Majeure Rule would have any impact, or impose any burden, on competition.

With respect to the Wind-down Plan and the proposed Wind-down Rule, which facilitate the execution of the Wind-down Plan, the proposal would operate to effect the transfer of all eligible Members and Limited Members of both Divisions to the Transferee, and would not prohibit any market participant from either bidding to become the Transferee or from applying for membership with the Transferee. The proposal also would not prohibit any Member or Limited Member from withdrawing from FICC prior to the Transfer Time, as is permitted under the Rules today, or from applying for membership with the Transferee. Therefore, as the proposal would treat each similarly situated Member identically under the Wind-down Plan and this Proposed Rule, FICC does not believe the Wind-down Plan or the proposed Wind-down Rule would have any impact, or impose any burden, on competition.

FICC does not believe that the other proposed changes to the Rules and the EPN Rules would have any impact on competition because these proposed changes to incorporate the Proposed Rules into the Rules and the EPN Rules are technical clarifications, which would not, on their own, change FICC's current practices or the rights or obligations of the Members or EPN Users.

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

While FICC has not solicited or received any written comments relating to this proposal, FICC has conducted outreach to its Members in order to provide them with notice of the proposal. FICC will notify the Commission of any written comments received by FICC.

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 clearing agency 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.

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, 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–FICC–2017–021 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–FICC–2017–021. 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 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 FICC 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–FICC–2017–021 and should be submitted on or before January 29, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[67]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00079 Filed 1–5–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82432; File No. SR–DTC–2017–021]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Adopt a Recovery & Wind-Down Plan and Related Rules

January 2, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2017, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency.[3] 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 of DTC would (1) adopt the Recovery & Wind-down Plan of DTC (''R&W Plan'' or ''Plan''); and (2) amend the Rules, By-Laws and Organization Certificate of DTC (''Rules'')[4] in order to adopt Rule 32(A) (Wind-down of the Corporation) and Rule 38 (Market Disruption and Force Majeure) (each proposed Rule 32(A) and proposed Rule 38, a ''Proposed Rule'' and, collectively, the ''Proposed Rules'').

The R&W Plan would be maintained by DTC in compliance with Rule 17Ad–22(e)(3)(ii) under the Act by providing

[67] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] On December 18, 2017, DTC filed this proposed rule change as an advance notice (SR–DTC–2017–803) with the Commission 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, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the Act, 17 CFR 240.19b–4(n)(1)(i). A copy of the advance notice is available at *http://www.dtcc.com/legal/sec-rule-filings.*

[4] Capitalized terms used herein and not otherwise defined herein are defined in the Rules, *available at www.dtcc.com/~/media/Files/Downloads/legal/rules/DTC_rules.pdf.*

plans for the recovery and orderly wind-down of DTC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described below.[5] The Proposed Rules are designed to (1) facilitate the implementation of the R&W Plan when necessary and, in particular, allow DTC to effectuate its strategy for winding down and transferring its business; (2) provide Participants with transparency around critical provisions of the R&W Plan that relate to their rights, responsibilities and obligations; and (3) provide DTC with the legal basis to implement those provisions of the R&W Plan when necessary, as described below.

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

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

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

1. Purpose

DTC is proposing to adopt the R&W Plan to be used by the Board and management in the event DTC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would identify (i) the recovery tools available to DTC to address the risks of (a) uncovered losses or liquidity shortfalls resulting from the default of one or more of its Participants, and (b) losses arising from non-default events, such as damage to its physical assets, a cyber-attack, or custody and investment losses, and (ii) the strategy for implementation of such tools. The R&W Plan would also establish the strategy and framework for the orderly wind-down of DTC and the transfer of its business in the remote event the implementation of the available recovery tools does not successfully return DTC to financial viability.

As discussed in greater detail below, the R&W Plan would provide, among other matters, (i) an overview of the business of DTC and its parent, The Depository Trust & Clearing Corporation (''DTCC''); (ii) an analysis of DTC's intercompany arrangements and critical links to other financial market infrastructures (''FMIs''); (iii) a description of DTC's services, and the criteria used to determine which services are considered critical; (iv) a description of the DTC and DTCC governance structure; (v) a description of the governance around the overall recovery and wind-down program; (vi) a discussion of tools available to DTC to mitigate credit/market and liquidity risks, including recovery indicators and triggers, and the governance around management of a stress event along a ''Crisis Continuum'' timeline; (vii) a discussion of potential non-default losses and the resources available to DTC to address such losses, including recovery triggers and tools to mitigate such losses; (viii) an analysis of the recovery tools' characteristics, including how they are comprehensive, effective, and transparent, how the tools provide appropriate incentives to Participants to, among other things, control and monitor the risks they may present to DTC, and how DTC seeks to minimize the negative consequences of executing its recovery tools; and (ix) the framework and approach for the orderly wind-down and transfer of DTC's business, including an estimate of the time and costs to effect a recovery or orderly wind-down of DTC.

The R&W Plan would be structured as a roadmap, and would identify and describe the tools that DTC may use to effect a recovery from the events and scenarios described therein. Certain recovery tools that would be identified in the R&W Plan are based in the Rules (including the Proposed Rules) and, as such, descriptions of those tools would include descriptions of, and reference to, the applicable Rules and any related internal policies and procedures. Other recovery tools that would be identified in the R&W Plan are based in contractual arrangements to which DTC is a party, including, for example, existing committed or pre-arranged liquidity arrangements. Further, the R&W Plan would state that DTC may develop further supporting internal guidelines and materials that may provide operationally for matters described in the Plan, and that such documents would be supplemental and subordinate to the Plan.

Key factors considered in developing the R&W Plan and the types of tools available to DTC were its governance structure and the nature of the markets within which DTC operates. As a result of these considerations, many of the tools available to DTC that would be described in the R&W Plan are DTC's existing, business-as-usual risk management and default management tools, which would continue to be applied in scenarios of increasing stress. In addition to these existing, business-as-usual tools, the R&W Plan would describe DTC's other principal recovery tools, which include, for example, (i) identifying, monitoring and managing general business risk and holding sufficient liquid net assets funded by equity (''LNA'') to cover potential general business losses pursuant to the Clearing Agency Policy on Capital Requirements (''Capital Policy''),[6] (ii) maintaining the Clearing Agency Capital Replenishment Plan (''Replenishment Plan'') as a viable plan for the replenishment of capital should DTC's equity fall close to or below the amount being held pursuant to the Capital Policy,[7] and (iii) the process for the allocation of losses among Participants as provided in Rule 4.[8] The R&W Plan would provide governance around the selection and implementation of the recovery tool or tools most relevant to mitigate a stress scenario and any applicable loss or liquidity shortfall.

The development of the R&W Plan is facilitated by the Office of Recovery & Resolution Planning (''R&R Team'') of DTCC.[9] The R&R Team reports to the DTCC Management Committee (''Management Committee'') and is responsible for maintaining the R&W Plan and for the development and ongoing maintenance of the overall recovery and wind-down planning process. The Board, or such committees as may be delegated authority by the Board from time to time pursuant to its charter, would review and approve the R&W Plan biennially, and would also review and approve any changes that

[5] 17 CFR 240.17Ad–22(e)(3)(ii).

[6] *See* Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR–DTC–2017–003, SR–FICC–2017–007, SR–NSCC–2017–004).

[7] *See id.*

[8] *See* Rule 4 (Participants Fund and Participants Investment), *supra* note 4. DTC is proposing changes to Rule 4 regarding allocation of losses in a separate filing submitted simultaneously with this filing (File Nos. SR–DTC–2017–022 and SR–DTC–2017–804, referred to collectively herein as the ''Loss Allocation Filing''). DTC expects the Commission to review both proposals together, and, as such, the proposal described in this filing anticipates the approval and implementation of those proposed changes to the Rules.

[9] DTCC operates on a shared services model with respect to DTC and its other subsidiaries. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a subsidiary, including DTC.

are proposed to the R&W Plan outside of the biennial review.

As discussed in greater detail below, the Proposed Rules would define the procedures that may be employed in the event of a DTC wind-down, and would provide for DTC's authority to take certain actions on the occurrence of a ''Market Disruption Event,'' as defined therein. Significantly, the Proposed Rules would provide Participants with transparency and certainty with respect to these matters. The Proposed Rules would facilitate the implementation of the R&W Plan, particularly DTC's strategy for winding down and transferring its business, and would provide DTC with the legal basis to implement those aspects of the R&W Plan.

DTC R&W Plan

The R&W Plan is intended to be used by the Board and DTC's management in the event DTC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would be structured to provide a roadmap, define the strategy, and identify the tools available to DTC to either (i) recover, in the event it experiences losses that exceed its prefunded resources (such strategies and tools referred to herein as the ''Recovery Plan'') or (ii) wind-down its business in a manner designed to permit the continuation of its critical services in the event that such recovery efforts are not successful (such strategies and tools referred to herein as the ''Wind-down Plan''). The description of the R&W Plan below is intended to highlight the purpose and expected effects of the material aspects of the R&W Plan, and to provide Participants with appropriate transparency into these features.

Business Overview, Critical Services, and Governance

The introduction to the R&W Plan would identify the document's purpose and its regulatory background, and would outline a summary of the Plan. The stated purpose of the R&W Plan is that it is to be used by the Board and DTC management in the event DTC encounters scenarios that could potentially prevent it from being able to provide its critical services as a going concern. The R&W Plan would be maintained by DTC in compliance with Rule 17Ad–22(e)(3)(ii) under the Act [10] by providing plans for the recovery and orderly wind-down of DTC.

The R&W Plan would describe DTCC's business profile, provide a summary of DTC's services, and identify the intercompany arrangements and critical links between DTC and other FMIs. This overview section would provide a context for the R&W Plan by describing DTC's business, organizational structure and critical links to other entities. By providing this context, this section would facilitate the analysis of the potential impact of utilizing the recovery tools set forth in later sections of the Recovery Plan, and the analysis of the factors that would be addressed in implementing the Wind-down Plan.

DTCC is a user-owned and user-governed holding company and is the parent company of DTC and its affiliates, National Securities Clearing Corporation (''NSCC'') and Fixed Income Clearing Corporation (''FICC,'' and, together with NSCC and DTC, the ''Clearing Agencies''). The Plan would describe how corporate support services are provided to DTC from DTCC and DTCC's other subsidiaries through intercompany agreements under a shared services model.

The Plan would provide a description of established links between DTC and other FMIs, both domestic and foreign, including central securities depositories (''CSDs'') and central counterparties (''CCPs''), as well as the twelve U.S. Federal Reserve Banks. In general, these links are either ''inbound'' or ''issuer'' links, in which the other FMI is a Participant and/or a Pledgee and maintains one or more accounts at DTC, or ''outbound'' or ''investor'' links in which DTC maintains one or more accounts at another FMI. Key FMIs with which DTC maintains critical links include CDS Clearing and Depository Services Inc. (''CDS''), the Canadian CSD, with participant links in both directions; Euroclear Bank SA/NV (''EB'') for cross-border collateral management services; and The Options Clearing Corporation (''OCC'') and the Federal Reserve Bank of New York (''FRBNY''), each of which is both a Participant and a Pledgee. The critical link for the U.S. marketplace is the relationship between DTC and NSCC, through which continuous net settlement (''CNS'') transactions are completed by settlement at DTC, and DTC acts as settlement agent for NSCC for end-of-day funds settlement.[11] This section of the Plan, identifying and briefly describing DTC's established links, would provide a mapping of critical connections and dependencies that may need to be relied on or otherwise addressed in connection with the implementation of either the Recovery Plan or the Wind-down Plan.

The Plan would define the criteria for classifying certain of DTC's services as ''critical,'' and would identify those critical services and the rationale for their classification. This section would provide an analysis of the potential systemic impact from a service disruption, and is important for evaluating how the recovery tools and the wind-down strategy would facilitate and provide for the continuation of DTC's critical services to the markets it serves. The criteria that would be used to identify a DTC service or function as critical would include consideration as to (1) whether there is a lack of alternative providers or products; (2) whether failure of the service could impact DTC's ability to perform its book-entry and settlement services; (3) whether failure of the service could impact DTC's ability to perform its payment system functions; and (4) whether the service is interconnected with other participants and processes within the U.S. financial system, for example, with other FMIs, settlement banks and broker-dealers. The Plan would then list each of those services, functions or activities that DTC has identified as ''critical'' based on the applicability of these four criteria. Such critical services would include, for example, MMIs and Commercial Paper Processing,[12] Mandatory and Voluntary Corporate Actions,[13] Cash and Stock Distributions,[14] and End of Day Net Money Settlement.[15] The R&W Plan would also include a non-exhaustive list of DTC services that are not deemed critical.

The evaluation of which services provided by DTC are deemed critical is important for purposes of determining how the R&W Plan would facilitate the continuity of those services. As discussed further below, while DTC's Wind-down Plan would provide for the transfer of all critical services to a transferee in the event DTC's wind-down is implemented, it would anticipate that any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have

[10] 17 CFR 240.17Ad–22(e)(3)(ii).

[11] DTC has other links in addition to those mentioned above. The current list of linked CSDs is available on the DTCC website.

[12] *See* Rule 9(C) (Transactions in MMI Securities), *supra* note 4.

[13] *See* DTC Reorganizations Service Guide, *available at www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Reorganizations.pdf.*

[14] *See* DTC Distributions Service Guide, *available at http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Service%20Guide%20Distributions.pdf.*

[15] *See* DTC Settlement Service Guide, *available at www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Settlement.pdf.*

substantial user demand from the continuing membership, would also be transferred.

The Plan would describe the governance structure of both DTCC and DTC. This section of the Plan would identify the ownership and governance model of these entities at both the Board of Directors and management levels. The Plan would state that the stages of escalation required to manage recovery under the Recovery Plan or to invoke DTC's wind-down under the Wind-down Plan would range from relevant business line managers up to the Board through DTC's governance structure. The Plan would then identify the parties responsible for certain activities under both the Recovery Plan and the Wind-down Plan, and would describe their respective roles. The Plan would identify the Risk Committee of the Board (''Board Risk Committee'') as being responsible for oversight of risk management activities at DTC, which include focusing on both oversight of risk management systems and processes designed to identify and manage various risks faced by DTC, and, due to DTC's critical role in the markets in which it operates, oversight of DTC's efforts to mitigate systemic risks that could impact those markets and the broader financial system.[16] The Plan would identify the DTCC Management Risk Committee (''Management Risk Committee'') as primarily responsible for general, day-to-day risk management through delegated authority from the Board Risk Committee. The Plan would state that the Management Risk Committee has delegated specific day-to-day risk management, including management of risks addressed through margining systems and related activities, to the DTCC Group Chief Risk Office (''GCRO''), which works with staff within the DTCC Financial Risk Management group. Finally, the Plan would describe the role of the Management Committee, which provides overall direction for all aspects of DTC's business, technology, and operations and the functional areas that support these activities.

The Plan would describe the governance of recovery efforts in response to both default losses and non-default losses under the Recovery Plan, identifying the groups responsible for those recovery efforts. Specifically, the Plan would state that the Management Risk Committee provides oversight of actions relating to the default of a Participant, which would be reported and escalated to it through the GCRO, and the Management Committee provides oversight of actions relating to non-default events that could result in a loss, which would be reported and escalated to it from the DTCC Chief Financial Officer (''CFO'') and the DTCC Treasury group that reports to the CFO, and from other relevant subject matter experts based on the nature and circumstances of the non-default event.[17] More generally, the Plan would state that the type of loss and the nature and circumstances of the events that lead to the loss would dictate the components of governance to address that loss, including the escalation path to authorize those actions. As described further below, both the Recovery Plan and the Wind-down Plan would describe the governance of escalations, decisions, and actions under each of those plans.

Finally, the Plan would describe the role of the R&R Team in managing the overall recovery and wind-down program and plans for each of the Clearing Agencies.

DTC Recovery Plan

The Recovery Plan is intended to be a roadmap of those actions that DTC may employ to monitor and, as needed, stabilize its financial condition. As each event that could lead to a financial loss could be unique in its circumstances, the Recovery Plan would not be prescriptive and would permit DTC to maintain flexibility in its use of identified tools and in the sequence in which such tools are used, subject to any conditions in the Rules or the contractual arrangement on which such tool is based. DTC's Recovery Plan would consist of (1) a description of the risk management surveillance, tools, and governance that DTC would employ across evolving stress scenarios that it may face as it transitions through a ''Crisis Continuum,'' described below; (2) a description of DTC's risk of losses that may result from non-default events, and the financial resources and recovery tools available to DTC to manage those risks and any resulting losses; and (3) an evaluation of the characteristics of the recovery tools that may be used in response to either losses arising out of a Participant Default (as defined below) or non-default losses, as described in greater detail below. In all cases, DTC would act in accordance with the Rules, within the governance structure described in the R&W Plan, and in accordance with applicable regulatory oversight to address each situation in order to best protect DTC, its Participants and the markets in which it operates.

Managing Participant Default Losses and Liquidity Needs Through the Crisis Continuum. The Plan would describe the risk management surveillance, tools, and governance that DTC may employ across an increasing stress environment, which is referred to as the ''Crisis Continuum.'' This description would identify those tools that can be employed to mitigate losses, and mitigate or minimize liquidity needs, as the market environment becomes increasingly stressed. The phases of the Crisis Continuum would include (1) a stable market phase, (2) a stressed market phase, (3) a phase commencing with DTC's decision to cease to act for a Participant or Affiliated Family of Participants,[18] and (4) a recovery phase. This section of the Recovery Plan would address conditions and circumstances relating to DTC's decision to cease to act for a Participant (referred to in the R&W Plan as a ''defaulting Participant,'' and the event as a ''Participant Default'') pursuant to the Rules.[19]

The Recovery Plan would provide context to its roadmap through this Crisis Continuum by describing DTC's ongoing management of credit, market and liquidity risk, and its existing process for measuring and reporting its risks as they align with established thresholds for its tolerance of those risks. The Recovery Plan would discuss the management of credit/market risk and liquidity exposures together, because the tools that address these risks can be deployed either separately or in a coordinated approach in order to address both exposures. DTC manages these risk exposures collectively to limit their overall impact on DTC and its Participants. DTC has built-in mechanisms to limit exposures and

[16] The charter of the Board Risk Committee is *available at http://www.dtcc.com/~/media/Files/Downloads/legal/policy-and-compliance/DTCC-BOD-Risk-Committee-Charter.pdf.*

[17] The Plan would state that these groups would be involved to address how to mitigate the financial impact of non-default losses, and in recommending mitigating actions, the Management Committee would consider information and recommendations from relevant subject matter experts based on the nature and circumstances of the non-default event. Any necessary operational response to these events, however, would be managed in accordance with applicable incident response/business continuity process; for example, processes established by the DTCC Technology Risk Management group would be followed in response to a cyber event.

[18] The Plan an ''Affiliated Family'' of Participants as a number of affiliated entities that are all Participants of DTC.

[19] In the Plan, ''cease to act'' or ''default'' would be defined in accordance with the Rules, including Rule 4 (Participants Fund and Participants Investment), Rule 9(A) (Transactions in Securities and Money Payments), Rule 9(B) (Transactions in Eligible Securities), Rule 9(C) (Transactions in MMI Securities), Rule 10 (Discretionary Termination), Rule 11 (Mandatory Termination) and Rule 12 (Insolvency), *supra* note 4.

replenish financial resources used in a stress event, in order to continue to operate in a safe and sound manner. DTC is a closed, collateralized system in which liquidity resources are matched against risk management controls, so, at any time, the potential net settlement obligation of the Participant or Affiliated Family of Participants with the largest net settlement obligation cannot exceed the amount of liquidity resources.[20] While Collateral securities are subject to market price risk, DTC manages its liquidity and market risks through the calculation of the required deposits to the Participants Fund [21] and risk management controls, *i.e.,* collateral haircuts, the Collateral Monitor [22] and Net Debit Cap.[23]

The Recovery Plan would outline the metrics and indicators that DTC has developed to evaluate a stress situation against established risk tolerance thresholds. Each risk mitigation tool identified in the Recovery Plan would include a description of the escalation thresholds that allow for effective and timely reporting to the appropriate internal management staff and committees, or to the Board. The Recovery Plan would make clear that these tools and escalation protocols would be calibrated across each phase of the Crisis Continuum. The Recovery Plan would also establish that DTC would retain the flexibility to deploy such tools either separately or in a coordinated approach, and to use other alternatives to these actions and tools as necessitated by the circumstances of a particular Participant Default event, in accordance with the Rules. Therefore, the Recovery Plan would both provide DTC with a roadmap to follow within each phase of the Crisis Continuum, and would permit it to adjust its risk management measures to address the unique circumstances of each event.

The Recovery Plan would describe the conditions that mark each phase of the Crisis Continuum, and would identify actions that DTC could take as it transitions through each phase in order to both prevent losses from materializing through active risk management, and to restore the financial health of DTC during a period of stress.

The ''stable market phase'' of the Crisis Continuum would describe active risk management activities in the normal course of business. These activities would include performing (1) backtests to evaluate the adequacy of the collateral level and the haircut sufficiency for covering market price volatility and (2) stress testing to cover market price moves under real historical and hypothetical scenarios to assess the haircut adequacy under extreme but plausible market conditions. The backtesting and stress testing results are escalated, as necessary, to internal and Board committees.[24]

The Recovery Plan would describe some of the indicators of the ''stressed market phase'' of the Crisis Continuum, which would include, for example, volatility in market prices of certain assets where there is increased uncertainty among market participants about the fundamental value of those assets. This phase would involve general market stresses, when no Participant Default would be imminent. Within the description of this phase, the Recovery Plan would provide that DTC may take targeted, routine risk management measures as necessary and as permitted by the Rules.

Within the ''Participant Default phase'' of the Crisis Continuum, the Recovery Plan would provide a roadmap for the existing procedures that DTC would follow in the event of a Participant Default and any decision by DTC to cease to act for that Participant.[25] The Recovery Plan would provide that the objectives of DTC's actions upon a Participant Default are to (1) minimize losses and market exposure, and (2), to the extent practicable, minimize disturbances to the affected markets. The Recovery Plan would describe tools, actions, and related governance for both market risk monitoring and liquidity risk monitoring through this phase. For example, in connection with managing its market risk during this phase, DTC would, pursuant to its Rules and existing procedures, (1) monitor and assess the adequacy of its Participants Fund and Net Debit Caps; and (2) follow its operational procedures relating to the execution of a liquidation of the Participant's Collateral securities through close collaboration and coordination across multiple functions. Management of liquidity risk through this phase would involve ongoing monitoring of, among other things, the adequacy of the Participants Fund and risk controls, and the Recovery Plan would identify certain actions DTC may deploy as it deems necessary to mitigate a potential liquidity shortfall, which would include, for example, the reduction of Net Debit Caps of some or all Participants, or seeking additional liquidity resources. The Recovery Plan would state that, throughout this phase, relevant information would be escalated and reported to both internal management committees and the Board Risk Committee.

The Recovery Plan would also identify financial resources available to DTC, pursuant to the Rules, to address losses arising out of a Participant Default. Specifically, Rule 4, as proposed to be amended by the Loss Allocation Filing, would provide that losses be satisfied first by applying a ''Corporate Contribution,'' and then, if necessary, by allocating remaining losses to non-defaulting Participants.[26]

The ''recovery phase'' of the Crisis Continuum would describe actions that DTC may take to avoid entering into a wind-down of its business. In order to provide for an effective and timely recovery, the Recovery Plan would describe two stages of this phase: (1) A recovery corridor, during which DTC may experience stress events or observe early warning indicators that allow it to evaluate its options and prepare for the recovery phase; and (2) the recovery phase, which would begin on the date that DTC issues the first Loss Allocation Notice of the second loss allocation round with respect to a given ''Event Period.'' [27]

[20] DTC's liquidity risk management strategy, including the manner in which DTC would deploy liquidity tools as well as its intraday use of liquidity, is described in the Clearing Agency Liquidity Risk Management Framework. *See* Securities Exchange Act Release Nos. 80489 (April 19, 2017), 82 FR 19120 (April 25, 2017) (SR–DTC–2017–004, SR–NSCC–2017–005, SR–FICC–2017–008); 81194 (July 24, 2017), 82 FR 35241 (July 28, 2017) (SR–DTC–2017–004, SR–NSCC–2017–005, SR–FICC–2017–008).

[21] *See* Rule 4 (Participants Fund and Participants Investment), *supra* note 4.

[22] *See* Rule 1, Section 1, *supra* note 4. For DTC, credit risk and market risk are closely related, as DTC monitors credit exposures from Participants through these risk management controls that are part of its market risk management strategy and are designed to comply with Rule 17Ad–22(e)(4) under the Act, where these risks are referred to as ''credit risks.'' *See also* 17 CFR 240.17Ad–22(e)(4).

[23] *Id.*

[24] DTC's stress testing practices are described in the Clearing Agency Stress Testing Framework (Market Risk). *See* Securities Exchange Act Release Nos. 80485 (April 19, 2017), 82 FR 19131 (April 25, 2017) (SR–DTC–2017–005, SR–FICC–2017–009, SR–NSCC–2017–006); 81192 (July 24, 2017), 82 FR 35245 (July 28, 2017) (SR–DTC–2017–005, SR–FICC–2017–009, SR–NSCC–2017–006).

[25] *See* Rule 10 (Discretionary Termination); Rule 11 (Mandatory Termination); Rule 12 (Insolvency), *supra* note 4.

[26] *See supra* note 8. The Loss Allocation Filing proposes to amend Rule 4 to define the amount DTC would contribute to address a loss resulting from either a Participant default or a non-default event as the ''Corporate Contribution.'' This amount would be 50 percent (50%) of the ''General Business Risk Capital Requirement,'' which is calculated pursuant to the Capital Policy and is an amount sufficient to cover potential general business losses so that DTC can continue operations and services as a going concern if those losses materialize, in compliance with Rule 17Ad–22(e)(15) under the Act. *See also supra* note 6; 17 CFR 240.17Ad–22(e)(15).

[27] The Loss Allocation Filing proposes to amend Rule 4 to introduce the concept of an ''Event

DTC expects that significant deterioration of liquidity resources would cause it to enter the recovery corridor stage of this phase, and, as such, the actions it may take at this stage would be aimed at replenishing those resources. Circumstances that could cause it to enter the recovery corridor may include, for example, a rapid and material increase in market prices or sequential or simultaneous failures of multiple Participants or Affiliated Families of Participants over a compressed time period. Throughout the recovery corridor, DTC would monitor the adequacy of its resources and the expected timing of replenishment of those resources, and would do so through the monitoring of certain metrics referred to as ''Corridor Indicators.''

The majority of the Corridor Indicators, as identified in the Recovery Plan, relate directly to conditions that may require DTC to adjust its strategy for hedging and liquidating Collateral securities, and any such changes would include an assessment of the status of the Corridor Indicators. Corridor Indicators would include, for example, effectiveness and speed of DTC's efforts to liquidate Collateral securities, and an impediment to the availability of its resources to repay any borrowings due to any Participant Default. For each Corridor Indicator, the Recovery Plan would identify (1) measures of the indicator, (2) evaluations of the status of the indicator, (3) metrics for determining the status of the deterioration or improvement of the indicator, and (4) ''Corridor Actions,'' which are steps that may be taken to improve the status of the indicator,[28] as well as management escalations required to authorize those steps. Because DTC has never experienced the default of multiple Participants, it has not, historically, measured the deterioration or improvements metrics of the Corridor Indicators. As such, these metrics were chosen based on the business judgment of DTC management.

The Recovery Plan would also describe the reporting and escalation of the status of the Corridor Indicators throughout the recovery corridor. Significant deterioration of a Corridor Indicator, as measured by the metrics set out in the Recovery Plan, would be escalated to the Board. DTC management would review the Corridor Indicators and the related metrics at least annually, and would modify these metrics as necessary in light of observations from simulations of Participant defaults and other analyses. Any proposed modifications would be reviewed by the Management Risk Committee and the Board Risk Committee. The Recovery Plan would estimate that DTC may remain in the recovery corridor stage between one day and two weeks. This estimate is based on historical data observed in past Participant default events, the results of simulations of Participant defaults, and periodic liquidity analyses conducted by DTC. The actual length of a recovery corridor would vary based on actual market conditions observed on the date and time DTC enters the recovery corridor stage of the Crisis Continuum, and DTC would expect the recovery corridor to be shorter in market conditions of increased stress.

The Recovery Plan would outline steps by which DTC may allocate its losses, and would state that the available tools related to allocation of losses would only be used in this and subsequent phases of the Crisis Continuum.[29] The Recovery Plan would also identify tools that may be used to address foreseeable shortfalls of DTC's liquidity resources following a Participant Default, and would provide that these tools may be used throughout the Crisis Continuum to address liquidity shortfalls if they arise. The goal in managing DTC's liquidity resources is to maximize resource availability in an evolving stress situation, to maintain flexibility in the order and use of sources of liquidity, and to repay any third party lenders in a timely manner. Liquidity tools include, for example, DTC's committed 364-day credit facility[30] and Net Credit Reductions.[31] The Recovery Plan would state that the availability and capacity of these liquidity tools cannot be accurately predicted and are dependent on the circumstances of the applicable stress period, including market price volatility, actual or perceived disruptions in financial markets, the costs to DTC of utilizing these tools, and any potential impact on DTC's credit rating.

As stated above, the Recovery Plan would state that DTC will have entered the recovery phase on the date that it issues the first Loss Allocation Notice of the second loss allocation round with respect to a given Event Period. The Recovery Plan would provide that, during the recovery phase, DTC would continue and, as needed, enhance, the monitoring and remedial actions already described in connection with previous phases of the Crisis Continuum, and would remain in the recovery phase until its financial resources are expected to be or are fully replenished, or until the Wind-down Plan is triggered, as described below.

The Recovery Plan would describe governance for the actions and tools that may be employed within the Crisis Continuum, which would be dictated by the facts and circumstances applicable to the situation being addressed. Such facts and circumstances would be measured by the Corridor Indicators applicable to that phase of the Crisis Continuum, and, in most cases, by the measures and metrics that are assigned to those Corridor Indicators, as described above. Each of these indicators would have a defined review period and escalation protocol that would be described in the Recovery Plan. The Recovery Plan would also describe the governance procedures around a decision to cease to act for a Participant, pursuant to the Rules, and around the management and oversight of the subsequent liquidation of Collateral securities. The Recovery Plan would state that, overall, DTC would retain flexibility in accordance with the Rules, its governance structure, and its regulatory oversight, to address a particular situation in order to best

Period'' as the ten (10) Business Days beginning on (i) with respect to a Participant Default, the day on which DTC notifies Participants that it has ceased to act for a Participant, or (ii) with respect to a non-default loss, the day that DTC notifies Participants of the determination by the Board of Directors that there is a non-default loss event, as described in greater detail in that filing. The proposed Rule 4 would define a ''round'' as a series of loss allocations relating to an Event Period, and would provide that the first Loss Allocation Notice in a first, second, or subsequent round shall expressly state that such notice reflects the beginning of a first, second, or subsequent round. The maximum allocable loss amount of a round is equal to the sum of the ''Loss Allocation Caps'' (as defined in the proposed Rule 4) of those Participants included in the round. *See supra* note 8.

[28] The Corridor Actions that would be identified in the Plan are indicative, but not prescriptive; therefore, if DTC needs to consider alternative actions due to the applicable facts and circumstances, the escalation of those alternative actions would follow the same escalation protocol identified in the Plan for the Corridor Indicator to which the action relates.

[29] As these matters are described in greater detail in the Loss Allocation Filing and in the proposed amendments to Rule 4, described therein, reference is made to that filing and the details are not repeated here. *See supra* note 8.

[30] *See* Securities Exchange Act Release No. 80605 (May 5, 2017), 82 FR 21850 (May 10, 2017) (SR–DTC–2017–802; SR–NSCC–2017–802).

[31] DTC may borrow amounts needed to complete settlement from Participants by net credit reductions to their settlement accounts, secured by the Collateral of the defaulting Participant. *See* Securities Exchange Act Release Nos. 24689 (July 9, 1987), 52 FR 26613 (July 15, 1987) (SR–DTC–87–4); 41879 (September 15, 1999), 64 FR 51360 (September 22, 1999) (SR–DTC–99–15); 42281 (December 28, 1999), 65 FR 1420 (January 10, 2000) (SR–DTC–99–25).

protect DTC and its Participants, and to meet the primary objectives, throughout the Crisis Continuum, of minimizing losses and, where consistent and practicable, minimizing disturbance to affected markets.

Non-Default Losses. The Recovery Plan would outline how DTC may address losses that result from events other than a Participant Default. While these matters are addressed in greater detail in other documents, this section of the Plan would provide a roadmap to those documents and an outline for DTC's approach to monitoring and managing losses that could result from a non-default event. The Plan would first identify some of the risks DTC faces that could lead to these losses, which include, for example, the business and profit/loss risks of unexpected declines in revenue or growth of expenses; the operational risks of disruptions to systems or processes that could lead to large losses, including those resulting from, for example, a cyber-attack; and custody or investment risks that could lead to financial losses. The Recovery Plan would describe DTC's overall strategy for the management of these risks, which includes a ''three lines of defense'' approach to risk management that allows for comprehensive management of risk across the organization.[32] The Recovery Plan would also describe DTC's approach to financial risk and capital management. The Plan would identify key aspects of this approach, including, for example, an annual budget process, business line performance reviews with management, and regular review of capital requirements against LNA. These risk management strategies are collectively intended to allow DTC to effectively identify, monitor, and manage risks of non-default losses.

The Plan would identify the two categories of financial resources DTC maintains to cover losses and expenses arising from non-default risks or events as (1) LNA, maintained, monitored, and managed pursuant to the Capital Policy, which include (a) amounts held in satisfaction of the General Business Risk Capital Requirement,[33] (b) the Corporate Contribution,[34] and (c) other amounts held in excess of DTC's capital requirements pursuant to the Capital Policy; and (2) resources available pursuant to the loss allocation provisions of Rule 4.[35]

The Plan would address the process by which the CFO and the DTCC Treasury group would determine which available LNA resources are most appropriate to cover a loss that is caused by a non-default event. This determination involves an evaluation of a number of factors, including the current and expected size of the loss, the expected time horizon over when the loss or additional expenses would materialize, the current and projected available LNA, and the likelihood LNA could be successfully replenished pursuant to the Replenishment Plan, if triggered.[36] Finally the Plan would discuss how DTC would apply its resources to address losses resulting from a non-default event, including the order of resources it would apply if the loss or liability exceeds DTC's excess LNA amounts, or is large relative thereto, and the Board has declared the event a ''Declared Non-Default Loss Event'' pursuant to Rule 4.[37]

The Plan would also describe proposed Rule 38 (Market Disruption and Force Majeure), which DTC is proposing to adopt in its Rules. This Proposed Rule would provide transparency around how DTC would address extraordinary events that may occur outside its control. Specifically, the Proposed Rule would define a ''Market Disruption Event'' and the governance around a determination that such an event has occurred. The Proposed Rule would also describe DTC's authority to take actions during the pendency of a Market Disruption Event that it deems appropriate to address such an event and facilitate the continuation of its services, if practicable, as described in greater detail below.

The Plan would describe the interaction between the Proposed Rule and DTC's existing processes and procedures addressing business continuity management and disaster recovery (generally, the ''BCM/DR procedures''), making clear that the Proposed Rule is designed to support those BCM/DR procedures and to address circumstances that may be exogenous to DTC and not necessarily addressed by the BCM/DR procedures. Finally, the Plan would describe that, because the operation of the Proposed Rule is specific to each applicable Market Disruption Event, the Proposed Rule does not define a time limit on its application. However, the Plan would note that actions authorized by the Proposed Rule would be limited to the pendency of the applicable Market Disruption Event, as made clear in the Proposed Rule. Overall, the Proposed Rule is designed to mitigate risks caused by Market Disruption Events and, thereby, minimize the risk of financial loss that may result from such events.

Recovery Tool Characteristics. The Recovery Plan would describe DTC's evaluation of the tools identified within the Recovery Plan, and its rationale for concluding that such tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to Participants and minimize negative impact on Participants and the financial system, in compliance with guidance published by the Commission in connection with the adoption of Rule 17Ad–22(e)(3)(ii) under the Act.[38] DTC's analysis and the conclusions set forth in this section of the Recovery Plan are described in greater detail in Item 3(b) of this filing, below.

DTC Wind-Down Plan

The Wind-down Plan would provide the framework and strategy for the orderly wind-down of DTC if the use of the recovery tools described in the Recovery Plan do not successfully return DTC to financial viability. While DTC believes that, given the comprehensive nature of the recovery tools, such event is extremely unlikely, as described in greater detail below, DTC is proposing a wind-down strategy that provides for (1) the transfer of DTC's business, assets, securities inventory, and membership to another legal entity, (2) such transfer being effected in connection with proceedings under Chapter 11 of the U.S. Federal Bankruptcy Code,[39] and (3) after effectuating this transfer, DTC liquidating any remaining assets in an orderly manner in bankruptcy proceedings. DTC believes that the proposed transfer approach to a wind-down would meet its objectives of (1) assuring that DTC's critical services will be available to the market as long as there are Participants in good standing,

[32] The Clearing Agency Risk Management Framework includes a description of this ''three lines of defense'' approach to risk management, and addresses how DTC comprehensively manages various risks, including operational, general business, investment, custody, and other risks that arise in or are borne by it. *See* Securities Exchange Act Release No. 81635 (September 15, 2017), 82 FR 44224 (September 21, 2017) (SR–DTC–2017–013, SR–FICC–2017–016, SR–NSCC–2017–012). The Clearing Agency Operational Risk Management Framework describes the manner in which DTC manages operational risks, as defined therein. *See* Securities Exchange Act Release No. 81745 (September 28, 2017), 82 FR 46332 (October 4, 2017) (SR–DTC–2017–014, SR–FICC–2017–017, SR–NSCC–2017–013).

[33] *See supra* note 26.

[34] *See supra* note 26.

[35] *See supra* note 8.

[36] *See supra* note 6.

[37] *See supra* note 8.

[38] Standards for Covered Clearing Agencies, Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14).

[39] 11 U.S.C. 1101 *et seq.*

and (2) minimizing disruption to the operations of Participants and financial markets generally that might be caused by DTC's failure.

In describing the transfer approach to DTC's Wind-down Plan, the Plan would identify the factors that DTC considered in developing this approach, including the fact that DTC does not own material assets that are unrelated to its clearance and settlement activities. As such, a business reorganization or ''bail-in'' of debt approach would be unlikely to mitigate significant losses. Additionally, DTC's approach was developed in consideration of its critical and unique position in the U.S. markets, which precludes any approach that would cause DTC's critical services to no longer be available.

First, the Wind-down Plan would describe the potential scenarios that could lead to the wind-down of DTC, and the likelihood of such scenarios. The Wind-down Plan would identify the time period leading up to a decision to wind-down DTC as the ''Runway Period.'' This period would follow the implementation of any recovery tools, as it may take a period of time, depending on the severity of the market stress at that time, for these tools to be effective or for DTC to realize a loss sufficient to cause it to be unable to borrow to complete settlement and to repay such borrowings.[40] The Plan would identify some of the indicators that DTC has entered this Runway Period, which would include, for example, simultaneous successive Participant Defaults, significant Participant retirements, and DTC's inability to replenish financial resources following the liquidation of Collateral securities.

The trigger for implementing the Wind-down Plan would be a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning DTC to viability as a going concern. As described in the Plan, DTC believes this is an appropriate trigger because it is both broad and flexible enough to cover a variety of scenarios, and would align incentives of DTC and Participants to avoid actions that might undermine DTC's recovery efforts. Additionally, this approach takes into account the characteristics of DTC's recovery tools and enables the Board to consider (1) the presence of indicators of a successful or unsuccessful recovery, and (2) potential for knock-on effects of continued iterative application of DTC's recovery tools.

The Wind-down Plan would describe the general objectives of the transfer strategy, and would address assumptions regarding the transfer of DTC's critical services, business, assets, securities inventory, and membership[41] to another legal entity that is legally, financially, and operationally able to provide DTC's critical services to entities that wish to continue their membership following the transfer (''Transferee''). The Wind-down Plan would provide that the Transferee would be either (1) a third party legal entity, which may be an existing or newly established legal entity or a bridge entity formed to operate the business on an interim basis to enable the business to be transferred subsequently (''Third Party Transferee''); or (2) an existing, debt-free failover legal entity established ex-ante by DTCC (''Failover Transferee'') to be used as an alternative Transferee in the event that no viable or preferable Third Party Transferee timely commits to acquire DTC's business. DTC would seek to identify the proposed Transferee, and negotiate and enter into transfer arrangements during the Runway Period and prior to making any filings under Chapter 11 of the U.S. Federal Bankruptcy Code.[42] As stated above, the Wind-down Plan would anticipate that the transfer to the Transferee, including the transfer and establishment of the Participant and Pledgee securities accounts on the books of the Transferee, be effected in connection with proceedings under Chapter 11 of the U.S. Federal Bankruptcy Code, and pursuant to a bankruptcy court order under Section 363 of the Bankruptcy Code, such that the transfer would be free and clear of claims against, and interests in, DTC, except to the extent expressly provided in the court's order.[43]

In order to effect a timely transfer of its services and minimize the market and operational disruption of such transfer, DTC would expect to transfer all of its critical services and any non-critical services that are ancillary and beneficial to a critical service, or that otherwise have substantial user demand from the continuing membership. Given the transfer of the securities inventory and the establishment on the books of the Transferee Participant and Pledgee securities accounts, DTC anticipates that, following the transfer, it would not itself continue to provide any services, critical or not. Following the transfer, the Wind-down Plan would anticipate that the Transferee and its continuing membership would determine whether to continue to provide any transferred non-critical service on an ongoing basis, or terminate the non-critical service following some transition period. DTC's Wind-down Plan would anticipate that the Transferee would enter into a transition services agreement with DTCC so that DTCC would continue to provide the shared services it currently provides to DTC, including staffing, infrastructure and operational support. The Wind-down Plan would also anticipate the assignment of DTC's ''inbound'' link arrangements to the Transferee. The Wind-down Plan would provide that in the case of ''outbound'' links, DTC would seek to have the linked FMIs agree, at a minimum, to accept the Transferee as a link party for a transition period.[44]

The Wind-down Plan would provide that, following the effectiveness of the transfer to the Transferee, the wind-down of DTC would involve addressing any residual claims against DTC through the bankruptcy process and liquidating the legal entity. As such, and as stated above, the Wind-down Plan does not contemplate DTC continuing to provide services in any capacity following the transfer time, and any services not transferred would be terminated. The Wind-down Plan would also identify the key dependencies for the effectiveness of the transfer, which include regulatory approvals that would permit the Transferee to be legally qualified to provide the transferred services from and after the transfer, and approval by the applicable bankruptcy court of, among other things, the proposed sale, assignments, and transfers to the Transferee.

The Wind-down Plan would address governance matters related to the execution of the transfer of DTC's business and its wind-down. The Wind-

[40] The Wind-down Plan would state that, given DTC's position as a user-governed financial market utility, it is possible that its Participants might voluntarily elect to provide additional support during the recovery phase leading up to a potential trigger of the Wind-down Plan, but would also make clear that DTC cannot predict the willingness of Participants to do so.

[41] Arrangements with FAST Agents and DRS Agents (each as defined in proposed Rule 32(A)) and with Settling Banks would also be assigned to the Transferee, so that the approach would be transparent to issuers and their transfer agents, as well as to Settling Banks.

[42] 11 U.S.C. 1101 *et seq.*

[43] *See id.* at 363.

[44] The proposed transfer arrangements outlined in the Wind-down Plan do not contemplate the transfer of any credit or funding agreements, which are generally not assignable by DTC. However, to the extent the Transferee adopts rules substantially identical to those DTC has in effect prior to the transfer, it would have the benefit of any rules-based liquidity funding. The Wind-down Plan contemplates that no Participants Fund would be transferred to the Transferee, as it is not held in a bankruptcy remote manner and it is the primary prefunded liquidity resource to be accessed in the recovery phase.

down Plan would address the duties of the Board to execute the wind-down of DTC in conformity with (1) the Rules, (2) the Board's fiduciary duties, which mandate that it exercise reasonable business judgment in performing these duties, and (3) DTC's regulatory obligations under the Act as a registered clearing agency. The Wind-down Plan would also identify certain factors the Board may consider in making these decisions, which would include, for example, whether DTC could safely stabilize the business and protect its value without seeking bankruptcy protection, and DTC's ability to continue to meet its regulatory requirements.

The Wind-down Plan would describe (1) actions DTC or DTCC may take to prepare for wind-down in the period before DTC experiences any financial distress, (2) actions DTC would take both during the recovery phase and the Runway Period to prepare for the execution of the Wind-down Plan, and (3) actions DTC would take upon commencement of bankruptcy proceedings to effectuate the Wind-down Plan.

Finally, the Wind-down Plan would include an analysis of the estimated time and costs to effectuate the plan, and would provide that this estimate be reviewed and approved by the Board annually. In order to estimate the length of time it might take to achieve a recovery or orderly wind-down of DTC's critical operations, as contemplated by the R&W Plan, the Wind-down Plan would include an analysis of the possible sequencing and length of time it might take to complete an orderly wind-down and transfer of critical operations, as described in earlier sections of the R&W Plan. The Wind-down Plan would also include in this analysis consideration of other factors, including the time it might take to complete any further attempts at recovery under the Recovery Plan. The Wind-down Plan would then multiply this estimated length of time by DTC's average monthly operating expenses, including adjustments to account for changes to DTC's profit and expense profile during these circumstances, over the previous twelve months to determine the amount of LNA that it should hold to achieve a recovery or orderly wind-down of DTC's critical operations. The estimated wind-down costs would constitute the ''Recovery/Wind-down Capital Requirement'' under the Capital Policy.[45] Under that policy, the General Business Risk Capital Requirement is calculated as the greatest of three estimated amounts, one of which is this Recovery/Wind-down Capital Requirement.[46]

The R&W Plan is designed as a roadmap, and the types of actions that may be taken both leading up to and in connection with implementation of the Wind-down Plan would be primarily addressed in other supporting documentation referred to therein.

The Wind-down Plan would address proposed Rule 32(A) (Wind-down of the Corporation) and proposed Rule 38 (Force Majeure and Market Disruption)), which would be adopted to facilitate the implementation of the Wind-down Plan, as discussed below.

Proposed Rules

In connection with the adoption of the R&W Plan, DTC is proposing to adopt the Proposed Rules, each described below. The Proposed Rules would facilitate the execution of the R&W Plan and would provide Participants with transparency as to critical aspects of the Plan, particularly as they relate to the rights and responsibilities of both DTC and its Participants. The Proposed Rules also provide a legal basis to these aspects of the Plan.

Rule 32(A) (Wind-Down of the Corporation)

The proposed Rule 32(A) (''Wind-down Rule'') would be adopted to facilitate the execution of the Wind-down Plan. The Wind-down Rule would include a proposed set of defined terms that would be applicable only to the provisions of this Proposed Rule. The Wind-down Rule would make clear that a wind-down of DTC's business would occur (1) after a decision is made by the Board, and (2) in connection with the transfer of DTC's services to a Transferee, as described therein. Generally, the proposed Wind-down Rule is designed to create clear mechanisms for the transfer of Eligible Participants and Pledgees, Settling Banks, DRS Agents, and FAST Agents (as these terms would be defined in the Wind-down Rule), and DTC's inventory of financial assets in order to provide for continued access to critical services and to minimize disruption to the markets in the event the Wind-down Plan is initiated.

Wind-down Trigger. First, the Proposed Rule would make clear that the Board is responsible for initiating the Wind-down Plan, and would identify the criteria the Board would consider when making this determination. As provided for in the Wind-down Plan and in the proposed Wind-down Rule, the Board would initiate the Plan if, in the exercise of its business judgment and subject to its fiduciary duties, it has determined that the execution of the Recovery Plan has not or is not likely to restore DTC to viability as a going concern, and the implementation of the Wind-down Plan, including the transfer of DTC's business, is in the best interests of DTC, its Participants and Pledgees, its shareholders and creditors, and the U.S. financial markets.

Identification of Critical Services; Designation of Dates and Times for Specific Actions. The Proposed Rule would provide that, upon making a determination to initiate the Wind-down Plan, the Board would identify the critical and non-critical services that would be transferred to the Transferee at the Transfer Time (as defined below and in the Proposed Rule), as well as any non-critical services that would not be transferred to the Transferee. The proposed Wind-down Rule would establish that any services transferred to the Transferee will only be provided by the Transferee as of the Transfer Time, and that any non-critical services that are not transferred to the Transferee would be terminated at the Transfer Time. The Proposed Rule would also provide that the Board would establish (1) an effective time for the transfer of DTC's business to a Transferee (''Transfer Time''), and (2) the last day that instructions in respect of securities and other financial products may be effectuated through the facilities of DTC (the ''Last Activity Date''). The Proposed Rule would make clear that DTC would not accept any transactions for settlement after the Last Activity Date. Any transactions to be settled after the Transfer Time would be required to be submitted to the Transferee, and would not be DTC's responsibility.

Notice Provisions. The proposed Wind-down Rule would provide that, upon a decision to implement the Wind-down Plan, DTC would provide its Participants, Pledgees, DRS Agents, FAST Agents, Settling Banks and regulators with a notice that includes material information relating to the Wind-down Plan and the anticipated transfer of DTC's Participants and business, including, for example, (1) a brief statement of the reasons for the decision to implement the Wind-down Plan; (2) identification of the Transferee and information regarding the transaction by which the transfer of DTC's business would be effected; (3) the Transfer Time and Last Activity Date; and (4) identification of Participants and the critical and non-

[45] *See supra* note 6.

[46] *See supra* note 6.

critical services that would be transferred to the Transferee at the Transfer Time, as well as those Non-Eligible Participants (as defined below and in the Proposed Rule) and any non-critical services that would not be included in the transfer. DTC would also make available the rules and procedures and membership agreements of the Transferee.

Transfer of Membership. The proposed Wind-down Rule would address the expected transfer of DTC's membership to the Transferee, which DTC would seek to effectuate by entering into an arrangement with a Failover Transferee, or by using commercially reasonable efforts to enter into such an arrangement with a Third Party Transferee. Thus, under the proposal, in connection with the implementation of the Wind-down Plan and with no further action required by any party:

(1) Each Eligible Participant would become (i) a Participant of the Transferee and (ii) a party to a Participants agreement with the Transferee;

(2) each Participant that is delinquent in the performance of any obligation to DTC or that has provided notice of its election to withdraw as a Participant (a ''Non-Eligible Participant'') as of the Transfer Time would become (i) the holder of a transition period securities account maintained by the Transferee on its books (''Transition Period Securities Account'') and (ii) a party to a Transition Period Securities Account agreement of the Transferee;

(3) each Pledgee would become (i) a Pledgee of the Transferee and (ii) a party to a Pledgee agreement with the Transferee;

(4) each DRS Agent would become (i) a DRS Agent of the Transferee and (ii) a party to a DRS Agent agreement with the Transferee;

(5) each FAST Agent would become (i) a FAST Agent of the Transferee and (ii) a party to a FAST Agent agreement with the Transferee; and

(6) each Settling Bank for Participants and Pledgees would become (i) a Settling Bank for Participants and Pledgees of the Transferee and (ii) a party to a Settling Bank Agreement with the Transferee.

Further, the Proposed Rule would make clear that it would not prohibit (1) Non-Eligible Participants from applying for membership with the Transferee, (2) Non-Eligible Participants that have become holders of Transition Period Securities Accounts (''Transition Period Securities Account Holders'') of the Transferee from withdrawing as a Transition Period Securities Account Holder from the Transferee, subject to the rules and procedures of the Transferee, and (3) Participants, Pledgees, DRS Agents, FAST Agents, and Settling Banks that would be transferred to the Transferee from withdrawing from membership with the Transferee, subject to the rules and procedures of the Transferee. Under the Proposed Rule, Non-Eligible Participants that have become Transition Period Securities Account Holders of the Transferee shall have the rights and be subject to the obligations of Transition Period Securities Account Holders set forth in special provisions of the rules and procedures of the Transferee applicable to such Transition Period Securities Account Holder. Specifically, Non-Eligible Participants that become Transition Period Securities Account Holders must, within the Transition Period (as defined in the Proposed Rule), instruct the Transferee to transfer the financial assets credited to its Transition Period Securities Account (i) to a Participant of the Transferee through the facilities of the Transferee or (ii) to a recipient outside the facilities of the Transferee, and no additional financial assets may be delivered versus payment to a Transition Period Securities Account during the Transition Period.

Transfer of Inventory of Financial Assets. The proposed Wind-down Rule would provide that DTC would enter into arrangements with a Failover Transferee, or would use commercially reasonable efforts to enter into arrangements with a Third Party Transferee, providing that, in either case, at Transfer Time:

(1) DTC would transfer to the Transferee (i) its rights with respect to its nominee Cede & Co. (''Cede'') (and thereby its rights with respect to the financial assets owned of record by Cede), (ii) the financial assets held by it at the FRBNY, (iii) the financial assets held by it at other CSDs, (iv) the financial assets held in custody for it with FAST Agents, (v) the financial assets held in custody for it with other custodians and (vi) the financial assets it holds in physical custody.

(2) The Transferee would establish security entitlements on its books for Eligible Participants of DTC that become Participants of the Transferee that replicate the security entitlements that DTC maintained on its books immediately prior to the Transfer Time for such Eligible Participants, and DTC would simultaneously eliminate such security entitlements from its books.

(3) The Transferee would establish security entitlements on its books for Non-Eligible Participants of DTC that become Transition Period Securities Account Holders of the Transferee that replicate the security entitlements that DTC maintained on its books immediately prior to the Transfer Time for such Non-Eligible Participants, and DTC would simultaneously eliminate such security entitlements from its books.

(4) The Transferee would establish pledges on its books in favor of Pledgees that become Pledgees of the Transferee that replicate the pledges that DTC maintained on its books immediately prior to the Transfer Time in favor of such Pledgees, and DTC shall simultaneously eliminate such pledges from its books.

Comparability Period. The proposed automatic mechanism for the transfer of DTC's membership is intended to provide DTC's membership with continuous access to critical services in the event of DTC's wind-down, and to facilitate the continued prompt and accurate clearance and settlement of securities transactions. Further to this goal, the proposed Wind-down Rule would provide that DTC would enter into arrangements with a Failover Transferee, or would use commercially reasonable efforts to enter into arrangements with a Third Party Transferee, providing that, in either case, with respect to the critical services and any non-critical services that are transferred from DTC to the Transferee, for at least a period of time to be agreed upon (''Comparability Period''), the business transferred from DTC to the Transferee would be operated in a manner that is comparable to the manner in which the business was previously operated by DTC. Specifically, the proposed Wind-down Rule would provide that: (1) The rules of the Transferee and terms of Participant, Pledgee, DRS Agent, FAST Agent and Settling Bank agreements would be comparable in substance and effect to the analogous Rules and agreements of DTC, (2) the rights and obligations of any Participants, Pledgees, DRS Agents, FAST Agents, and Settling Banks that are transferred to the Transferee would be comparable in substance and effect to their rights and obligations as to DTC, and (3) the Transferee would operate the transferred business and provide any services that are transferred in a comparable manner to which such services were provided by DTC.

The purpose of these provisions and the intended effect of the proposed Wind-down Rule is to facilitate a smooth transition of DTC's business to a Transferee and to provide that, for at least the Comparability Period, the

Transferee (1) would operate the transferred business in a manner that is comparable in substance and effect to the manner in which the business was operated by DTC, and (2) would not require sudden and disruptive changes in the systems, operations and business practices of the new Participants, Pledgees, DRS Agents, FAST Agents, and Settling Banks of the Transferee.

Subordination of Claims Provisions and Miscellaneous Matters. The proposed Wind-down Rule would also include a provision addressing the subordination of unsecured claims against DTC of its Participants who fail to participate in DTC's recovery efforts (*i.e.,* such firms are delinquent in their obligations to DTC or elect to retire from DTC in order to minimize their obligations with respect to the allocation of losses, pursuant to the Rules). This provision is designed to incentivize Participants to participate in DTC's recovery efforts.[47]

The proposed Wind-down Rule would address other ex-ante matters, including provisions providing that its Participants, Pledgees, DRS Agents, FAST Agents and Settling Banks (1) will assist and cooperate with DTC to effectuate the transfer of DTC's business to a Transferee, (2) consent to the provisions of the rule, and (3) grant DTC power of attorney to execute and deliver on their behalf documents and instruments that may be requested by the Transferee. Finally, the Proposed Rule would include a limitation of liability for any actions taken or omitted to be taken by DTC pursuant to the Proposed Rule.

Rule 38 (Market Disruption and Force Majeure)

The proposed Rule 38 (''Force Majeure Rule'') would address DTC's authority to take certain actions upon the occurrence, and during the pendency, of a ''Market Disruption Event,'' as defined therein. The Proposed Rule is designed to clarify DTC's ability to take actions to address extraordinary events outside of the control of DTC and of its membership, and to mitigate the effect of such events by facilitating the continuity of services (or, if deemed necessary, the temporary suspension of services). To that end, under the proposed Force Majeure Rule, DTC would be entitled, during the pendency of a Market Disruption Event, to (1) suspend the provision of any or all services, and (2) take, or refrain from taking, or require its Participants and Pledgees to take, or refrain from taking, any actions it considers appropriate to address, alleviate, or mitigate the event and facilitate the continuation of DTC's services as may be practicable.

The proposed Force Majeure Rule would identify the events or circumstances that would be considered a ''Market Disruption Event,'' including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which DTC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems. The proposed Force Majeure Rule would define the governance procedures for how DTC would determine whether, and how, to implement the provisions of the rule. A determination that a Market Disruption Event has occurred would generally be made by the Board, but the Proposed Rule would provide for limited, interim delegation of authority to a specified officer or management committee if the Board would not be able to take timely action. In the event such delegated authority is exercised, the proposed Force Majeure Rule would require that the Board be convened as promptly as practicable, no later than five Business Days after such determination has been made, to ratify, modify, or rescind the action. The proposed Force Majeure Rule would also provide for prompt notification to the Commission, and advance consultation with Commission staff, when practicable. The Proposed Rule would require Participants and Pledgees to notify DTC immediately upon becoming aware of a Market Disruption Event, and, likewise, would require DTC to notify its Participants and Pledgees if it has triggered the Proposed Rule.

Finally, the Proposed Rule would address other related matters, including a limitation of liability for any failure or delay in performance, in whole or in part, arising out of the Market Disruption Event.

2. Statutory Basis

DTC believes that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. In particular, DTC believes that the R&W Plan and each of the Proposed Rules are consistent with Section 17A(b)(3)(F) of the Act,[48] the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad–22(e)(3)(ii) under the Act,[49] and the R&W Plan is consistent with Rule 17Ad–22(e)(15)(ii) under the Act,[50] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of DTC be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible.[51] The Recovery Plan and the proposed Force Majeure Rule would promote the prompt and accurate clearance and settlement of securities transactions by providing DTC with a roadmap for actions it may employ to mitigate losses, and monitor and, as needed, stabilize, its financial condition, which would allow it to continue its critical clearance and settlement services in stress situations. Further, as described above, the Recovery Plan is designed to identify the actions and tools DTC may use to address and minimize losses to both DTC and its Participants. The Recovery Plan and the proposed Force Majeure Rule would provide DTC's management and the Board with guidance in this regard by identifying the indicators and governance around the use and application of such tools to enable them to address stress situations in a manner most appropriate for the circumstances. Therefore, the Recovery Plan and the proposed Force Majeure Rule would also contribute to the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible by enabling actions that would address and minimize losses.

The Wind-down Plan and the proposed Wind-down Rule, which would facilitate the implementation of the Wind-down Plan, would also promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible. The Wind-down Plan and the proposed Wind-down Rule would collectively establish a framework for the transfer and orderly wind-down of DTC's business. These proposals would establish clear mechanisms for the transfer of DTC's critical services and membership as well as clear provision for the transfer of the securities inventory it holds in fungible bulk for Participants. By doing so, the

[47] Nothing in the proposed Wind-down Rule would seek to prevent a Participant that retired its membership at DTC from applying for membership with the Transferee. Once its DTC membership is terminated, however, such firm would not be able to benefit from the membership assignment that would be effected by this proposed Wind-down Rule, and it would have to apply for membership directly with the Transferee, subject to its membership application and review process.

[48] 15 U.S.C. 78q–1(b)(3)(F).

[49] 17 CFR 240.17Ad–22(e)(3)(ii).

[50] *Id.* at 240.17Ad–22(e)(15)(ii).

[51] 15 U.S.C. 78q–1(b)(3)(F).

Wind-down Plan and these Proposed Rules are designed to facilitate the continuity of DTC's critical services and enable its Participants and Pledgees to maintain access to DTC's services through the transfer of its membership in the event DTC defaults or the Wind-down Plan is triggered by the Board. Therefore, by facilitating the continuity of DTC's critical clearance and settlement services, DTC believes the proposals would promote the prompt and accurate clearance and settlement of securities transactions. Further, by creating a framework for the transfer and orderly wind-down of DTC's business, DTC believes the proposals would enhance the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible.

Therefore, DTC believes the R&W Plan and each of the Proposed Rules are consistent with the requirements of Section 17A(b)(3)(F) of the Act.[52]

Rule 17Ad–22(e)(3)(ii) under the Act requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[53] The R&W Plan and each of the Proposed Rules are designed to meet the requirements of Rule 17Ad–22(e)(3)(ii).[54]

The R&W Plan would be maintained by DTC in compliance with Rule 17Ad–22(e)(3)(ii) in that it provides plans for the recovery and orderly wind-down of DTC necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, as described above.[55] Specifically, the Recovery Plan would define the risk management activities, stress conditions and indicators, and tools that DTC may use to address stress scenarios that could eventually prevent it from being able to provide its critical services as a going concern. Through the framework of the Crisis Continuum, the Recovery Plan would address measures that DTC may take to address risks of credit losses and liquidity shortfalls, and other losses that could arise from a Participant Default. The Recovery Plan would also address the management of general business risks and other non-default risks that could lead to losses.

The Wind-down Plan would be triggered by a determination by the Board that recovery efforts have not been, or are unlikely to be, successful in returning DTC to viability as a going concern. Once triggered, the Wind-down Plan would set forth clear mechanisms for the transfer of DTC's membership and business, and would be designed to facilitate continued access to DTC's critical services and to minimize market impact of the transfer. By establishing the framework and strategy for the execution of the transfer and wind-down of DTC in order to facilitate continuous access to DTC's critical services, the Wind-down Plan establishes a plan for the orderly wind-down of DTC. Therefore, DTC believes the R&W Plan would provide plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses, and, as such, meets the requirements of Rule 17Ad–22(e)(3)(ii).[56]

As described in greater detail above, the Proposed Rules are designed to facilitate the execution of the R&W Plan, provide Participants with transparency regarding the material provisions of the Plan, and provide DTC with a legal basis for implementation of those provisions. As such, DTC also believes the Proposed Rules meet the requirements of Rule 17Ad–22(e)(3)(ii).[57]

DTC has evaluated the recovery tools that would be identified in the Recovery Plan and has determined that these tools are comprehensive, effective, and transparent, and that such tools provide appropriate incentives to DTC's Participants to manage the risks they present. The recovery tools, as outlined in the Recovery Plan and in the proposed Force Majeure Rule, provide DTC with a comprehensive set of options to address its material risks and support the resiliency of its critical services under a range of stress scenarios. DTC also believes the recovery tools are effective, as DTC has both legal basis and operational capability to execute these tools in a timely and reliable manner. Many of the recovery tools are provided for in the Rules; Participants are bound by the Rules through their Participants Agreements with DTC, and the Rules are adopted pursuant to a framework established by Rule 19b–4 under the Act,[58] providing a legal basis for the recovery tools found therein. Other recovery tools have legal basis in contractual arrangements to which DTC is a party, as described above. Further, as many of the tools are embedded in DTC's ongoing risk management practices or are embedded into its predefined default-management procedures, DTC is able to execute these tools, in most cases, when needed and without material operational or organizational delay.

The majority of the recovery tools are also transparent, as they are or are proposed to be included in the Rules, which are publicly available. DTC believes the recovery tools also provide appropriate incentives to its owners and Participants, as they are designed to control the amount of risk they present to DTC's clearance and settlement system. Finally, DTC's Recovery Plan provides for a continuous evaluation of the systemic consequences of executing its recovery tools, with the goal of minimizing their negative impact. The Recovery Plan would outline various indicators over a timeline of increasing stress, the Crisis Continuum, with escalation triggers to DTC management or the Board, as appropriate. This approach would allow for timely evaluation of the situation and the possible impacts of the use of a recovery tool in order to minimize the negative effects of the stress scenario. Therefore, DTC believes that the recovery tools that 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).[59]

Therefore, DTC believes the R&W Plan and each of the Proposed Rules are consistent with Rule 17Ad–22(e)(3)(ii).[60]

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

[52] *Id.*

[53] 17 CFR 240.17Ad–22(e)(3)(ii).

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *Id.* at 240.19b–4.

[59] *Supra* note 38.

[60] 17 CFR 240.17Ad–22(e)(3)(ii).

orderly wind-down of critical operations and services of the covered clearing agency.[61] 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).[62]

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

DTC does not believe the proposal would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purpose of the Act.[63] The proposal would apply uniformly to all Participants and Pledgees. DTC does not anticipate that the proposal would affect its day-to-day operations under normal circumstances, or in the management of a typical Participant default scenario or non-default event. DTC is not proposing to alter the standards or requirements for becoming or remaining a Participant or Pledgee, or otherwise using its services. DTC also does not propose to change its methodology for calculation of Participants Fund contributions. The proposal is intended to (1) address the risk of loss events and identify the tools and resources available to it to withstand and recover from such events, so that it can restore normal operations, and (2) provide a framework for its orderly wind-down and the transfer of its business in the event those recovery tools do not restore DTC to financial viability, as described herein.

The R&W Plan and each of the Proposed Rules have been developed and documented in order to satisfy applicable regulatory requirements, as discussed above.

With respect to the Recovery Plan, the proposal generally reflects DTC's existing tools and existing internal procedures. Existing tools that would have a direct impact on the rights, responsibilities or obligations of Participants are reflected in the existing Rules or are proposed to be included in the Rules. Accordingly, the Recovery Plan and the proposed Force Majeure Rule are intended to provide a roadmap, define the strategy and identify the tools available to DTC in connection with its recovery efforts. By proposing to enhance DTC's existing internal management and its regulatory compliance related to its recovery efforts, DTC does not believe the Recovery Plan or the proposed Force Majeure Rule would have any impact, or impose any burden, on competition.

With respect to the Wind-down Plan and the proposed Wind-down Rule, which facilitate the execution of the Wind-down Plan, the proposal would operate to effect the transfer of all eligible Participants and Pledgees to the Transferee, and would not prohibit any market participant from either bidding to become the Transferee or from applying for membership with the Transferee. The proposal also would not prohibit any Participant or Pledgee from withdrawing from DTC prior to the Transfer Time, as is permitted under the Rules today, or from applying for membership with the Transferee. Therefore, as the proposal would treat each similarly situated Participant and Pledgee identically under the Wind-down Plan and under the Proposed Wind-down Rule, DTC does not believe the Wind-down Plan or the proposed Wind-down Rule would have any impact, or impose any burden, on competition.

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

While DTC has not solicited or received any written comments relating to this proposal, DTC has conducted outreach to its Members in order to provide them with notice of the proposal. DTC will notify the Commission of any written comments received by DTC.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the clearing agency 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.

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, 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–2017–021 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–2017–021. 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 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-*

[61] *Id.* at 240.17Ad–22(e)(15)(ii).

[62] *Id.*

[63] 15 U.S.C. 78q–1(b)(3)(I).

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–2017–021 and should be submitted on or before January 29, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–00080 Filed 1–5–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82428; File No. SR–NSCC–2017–018]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change To Amend the Loss Allocation Rules and Make Other Changes

January 2, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 2017, National Securities Clearing Corporation (''NSCC'') 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.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of modifications to 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.[4]

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 primary purpose of this proposed rule change is to amend NSCC's loss allocation rules in order to enhance the resiliency of NSCC's loss allocation process so that NSCC can take timely action to address multiple loss events that occur in succession during a short period of time (defined and explained in detail below). 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 The Depository Trust Company (''DTC''), Fixed Income Clearing Corporation (''FICC'') (including the Government Securities Division (''FICC/GSD'') and the Mortgage-Backed Securities Division (''FICC/MBSD'')), and NSCC (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 loss allocation rules by enhancing their readability and clarity, (iii) reduce the time within which NSCC is required to return a former Member's Clearing Fund deposit, and (iv) make conforming and technical changes.

(i) Background

Central counterparties (''CCPs'') play a key role in financial markets by mitigating counterparty credit risk on transactions between market 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. In addition, in performing its critical functions, a CCP could be exposed to non-default losses that are otherwise incident to the CCP's clearance and settlement business.

A CCP's rulebook should provide a complete description of how losses would be allocated to participants if the size of the losses exceeded the CCP's pre-funded resources. Doing so provides for an orderly allocation of losses, and potentially allows the CCP to continue providing critical services to the market and thereby results in significant financial stability benefits. In addition, a clear description of the loss allocation process offers transparency and accessibility to the CCP's participants.

Current NSCC Loss Allocation Process

As a CCP, NSCC's loss allocation process is a key component of its risk management process. Risk management is the foundation of NSCC's ability to guarantee settlement, as well as the means by which NSCC protects itself and its Members from the risks inherent in the clearance and settlement process. NSCC's risk management process must account for the fact that, in certain extreme circumstances, the collateral and other financial resources that secure NSCC's risk exposures may not be sufficient to fully cover losses resulting from the liquidation of the portfolio of a Member for whom NSCC has ceased to act.[5]

The Rules currently provide for a loss allocation process through which both NSCC (by applying no less than 25% of its retained earnings in accordance with Addendum E) and its Members would share in the allocation of a loss resulting from the default of a Member for whom NSCC has ceased to act pursuant to the Rules. The Rules also recognize that NSCC may incur losses outside the context of a defaulting Member that are otherwise incident to NSCC's clearance and settlement business.

NSCC's loss allocation rules currently provide that in the event NSCC ceases to act for a Member, the amounts on deposit to the Clearing Fund from the defaulting Member, along with any other resources of, or attributable to, the defaulting Member that NSCC may access under the Rules (*e.g.,* payments from Clearing Agency Cross-Guaranty Agreements), are the first source of funds NSCC would use to cover any losses that may result from the closeout of the defaulting Member's guaranteed

[64] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] On December 18, 2017, NSCC filed this proposed rule change as an advance notice (SR–NSCC–2017–806) with the Commission 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, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) of the Act, 17 CFR 240.19b–4(n)(1)(i). A copy of the advance notice is *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

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

[5] When NSCC restricts a Member's access to services generally, NSCC is said to have ''ceased to act'' for the Member. Rule 46 (Restrictions on Access to Services) sets out the circumstances under which NSCC may cease to act for a Member and the types of actions it may take. *Supra* note 4.