For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

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Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

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

December 22, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2021, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of amendments to the Rules, By-Laws and Organization Certificate (''Rules'') of DTC in order to (i) enhance DTC's capital requirements for Participants, (ii) redefine DTC's Watch List and eliminate DTC's enhanced surveillance list and (iii) make certain other clarifying, technical and supplementary changes in the Rules, including definitional updates, to accomplish items (i) and (ii), as described in greater detail below.[3]

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

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

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

1. Purpose

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

(i) Background

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

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

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

DTC's capital requirements for Participants have not been updated in over 20 years. Since that time, there have been significant changes to the financial markets that warrant DTC revisiting its capital requirements. For example, the regulatory environment within which DTC and its Participants operate has undergone various changes. The implementation of the Basel III standards,[5] the designation of many banks as systemically important by the Financial Stability Board,[6] as well as the designation of DTC as a systemically important financial market utility (''SIFMU'') by the Financial Stability Oversight Council,[7] have significantly increased the regulatory requirements, including capital requirements, of many financial institutions and CSDs. Similarly, the Covered Clearing Agency Standards (''CCAS'') adopted by the Commission have raised the regulatory standards applicable to CSDs such as DTC.[8]

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

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

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

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

[4] 15 U.S.C. 78q–1(b)(4)(B).

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

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

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

[8] 17 CFR 240.17Ad–22(e).

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

to mitigate the effects of these and other risks.

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

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

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

(ii) Current DTC Capital Requirements

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

Policy Statement

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

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

Section 1

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

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

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

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

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

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

Section 2

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

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

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

i. For financial statements prepared in accordance with International Financial Reporting Standards, the U.K. Companies Act of 1985 (''U.K. GAAP''), or Canadian generally accepted accounting principles—a premium of 1½ times the minimum financial requirements;

ii. for financial statements prepared in accordance with a European Union country's generally accepted accounting principles, other than U.K. GAAP—a premium of 5 times the minimum financial requirements; and

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

Accordingly, a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP is required to meet financial requirements between 1½ to 7 times the minimum financial requirements that would otherwise be applicable to the non-U.S entity. Given that, as noted above, the financial responsibility requirements generally require a Participant to have a certain level of capital, Section 2 of the Policy Statement has the effect of requiring a non-U.S. entity that does not prepare its financial statements in accordance with U.S. GAAP to have capital between 1½ to 7 times the otherwise-applicable capital requirement.

Section 2 of the Policy Statement also provides that a non-U.S. entity must be in compliance with the financial

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

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

[11] *See* Policy Statement, *supra* note 3.

reporting and responsibility standards of its home country regulator.

(iii) Current DTC Watch List and Enhanced Surveillance List

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

Specifically, the Watch List is the list of Participants with credit ratings derived from DTC's Credit Risk Rating Matrix (''CRRM'')[13] of 5, 6 or 7, as well as Participants that, based on DTC's consideration of relevant factors, including those set forth in Section 10 of Rule 2 (Participants and Pledgees),[14] are deemed by DTC to pose a heightened risk to it and its Participants.

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

Rule 2 (Participants and Pledgees)

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

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

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

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

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

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

(iv) Proposed Rule Changes

A. Changes To Enhance DTC's Capital Requirements

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

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

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

Rule 1 (Definitions; Governing Law)

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

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

U.S. Banks and Trust Companies That Are Banks

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

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

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

[13] DTC's CRRM is a matrix of credit ratings of Participants specified in Section 10(a) of Rule 2. The CRRM is developed by DTC to evaluate the credit risk Participants pose to DTC and its Participants and is based on factors determined to be relevant by DTC from time to time, which factors are designed to collectively reflect the financial and operational condition of a Participant. These factors include (i) quantitative factors, such as capital, assets, earnings, and liquidity, and (ii) qualitative factors, such as management quality, market position/environment, and capital and liquidity risk management. *See* Rule 1 (Definitions; Governing Law), *supra* note 3.

[14] Rule 2 (Participants and Pledgees), Section 10, *supra* note 3.

[15] Rule 2 (Participants and Pledgees), *supra* note 3.

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

[17] *See* 12 CFR 324.403(b)(1).

[18] *Compare, e.g.,* 12 CFR 324.20(b) (FDIC's definition of CET1 Capital), and Regulation (EU) No

Consistent with these changes by banking regulators, DTC believes that the appropriate capital measure for Participants that are U.S. banks and trust companies that are banks should be CET1 Capital and that DTC's capital requirements for Participants should be enhanced in light of these increased regulatory capital requirements.

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

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

U.S. Banks Trust Companies That Are Not Banks

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

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

U.S. Broker-Dealers

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

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

U.S. CSDs

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

U.S. Securities Exchanges

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

U.S. Settling Banks

DTC proposes to require that a Settling Bank or applicant to be a Settling Bank that, in accordance with such entity's regulatory and/or statutory requirements, calculates a Tier 1 RBC Ratio must have a Tier 1 RBC Ratio[21] at all times equal to or greater than the Tier 1 RBC Ratio that would be required for such Settling Bank or applicant to be Well Capitalized.

Other U.S. Entities

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

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

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

Non-U.S. Banks and Trust Companies

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

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

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

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

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

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

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

As described above, pursuant to Section 2 of the Policy Statement, the current minimum capital requirements for a Participant that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such Participant to have capital between 1½ to 7 times the otherwise-applicable capital requirement.

The multiplier was designed to account for the less transparent nature of accounting standards other than U.S. GAAP. However, accounting standards have converged over the years (namely IFRS and U.S. GAAP).[23] As such, DTC believes the multiplier is no longer necessary and its retirement would be a welcomed simplification for both DTC and its Participants.

Accordingly, DTC proposes to delete the language in Section 2 of the Policy Statement providing that the minimum capital requirements for a Participant that does not prepare its financial statements in accordance with U.S. GAAP is subject to a multiplier that requires such Participants to have capital between 1½ to 7 times the otherwise-applicable capital requirement.

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

Non-U.S. Broker-Dealers

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

Non-U.S. CSDs

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

Non-U.S. Securities Exchanges

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

Other Non-U.S. Entities

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

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

Other Proposed Changes to the Policy Statement

Introduction and General Changes

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

Section 1

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

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

Section 2

DTC proposes to provide in Section 2 of the Policy Statement that a non-U.S. entity applicant that satisfies the

[23] The convergence between IFRS and U.S. GAAP began with the 2002 Norwalk Agreement. (*Available at https://www.ifrs.org/content/dam/ifrs/around-the-world/mous/norwalk-agreement-2002.pdf.*) Under that agreement, the Financial Accounting Standards Board (''FASB'') and the International Accounting Standards Board (''IASB'') signed a memorandum of understanding on the convergence of accounting standards. Between 2010 and 2013, FASB and IASB published several quarterly progress reports on their work to improve and achieve convergence of U.S. GAAP and IFRS. In 2013, the International Financial Reporting Standards Foundation established the Accounting Standards Advisory Forum (''ASAF'') to improve cooperation among worldwide standard setters and advise the IASB as it developed IFRS. (*See https://www.ifrs.org/groups/accounting-standards-advisory-forum/.*) FASB was selected as one of the ASAF's twelve members. FASB's membership on the ASAF helps represent U.S. interests in the IASB's standard-setting process and continues the process of improving and converging U.S. GAAP and IFRS. In February 2013, the Journal of Accountancy published its view of the success of the convergence project citing converged or partially converged standards, including business combinations, discontinued operations, fair value measurement, and share-base payments. (*Available at https://www.journalofaccountancy.com/issues/2013/feb/20126984.html.*) Subsequent to the publication, IASB and FASB converge on revenue recognition. While IASB and FASB have not achieved full convergence, DTC believes the accounting rules are sufficiently aligned such that the multiplier is no longer required.

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

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

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

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

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

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

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

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

Participant Outreach

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

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

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

Implementation Timeframe

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

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

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Exchange Act[26] and Rules 17Ad–22(e)(4)(i) and (e)(18),[27] each as promulgated under the Exchange Act, for the reasons described below.

Section 17A(b)(3)(F) of the Exchange Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.[28] As described above, the proposed rule changes would (1) enhance DTC's capital requirements for Participants (2) redefine the Watch List and eliminate the enhanced surveillance list, and (3) make clarification changes to the Rules. DTC believes that enhancing its capital requirements for Participants, including continuing to recognize and account for varying Participants and participation categories, would help ensure that Participants maintain sufficient capital to absorb losses arising out of their clearance and settlement activities at DTC and otherwise, and would help DTC more effectively manage and mitigate the credit risks posed by its Participants, which would in turn help DTC be better able to withstand such

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

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

[26] 15 U.S.C. 78q–1(b)(3)(F).

[27] 17 CFR 240.17Ad–22(e)(4)(i) and (e)(18).

[28] 15 U.S.C. 78q–1(b)(3)(F).

credit risks and continue to meet its clearance and settlement obligations to its Participants. Similarly, DTC believes that redefining the Watch List and eliminating the enhanced surveillance list, as described above, would help DTC better allocate its resources for monitoring the credit risks posed by its Participants, which would in turn help DTC more effectively manage and mitigate such credit risks so that DTC is better able to withstand such credit risks and continue to meet its clearance and settlement obligations to its Participants. DTC believes that making clarification changes to the Rules, including through the use of new defined terms, would help ensure that the Rules remain clear and accurate, which would in turn help facilitate Participants' understanding of the Rules and provide Participants with increased predictability and certainty regarding their rights and obligations with respect to DTC's clearance and settlement activities. Therefore, DTC believes that these proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Exchange Act.

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

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

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

DTC does not believe the proposed changes to enhance the capital requirements for its Participants will have an impact on competition because Participants largely already meet, and in most cases exceed, the proposed capital requirements. Nevertheless, DTC fully appreciates that for the few Participants that do not already meet the proposed requirements, the proposed rule change could have an impact upon competition because those Participants could be required to maintain capital in excess of their current capital levels. That impact could impose a burden on competition on some of those Participants because they may bear higher costs to raise capital in order to comply with the enhanced capital requirements. However, DTC does not believe the burden on competition would be significant because, again, only a few Participants do not already meet the proposed requirements. In any event, to the extent there would be a burden on competition, DTC believes it would be necessary and appropriate in furtherance of the purposes of the Exchange Act, as permitted by Section 17A(b)(3)(I) thereunder.[31]

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

[29] 17 CFR 240.17Ad–22(e)(4)(i).

[30] 17 CFR 240.17Ad–22(e)(18).

[31] 15 U.S.C. 78q–1(b)(3)(I).

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

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

There also has been heightened focus on legal, operational, and cyber risk, given the devastating impact that they could have today. Appreciation of these greater risks have manifested into new regulatory requirements for certain industry participants,[33] including DTC, requiring DTC to maintain greater capital amounts and deploy enhanced risk management tools.[34]

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

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

Therefore, DTC believes the proposed changes to enhance the capital requirements for its Participants are appropriate in furtherance of the purposes of the Exchange Act, as permitted by Section 17A(b)(3)(I) thereunder,[35] as the proposed changes are purposely tailored and structured, provide for a one-year implementation period, and are consistent with applicable provisions of the Exchange Act and rules thereunder.

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

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

DTC has not received or solicited any written comments relating to this proposal.[36] If any written comments are received, DTC will amend this filing to publicly file such comments as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

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

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

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

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

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

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2021–017 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–DTC–2021–017. This file number should be included on the subject line if 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 proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of

[32] *See supra* note 9.

[33] *See, e.g.,* Basel Committee on Banking Supervision, Basel III Standards, *supra* note 5; Financial Stability Board, 2020 list of G–SIBs, *supra* note 6; U.S. Department of the Treasury, Designations, Financial Market Utility Designations, *supra* note 7.

[34] *See, e.g.,* CCAS, *supra* note 8.

[35] 15 U.S.C. 78q–1(b)(3)(I).

[36] *See supra* note 25.

10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2021–017 and should be submitted on or before January 19, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–28249 Filed 12–28–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93857; File No. SR–FICC–2021–009]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Enhance Capital Requirements and Make Other Changes

December 22, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 13, 2021, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of amendments to the Government Securities Division (''GSD'') Rulebook (the ''GSD Rules'') and the Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (the ''MBSD Rules,'' and together with the GSD Rules, the ''Rules'') of FICC in order to (i) enhance FICC's capital requirements for Members of GSD and Members of MBSD (collectively, ''members''), (ii) redefine FICC's Watch List and eliminate FICC's enhanced surveillance list, and (iii) make certain other clarifying, technical and supplementary changes in the Rules, including definitional updates, to accomplish items (i) and (ii), as described in greater detail below.[3]

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

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

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

1. Purpose

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

(i) Background

Central counterparties (''CCPs'') play a key role in financial markets by mitigating counterparty credit risk on transactions of their participants. CCPs achieve this by providing guaranties to participants and, as a consequence, are typically exposed to credit risks that could lead to default losses.

As a CCP, FICC is exposed to the credit risks of its members. The credit risks borne by FICC are mitigated, in part, by the capital maintained by members, which serves as a loss-absorbing buffer.

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

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

FICC's capital requirements for its members have not been updated in nearly 20 years.[5] Since that time, there have been significant changes to the financial markets that warrant FICC revisiting its capital requirements. For example, the regulatory environment within which FICC and its members operate has undergone various changes. The implementation of the Basel III standards,[6] the designation of many banks as systemically important by the Financial Stability Board,[7] as well as the designation of FICC as a systemically important financial market utility (''SIFMU'') by the Financial Stability Oversight Council,[8] have significantly increased the regulatory requirements, including capital requirements, of many financial institutions and CCPs. Similarly, the Covered Clearing Agency Standards (''CCAS'') adopted by the Commission have raised the regulatory standards applicable to CCPs such as FICC.[9]

There also have been significant membership changes over the past 20 years. Numerous mergers, acquisitions, and new market entrants (*e.g.,* via the CCIT and Sponsoring Member programs at FICC) have created a diverse FICC membership that has expanded the credit-risk profiles that FICC must manage. For example, post the 2008 financial crisis and subsequent changes in regulatory capital requirements, FICC

[37] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Capitalized terms not defined herein shall have the meanings ascribed to such terms in the GSD Rules and the MBSD Rules, as applicable, *available at https://www.dtcc.com/legal/rules-and-procedures.*

[4] 15 U.S.C. 78q–1(b)(4)(B).

[5] Although FICC has not updated capital requirements for many of its members in nearly 20 years, during that time FICC has adopted new membership categories with corresponding capital requirements that FICC believes are still appropriate. As such, FICC is not proposing changes to capital requirements for all membership categories.

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

[7] *See* Financial Stability Board, 2021 list of global systemically important banks, *available at https://www.fsb.org/wp-content/uploads/P231121.pdf.*

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

[9] 17 CFR 240.17Ad–22(e).