No. 82670 (February 8, 2018), 83 FR 6626 (February 14, 2018) (SR–DTC–2017–022; SR–FICC–2017–022; SR–NSCC–2017–018). On March 20, 2018, the Commission instituted proceedings to determine whether to approve or disapprove the Proposed Rule Change. *See* Securities Exchange Act Release No. 82910 (March 20, 2018), 83 FR 12968 (March 26, 2018) (SR–NSCC–2017–018). On June 25, 2018, the Commission designated a longer period for Commission action on the proceedings to determine whether to approve or disapprove the Proposed Rule Change. Therefore, September 5, 2018 is the date by which the Commission should either approve or disapprove the Proposed Rule Change. *See* Securities Exchange Act Release Nos. 83510 (June 25, 2018), 83 FR 30791 (June 29, 2018) (SR–DTC–2017–022; SR–FICC–2017–022; SR–NSCC–2017–018). On June 28, 2018, NSCC filed Amendment No. 1 to the Proposed Rule Change. *See* Securities Exchange Act Release No. 83633 (July 13, 2018), 83 FR 34227 (July 19, 2018) (SR–NSCC–2017–018). As of the date of this release, the Commission has not received any comments on the Proposed Rule Change.

[2] Securities Exchange Act Release No. 82584 (January 24, 2018), 83 FR 4377 (January 30, 2018) (SR–NSCC–2017–806). Pursuant to Section 806(e)(1)(H) of the Clearing Supervision Act, the Commission may extend the review period of an advance notice for an additional 60 days, if the changes proposed in the advance notice raise novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. 12 U.S.C. 5465(e)(1)(H). The Commission found that the Advance Notice raised complex issues and, accordingly, extended the review period of the Advance Notice for an additional 60 days until April 17, 2018, pursuant to Section 806(e)(1)(H). *Id.*

[3] 12 U.S.C. 5465(e)(1)(D); *See* Memorandum from the Office of Clearance and Settlement Supervision, Division of Trading and Markets, titled ''Commission's Request for Additional Information,'' *available at https://www.sec.gov/rules/sro/nscc-an.htm.*

[4] To promote the public availability and transparency of its post-notice amendment, NSCC submitted a copy of Amendment No. 1 through the Commission's electronic public comment letter mechanism. Accordingly, Amendment No. 1 has been posted on the Commission's website at *https://www.sec.gov/rules/sro/nscc-an.htm* and thus been publicly available since June 29, 2018. 12 U.S.C. 5465(e)(1)(E) and (G); *see* Memorandum from the Office of Clearance and Settlement Supervision, Division of Trading and Markets, titled ''Response to the Commission's Request for Additional Information,'' *available at https://www.sec.gov/rules/sro/nscc-an.htm.*

[5] Capitalized terms not defined herein are defined in the Rules, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*