DTCC
Securing Today. Shaping Tomorrow.®

Aimee Bandler
Director and
Assistant General Counsel

55 Water Street
New York, New York 10041 0099
[redacted]

June 28, 2018

By Electronic Mail (rule-comments@sec.gov)

Robert W. Errett
Deputy Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **Amendments No. 1 to File No. SR-DTC-2017-022 and File No. SR-DTC-2017-804**

Dear Mr. Errett:

The Depository Trust Company filed Amendments No. 1 to File Nos. SR-DTC-2017-022 and SR-DTC-2017-804 on June 28, 2018, copies of which are enclosed.

Sincerely,

[redacted]

Aimee Bandler
Director and Assistant General Counsel

OMB APPROVAL
OMB Number: 3235-0045 Estimated average burden hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 164

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

File No.* SR 2017 * 022
Amendment No. (req. for Amendments *) 1

Filing by The Depository Trust Company

Pursuant to Rule 19b 4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☐	☑	☐	☑	☐	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

- ☐ 19b 4(f)(1)
- ☐ 19b 4(f)(2)
- ☐ 19b 4(f)(3)
- ☐ 19b 4(f)(4)
- ☐ 19b 4(f)(5)
- ☐ 19b 4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☐

Section 806(e)(2) * ☐

Security Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Contact Information

Provide the name, telephone number, and e mail address of the person on the staff of the self regulatory organization prepared to respond to questions and comments on the action.

First Name * Aimee Last Name * Bandler

Title * Assistant General Counsel

E mail * [redacted]

Telephone [redacted] Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 06/28/2018

By Lois J. Radisch

(Name *)

(Title *)

Managing Director and Deputy General Counsel

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

[redacted]

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b 4 instructions please refer to the EFFS website.

Form 19b-4 Information *

Add Remove View

The self regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b 4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR [SRO] xx xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0 3 under the Act (17 CFR 240.0 3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

Add Remove View

The Notice section of this Form 19b 4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR [SRO] xx xx). A material failure to comply with these guidelines will result in the proposed rule change, security based swap submission, or advance notice being deemed not properly filed. See also Rule 0 3 under the Act (17 CFR 240.0 3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document ☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document ☐

Copies of any form, report, or questionnaire that the self regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

Add Remove View

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

1. Text of Proposed Rule Change

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by DTC's Board of Directors on October 18, 2017.

---

[1] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of DTC (the "Rules"), available at http://www.dtcc.com/legal/rules-and-procedures.aspx.

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

(a) Purpose

Description of Amendment No. 1

This filing constitutes Amendment No. 1 ("Amendment") to rule filing SR-DTC-2017-022 ("Rule Filing") previously filed by DTC on December 18, 2017.[2] This Amendment amends and replaces the Rule Filing in its entirety. DTC submits this Amendment in order to further clarify the operation of the proposed rule changes on loss allocation by providing additional information and examples. This Amendment would also clarify the requirements for a Participant that wants to voluntarily terminate its business with DTC. In particular, this Amendment would:

(i) Clarify that the term "Participant Default," referring to the failure of a Participant to satisfy any obligation to DTC, includes the failure of a Defaulting Participant to satisfy its obligations as provided in Rule 9(B).[3]

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

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

---

2 See Securities Exchange Act Release No. 82426 (January 2, 2018), 83 FR 913 (January 8, 2018) (SR-DTC-2017-022).

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

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

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

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

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

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

Nature of the Proposed Change

The proposed rule change would revise Rule 4 (Participants Fund and Participants Investment) to (i) provide separate sections for (x) the use of the Participants Fund as a liquidity resource for settlement and (y) loss allocation among Participants of losses and liabilities arising out of Participant defaults or due to non-default events; and (ii) enhance the resiliency of DTC's loss allocation process so that DTC can take timely action to contain multiple loss events that occur in succession during a short period of time. In connection therewith, the proposed rule change would (i) align the loss allocation rules of the DTCC Clearing Agencies, so as to provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies,[4] (ii) increase transparency and

[4] On December 18, 2017, NSCC and FICC submitted proposed rule changes and advance notices to enhance their rules regarding allocation of losses. Securities Exchange Act Release Nos. 82428 (January 2, 2018), 83 FR 897 (January 8, 2018) (SR-NSCC-2017-

accessibility of the provisions relating to the use of the Participants Fund as a liquidity resource for settlement and the loss allocation provisions, by enhancing their readability and clarity, (iii) require a defined corporate contribution to losses and liabilities that are incurred by DTC prior to any allocation among Participants, whether such losses and liabilities arise out of Participant defaults or due to non-default events, (iv) reduce the time within which DTC is required to return a former Participant's Actual Participants Fund Deposit, and (v) make conforming and technical changes. In addition, the proposed rule change would amend Section 6 of Rule 4 to clarify the requirements for a Participant that wants to voluntarily terminate its business with DTC, and to align, where appropriate, with the proposed voluntary termination provisions of the NSCC and FICC rules. The proposed rule change would also amend Rule 1 (Definitions; Governing Law) to add cross-references to terms that would be defined in proposed Rule 4, and would amend Rule 2 (Participants and Pledgees), in relevant part, to align with proposed Section 6 of Rule 4, as discussed below.

(i) Background

Current Rule 4 provides a single set of tools and a common process for the use of the Participants Fund for both liquidity purposes to complete settlement among non-defaulting Participants, if one or more Participants fails to settle,[5] and for the satisfaction of losses and

---

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

5 DTC is a central securities depository providing key services that are structured to support daily settlement of book-entry transfers of securities, in accordance with its Rules and Procedures. In particular, Rule 9(A) (Transactions in Securities and Money Payments), Rule 9(B) (Transactions in Eligible Securities), Rule 9(C) (Transactions in MMI Securities), Rule 9(D) (Settling Banks), and Rule 9(E) (Clearing Agency Agreements) provide the mechanism to achieve a "DVP Model 2 Deferred Net Settlement System" (as defined in Annex D of the Principles for Financial Market Infrastructures issued by The Committee on Payments and Market Infrastructures and the Technical Committee of the International Organization of Securities Commissions (April 2012), available at https://www.bis.org/cpmi/publ/d101a.pdf. Briefly, in relevant part, Rule 9(B) provides that "[e]ach Participant and the Corporation shall settle the balance of the Settlement Account of the Participant on a daily basis in accordance with these Rules and the Procedures. Except as provided in the Procedures, the Corporation shall not be obligated to make any settlement payments to any Participants until the Corporation has received all of the settlement payments that Settling Banks and Participants are required to make to the Corporation." Supra note 1. Pursuant to these provisions of Rule 9(B),

liabilities due to Participant defaults[6] or certain other losses or liabilities incident to the business of DTC.[7] The proposed rule change would amend and add provisions to separate use of the Participants Fund as a liquidity resource to complete settlement, reflected in proposed Section 4

---

securities will be delivered to Participants that satisfy their settlement obligations in the end-of-day net settlement process.

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

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

of Rule 4, and for loss allocation, reflected in proposed Section 5 of Rule 4. There wouldn't be any substantive change to the rights and obligations of Participants under proposed Sections 4 and 5 of Rule 4.[8] The proposed rule changes reinforce the distinction, conceptual and sequential, between the mechanisms to complete settlement on a Business Day and to mutualize losses that may result from a failure to settle, or other loss-generating events. The change is also proposed so that the loss allocation provisions of proposed Section 5 of Rule 4 more closely align to similar provisions of the NSCC and FICC rules, to the extent appropriate.

The proposed rule change would retain the core principles of current Rule 4 for both application of the Participants Fund as a liquidity resource to complete settlement and for loss allocation, while clarifying or refining certain provisions and introducing certain new concepts relating to loss allocation. In connection with the use of the Participants Fund as a liquidity resource to complete settlement when a Participant fails to settle, the proposed rule would introduce the term "pro rata settlement charge," for the use of the Participants Fund to complete settlement as apportioned among non-defaulting Participants. The existing term generically applied to such a use or to a loss allocation is simply a "pro rata charge".[9]

For loss allocation, the proposed rule change, like current Rule 4, would continue to apply to both default and non-default losses and liabilities, and, to the extent allocated among Participants, would be charged ratably in accordance with their Required Participants Fund Deposits.[10] A new provision would require DTC to contribute to a loss or liability, either arising from a Participant default or non-default event, prior to any allocation among Participants. The proposed rule change would also introduce the new concepts of an "Event Period" and a "round" to address the allocation of losses arising from multiple events that occur in succession during a short period of time. These proposed rule changes would be substantially similar in these respects to analogous proposed rule changes for NSCC and FICC.

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

Current Rule 4 addresses the Participants Fund and Participants Investment requirements and, among other things, the permitted uses of the Participants Fund and Participants

---

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

9 See Rule 4, Section 5, supra note 1.

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

Investment.[11] Pursuant to current Rule 4, DTC maintains a cash Participants Fund. The Required Participants Fund Deposit for any Participant is based on the liquidity risk it poses to DTC relative to other Participants.

Default of a Participant. Under current Section 3 of Rule 4, if a Participant is obligated to DTC and fails to satisfy any obligation, DTC may, in such order and in such amounts as DTC shall determine in its sole discretion: (a) apply some or all of the Actual Participants Fund Deposit of such Participant to such obligation; (b) Pledge some or all of the shares of Preferred Stock of such Participant to its lenders as collateral security for a loan under the End-of-Day Credit Facility;[12] and/or (c) sell some or all of the shares of Preferred Stock of such Participant to other Participants (who shall be required to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and apply the proceeds of such sale to satisfy such obligation.

Application of the Participants Fund. Current Section 4 of Rule 4 addresses the application of the Participants Fund if DTC incurs a loss or liability, which would include application of the Participants Fund to complete settlement[13] or the allocation of losses once determined, including non-default losses. For both liquidity and loss scenarios, current Section 4 of Rule 4 provides that an application of the Participants Fund would be apportioned among Participants ratably in accordance with their Required Participants Fund Deposits, less any additional amount that a Participant was required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A).[14] It also provides for the optional use of an amount of DTC's retained earnings and undivided profits.

---

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

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

13 In contrast to NSCC and FICC, DTC is not a central counterparty and does not guarantee obligations of its membership. The Participants Fund is a mutualized pre-funded liquidity and loss resource. As such, in contrast to NSCC and FICC, DTC does not have an obligation to "repay" the Participants Fund, and the application of the Participants Fund does not convert to a loss. See supra note 6.

14 Section 2 of Rule 9(A) provides, in part, "At the request of the Corporation, a Participant or Pledgee shall immediately furnish the Corporation with such assurances as the Corporation shall require of the financial ability of the Participant or Pledgee to fulfill its

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

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

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

Overview of the Proposed Rule Changes

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

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

Proposed Section 4 would address the situation of a Defaulting Participant failure to settle (which is one type of Participant Default) if the application of the Actual Participants Fund Deposit of that Defaulting Participant, pursuant to proposed Section 3, is not sufficient to

---

commitments and shall conform to any conditions which the Corporation deems necessary for the protection of the Corporation, other Participants or Pledgees, including deposits to the Participants Fund . . ." Supra note 1. Pursuant to the proposed rule change, the additional amount that a Participant is required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A) would be defined as an "Additional Participants Fund Deposit." This is not a new concept, only the addition of a defined term for greater clarity.

complete settlement among Participants other than the Defaulting Participant (each, a "non-defaulting Participant").[15]

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

The calculation of each non-defaulting Participant's pro rata settlement charge would be similar to the current Section 4 calculation of a pro rata charge except that, for greater simplicity, it would not include the current distinction for common members of another clearing agency pursuant to a Clearing Agency Agreement.[16] For enhanced clarity as to the date of determination of the ratio, it would be based on the Required Participants Fund Deposits as fixed on the Business Day of the application of the Participants Fund, as opposed to the current language "at the time the loss or liability was discovered."[17]

---

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

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

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

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

The proposed rule change also would retain the concept of providing each non-defaulting Participant an opportunity to elect to terminate its business with DTC and thereby cap its exposure to further pro rata settlement charges. The proposed rule change would shorten the notification period for the election to terminate from ten (10) Business Days to five (5) Business Days,[18] and would also change the beginning date of such notification period from the receipt of the notice to the date of the issuance of the Settlement Charge Notice.[19] A Participant that elects to terminate its business with DTC would, subject to its cap, remain responsible for (i) its pro rata settlement charge that was the subject of the Settlement Charge Notice and (ii) all other pro rata settlement charges until the Participant Termination Date (as defined below and in the proposed rule change). The proposed cap on pro rata settlement charges of a Participant that has timely notified DTC of its election to terminate its business with DTC would be the amount of its Aggregate Required Deposit and Investment, as fixed on the day of the pro rata settlement charge that was the subject of the Settlement Charge Notice, plus 100% of the amount thereof ("Settlement Charge Cap"). The proposed Settlement Charge Cap would be no greater than the current cap.[20]

The pro rata application of the Actual Participants Fund Deposits of non-defaulting Participants to complete settlement when there is a Participant Default is not the allocation of a loss. A pro rata settlement charge would relate solely to the completion of settlement. New

---

18 DTC believes this shorter period would be sufficient for a Participant to decide whether to give notice to terminate its business with DTC in response to a settlement charge. In addition, a five (5) Business Day pro rata settlement charge notification period would conform to the proposed loss allocation notification period in this proposed rule change and in the proposed rule changes for NSCC and FICC. See infra note 33.

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

20 Current Section 8 of Rule 4 provides for a cap that is equal to the greater of (a) the amount of its Aggregate Required Deposit and Investment, as fixed immediately prior to the time of the first pro rata charge, plus 100% of the amount thereof, or (b) the amount of all prior pro rata charges attributable to the same loss or liability with respect to which the Participant has not timely exercised its right to limit its obligation as provided above. Supra note 1. The alternative limit in clause (b) would be eliminated in proposed Section 8(a) in favor of a single defined standard.

proposed loss allocation concepts described below, including, but not limited to, a "round," "Event Period," and "Corporate Contribution," would not apply to pro rata settlement charges.[21]

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

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

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

(1) Mandatory Corporate Contribution.

Current Section 4 of Rule 4 provides that if there is an unsatisfied loss or liability, DTC

---

[21] Proposed Sections 3, 4 and 5 of Rule 4 together relate, in whole or in part, to what may happen when there is a Participant Default. Proposed Section 3 is the basic provision of remedies if a Participant fails to satisfy an obligation to DTC. Proposed Section 4 is a specific remedy for a failure to settle by a Defaulting Participant, i.e., a specific type of Participant Default. Proposed Section 5 is also a remedial provision for a Participant Default when, additionally, DTC ceases to act for the Participant and there are remaining losses or liabilities. If a Participant Default occurs, the application of proposed Section 3 would be required, the application of proposed Section 4 would be at the discretion of DTC. Whether or not proposed Section 4 has been applied, once there is a loss due to a Participant Default and DTC ceases to act for the Participant, proposed Section 5 would apply. See supra note 6.

A principal type of Participant Default is a failure to settle. A Participant's obligation to pay any amount due in settlement is secured by Collateral of the Participant. When the Defaulting Participant fails to pay its settlement obligation, under Rule 9(B), Section 2, DTC has the right to Pledge or sell such Collateral to satisfy the obligation. Supra note 1. (It is more likely that DTC would borrow against the Collateral to complete settlement on the Business Day, because it is unlikely to be able to liquidate Collateral for same day funds in time to settle on that Business Day.) If DTC Pledges the Collateral to secure a loan to fund settlement (e.g., under the End-of-Day Credit Facility), the Collateral would have to be sold to obtain funds to repay the loan. In any such sale of the Collateral, there is a risk, heightened in times of market stress, that the proceeds of the sale would be insufficient to repay the loan. That deficiency would be a liability or loss to which proposed Section 5 of Rule 4 would apply, i.e., a Default Loss Event.

may, in its sole discretion and in such amount as DTC would determine, "charge the existing retained earnings and undivided profits" of DTC.

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

The proposed "Corporate Contribution" would be defined to be an amount equal to fifty percent (50%) of DTC's General Business Risk Capital Requirement.[22] DTC's General Business Risk Capital Requirement, as defined in DTC's Clearing Agency Policy on Capital Requirements,[23] is, at a minimum, equal to the regulatory capital that DTC is required to maintain in compliance with Rule 17Ad-22(e)(15) under the Securities Exchange Act of 1934, as amended (the "Act").[24] The proposed Corporate Contribution would be held in addition to DTC's General Business Risk Capital Requirement.

The proposed Corporate Contribution would apply to losses arising from Default Loss Events and Declared Non-Default Loss Events, and would be a mandatory contribution of DTC prior to any allocation among Participants.[25] As proposed, if the proposed Corporate Contribution is fully or partially used against a loss or liability relating to an Event Period, the Corporate Contribution would be reduced to the remaining unused amount, if any, during the following two hundred fifty (250) Business Days in order to permit DTC to replenish the Corporate Contribution.[26] To ensure transparency, Participants would receive notice of any such

---

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

23 See Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR-DTC-2017-003).

24 17 CFR 240.17Ad-22(e)(15).

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

26 DTC believes that two hundred fifty (250) Business Days would be a reasonable estimate of the time frame that DTC would require to replenish the Corporate Contribution by

reduction to the Corporate Contribution.

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

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

The proposed rule changes relating to the calculation and mandatory application of the Corporate Contribution are set forth in proposed Section 5 of Rule 4.

(2) Introducing an Event Period.

The proposed rule change would clearly define the obligations of DTC and its Participants regarding the allocation of losses or liabilities relating to or arising out of a Default Loss Event or a Declared Non-Default Loss Event. The proposed rule change would define "Default Loss Event" as the determination by DTC to cease to act for a Participant pursuant to Rule 10, Rule 11, or Rule 12 (such Participant, a "CTA Participant"). "Declared Non-Default Loss Event" would be defined as the determination by the Board of Directors that a loss or liability incident to the clearance and settlement business of DTC may be a significant and substantial loss or liability that may materially impair the ability of DTC to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among Participants in order to ensure that DTC may continue to offer clearance and settlement services in an orderly manner. In order to balance the need to manage the risk of sequential loss events against Participants' need for certainty concerning maximum loss allocation exposures, DTC is proposing to introduce the concept of an "Event Period" to address the losses and liabilities that may arise from or relate to multiple Default Loss Events and/or Declared Non-Default Loss Events that arise in quick succession. Specifically, the proposal would group Default Loss Events and Declared Non-Default Loss Events occurring in a period of ten (10) Business Days ("Event Period") for purposes of allocating losses to Participants in one or more rounds, subject to the limits of loss allocation set forth in the proposed rule change and as explained below.[27] In the case of a loss or liability arising from or relating to a Default

---

equity in accordance with DTC's Clearing Agency Policy on Capital Requirements, including a conservative additional period to account for any potential delays and/or unknown exigencies in times of distress.

[27] DTC believes that having a ten (10) Business Day Event Period would provide a reasonable period of time to encompass potential sequential Default Loss Events and/or Declared Non-Default Loss Events that are likely to be closely linked to an initial event and/or a severe market dislocation episode, while still providing appropriate certainty for

Loss Event, an Event Period would begin on the day on which DTC notifies Participants that it has ceased to act for a Participant (or the next Business Day, if such day is not a Business Day). In the case of a Declared Non-Default Loss Event, the Event Period would begin on the day that DTC notifies Participants of the Declared Non-Default Loss Event (or the next Business Day, if such day is not a Business Day). If a subsequent Default Loss Event or Declared Non-Default Loss Event occurs within the Event Period, any losses or liabilities arising out of or relating to any such subsequent event would be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period. An Event Period may include both Default Loss Events and Declared Non-Default Loss Events, and there would not be separate Event Periods for Default Loss Events or Declared Non-Default Loss Events occurring within overlapping ten (10) Business Day periods.

The amount of losses that may be allocated by DTC, subject to the required Corporate Contribution, and to which a Loss Allocation Cap would apply for any Participant that elects to terminate its business with DTC in respect of a loss allocation round, would include any and all losses from any Default Loss Events and any Declared Non-Default Loss Events during the Event Period, regardless of the amount of time, during or after the Event Period, required for such losses to be crystallized and allocated.[28]

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

(3) Introducing the concept of "rounds" and Loss Allocation Notice.

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

Participants concerning their maximum exposure to allocated losses with respect to such events.

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

Each loss allocation would be communicated to Participants by the issuance of a notice that advises each Participant of the amount being allocated to it (each, a "Loss Allocation Notice"). The calculation of each Participant's pro rata allocation charge would be similar to the current Section 4 calculation of a pro rata charge except that, for greater simplicity, it would not include the current distinction for common members of another clearing agency pursuant to a Clearing Agency Agreement.[29] In addition, for enhanced clarity as to the date of determination of the ratio, it would be based on the Required Participants Fund Deposits as fixed on the first day of the Event Period, as opposed to the current language "at the time the loss or liability was discovered."[30]

Each Loss Allocation Notice would specify the relevant Event Period and the round to which it relates. Participants would receive two (2) Business Days' notice of a loss allocation,[31] and Participants would be required to pay the requisite amount no later than the second Business Day following the issuance of such notice.[32] Multiple Loss Allocation Notices may be issued with respect to each round, up to the round cap.

---

29 See supra note 16.

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

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

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

The first Loss Allocation Notice in any first, second, or subsequent round would expressly state that such Loss Allocation Notice reflects the beginning of the first, second, or subsequent round, as the case may be, and that each Participant in that round has five (5) Business Days[33] from the issuance[34] of such first Loss Allocation Notice for the round (such period, a "Loss Allocation Termination Notification Period") to notify DTC of its election to terminate its business with DTC (such notification, whether with respect to a Settlement Charge Notice or Loss Allocation Notice, a "Termination Notice") pursuant to proposed Section 8(b) of Rule 4 and thereby benefit from its Loss Allocation Cap.

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

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

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

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

---

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

34 See supra note 19.

(4) Capping terminating Participants' loss allocation exposure and related changes.

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

As proposed, if a Participant timely provides notice of its election to terminate its business with DTC as provided in proposed Section 8(b) of Rule 4, its maximum payment obligation with respect to any loss allocation round would be the amount of its Aggregate Required Deposit and Investment, as fixed on the first day of the Event Period, plus 100% of the amount thereof ("Loss Allocation Cap"),[35] provided that the Participant complies with the requirements of the termination process in proposed Section 6(b) of Rule 4. DTC may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap. If a Participant's Loss Allocation Cap exceeds the Participant's then-current Required Participants Fund Deposit, it must still pay the excess amount.

As proposed, Participants would have five (5) Business Days from the issuance of the first Loss Allocation Notice in any round to decide whether to terminate its business with DTC, and thereby benefit from its Loss Allocation Cap. The start of each round[36] would allow a Participant the opportunity to notify DTC of its election to terminate its business with DTC after satisfaction of the losses allocated in such round.

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

Pursuant to the proposed rule change, in order to avail itself of its Loss Allocation Cap, the Participant would need to follow the requirements in proposed Section 6(b) of Rule 4. In addition to retaining the substance of the existing requirements for any termination that are set forth in current Section 6 of Rule 4, proposed Section 6 also would provide that a Participant that

---

35 The alternative limit in clause (b) would be eliminated in proposed Section 8(b) in favor of a single defined standard. See supra note 20.

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

provides a Termination Notice in connection with a loss allocation must: (1) specify in the Termination Notice an effective date of termination ("Participant Termination Date"), which date shall be no later than ten (10) Business Days following the last day of the applicable Loss Allocation Termination Notification Period; (2) cease all activities and use of the Corporation's services other than activities and services necessary to terminate the business of the Participant with DTC; and (3) ensure that all activities and use of DTC services by such Participant cease on or prior to the Participant Termination Date.

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

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

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

The proposed rule changes are intended to make the provisions in the Rules governing loss allocation more transparent and accessible to Participants. In particular, DTC is proposing the following change relating to loss allocation to provide clarity around the governance for the allocation of losses arising from a non-default event.[37]

Currently, DTC can use the Participants Fund to satisfy losses and liabilities arising from a Participant Default or arising from an event that is not due to a Participant Default (i.e., a non-default loss), provided that such loss or liability is incident to the business of DTC.[38]

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

Finally, as previously discussed, pursuant to the proposed rule change, proposed Rule 4 would include language to clarify that (i) the Corporate Contribution would apply to losses or

---

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

[38] See supra note 7.

liabilities arising from a Default Loss Event or a Declared Non-Default Loss Event, and (ii) the loss allocation waterfall would be applied in the same manner regardless of whether a loss arises from a Default Loss Event or a Declared Non-Default Loss Event.

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

D. Loss Allocation Waterfall Comparison

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

Assumptions:

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

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

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

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

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

Current Loss Allocation:

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

With respect to the losses arising out of Participant B's default, DTC will contribute $68 million (($364 million - $91 million) * 25%) from the balance of its retained earnings and undivided profits, and then allocate the remaining loss of $282 million ($350 million - $68

million) to Participants. Because Participant X voluntarily retired before DTC ceased to act for Participant B, Participant X is not subject to loss allocation with respect to losses arising out of Participant B's default.

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

Proposed Loss Allocation:

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

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

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

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

E. Clarifying Changes Regarding Voluntary Retirement

Section 1 of Rule 2 provides that a Participant may terminate its business with DTC by notifying DTC in the appropriate manner.[39] To provide additional transparency to Participants

---

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

with respect to the voluntary retirement of a Participant, and to align, where appropriate, with the proposed rule changes of NSCC and FICC with respect to voluntary termination, DTC is proposing to add proposed Section 6(a) to Rule 4, which would be titled, "Upon Any Voluntary Retirement." Proposed Section 6(a) of Rule 4 would (i) clarify the requirements[40] for a Participant that wants to voluntarily terminate its business with DTC, and (ii) address the situation where a Participant submits a Voluntary Retirement Notice (defined below) and subsequently receives a Settlement Charge Notice or the first Loss Allocation Notice in a round on or prior to the Voluntary Retirement Date (defined below).

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

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

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

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

(4) ensure that all activities and use of DTC services by the Participant cease on or prior to the Voluntary Retirement Date.[41]

Proposed Section 6(a) of Rule 4 would provide that if the Participant fails to comply with the requirements of proposed Section 6(a), its Voluntary Retirement Notice would be deemed void.[42]

Participant, the Corporation shall thereupon cease to make sits services available to the Participant, except that the Corporation may perform services on behalf of the Participant or its successor in interest necessary to terminate the business of the Participant or its successor with the Corporation, and the Participant or its successor shall pay to the Corporation the fees and charges provided by these Rules with respect to services performed by the Corporation subsequent to the time when the Participant ceases to be a Participant." Supra note 1. DTC is proposing to modify the provision to clarify that the termination would be subject to proposed Section 6 of Rule 4.

40 The requirements would reflect current practice.

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

42 The purpose of this proposed provision is to clarify that a failure of a Participant to comply with proposed Section 6(a) of Rule 4 would mean that the Participant would continue to be a Participant, as if the Voluntary Retirement Notice had not been received

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

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

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

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

The four (4) year retention period was implemented at a time when there were more deposits and processing of physical certificates, as well as added risks related to manual processing, and related claims could surface many years after an alleged event. DTC believes that the change to two (2) years is appropriate because, currently, as DTC and the industry

---

by DTC. For example, Participant A submits a Voluntary Retirement Notice to DTC on April 1st and indicates a Voluntary Retirement Date of April 15th, but fails to comply with the requirements of proposed Section 6(a) of Rule 4 by the Voluntary Retirement Date. The Participant would continue to be a Participant after the Voluntary Retirement Date. If an Event Period subsequently occurs before the Participant submits a new Voluntary Retirement Notice and voluntarily retires in compliance with proposed Section 6(a), such Participant would be obligated to pay its pro rata shares of losses and liabilities arising from that Event Period.

continue to move toward automation and dematerialization, claims typically surface more quickly. Therefore, DTC believes that a shorter retention period of two (2) years would be sufficient to maintain a reasonable level of coverage for possible claims arising in connection with the activities of a former Participant, while allowing DTC to provide some relief to former Participants by returning their Actual Participants Fund Deposits more quickly.

(ii) Proposed Rule Changes

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

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

Section 3

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

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

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

In addition, DTC is proposing to make three ministerial changes to enhance readability by: (i) removing the duplicative "in," in the phrase "in such order and in such amounts," (ii)

replacing the word "eliminate" with "satisfy," and (iii) to conform to proposed changes, renumbering the list of actions that DTC may take when there is a Participant Default.

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

Section 4 and Section 5

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

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

Proposed Section 4

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

Proposed Section 4 would retain the current principle that DTC must notify Participants and the Commission when it applies the Participants Fund deposits of non-defaulting Participants, by stating that if the Actual Participants Fund Deposits of non-defaulting Participants are applied to complete settlement, DTC must promptly notify each Participant and

the Commission of the amount of the charge and the reasons therefor, and would define such notice as a Settlement Charge Notice.

Proposed Section 4 would retain the current calculation of pro rata charges by providing that each non-defaulting Participant's pro rata share[43] of any such application of the Participants Fund, defined as a "pro rata settlement charge," would be equal to (i) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the Business Day of such application[44] less its Additional Participants Fund Deposit, if any, on that day, divided by (ii) the sum of the Required Participants Fund Deposits of all non-defaulting Participants, as such Required Participants Fund Deposits were fixed on that day, less the sum of the Additional Participants Fund Deposits, if any, of such non-defaulting Participants on that day.

Proposed Section 4 would also provide a period of time within which a Participant could notify DTC of its election to terminate its business with DTC and thereby cap its liability, by providing that a Participant would have a period of five (5) Business Days following the issuance of a Settlement Charge Notice ("Settlement Charge Termination Notification Period") to notify DTC of its election to terminate its business with DTC pursuant to proposed Section 8(a), and thereby benefit from its Settlement Charge Cap, as set forth in proposed Section 8(a).[45] Proposed Section 4 would also require that any Participant that gives DTC notice of its election to terminate its business with DTC must comply with proposed Section 6(b) of Rule 4,[46] and if it does not, its election to terminate would be deemed void.

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

Current Section 5 of Rule 4 provides that "[e]xcept as provided in Section 8 of this Rule, if a pro rata charge is made pursuant to Section 4 of the current Rule against the Required Participants Fund Deposit of a Participant, and, as a consequence, the Actual Participants Fund Deposit of such Participant is less than its Required Participants Fund Deposit, the Participant shall, upon the demand of the Corporation, within such time as the Corporation shall require, Deposit to the Participants Fund the amount in cash needed to eliminate any resulting deficiency in its Required Participants Fund Deposit. If the Participant shall fail to make such deposit to the Participants Fund, the Corporation may take disciplinary action against the Participant pursuant to these Rules. Any disciplinary action which the Corporation takes pursuant to these Rules, or the voluntary or involuntary cessation of participation by the Participant, shall not affect the

---

43 See supra note 16.

44 See supra note 17.

45 See supra note 18.

46 Proposed Section 6(b) is discussed below.

obligations of the Participant to the Corporation or any remedy to which the Corporation may be entitled under applicable law."

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

Proposed Section 5

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

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

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

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

Under proposed Section 5, the loss allocation waterfall would begin with a new mandatory Corporate Contribution from DTC. Rule 4 currently provides that the use of any retained earnings and undivided profits by DTC is a voluntary contribution of a discretionary amount of its retained earnings. Proposed Section 5 of Rule 4 would, instead, require a defined corporate contribution to losses and liabilities that are incurred by DTC with respect to an Event Period. As proposed, the Corporate Contribution to losses or liabilities that are incurred by DTC with respect to an Event Period would be defined as an amount that is equal to fifty percent

(50%) of the amount calculated by DTC in respect of its General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the Event Period.[47] DTC's General Business Risk Capital Requirement, as defined in DTC's Clearing Agency Policy on Capital Requirements,[48] is, at a minimum, equal to the regulatory capital that DTC is required to maintain in compliance with Rule 17Ad-22(e)(15) under the Act.[49]

If DTC applies the Corporate Contribution to a loss or liability arising out of or relating to one or more Default Loss Events or Declared Non-Default Loss Events relating to an Event Period, then for any subsequent Event Periods that occur during the next two hundred fifty (250) Business Days, the Corporate Contribution would be reduced to the remaining unused portion of the Corporate Contribution amount that was applied for the first Event Period.[50] Proposed Section 5 would require DTC to notify Participants of any such reduction to the Corporate Contribution.

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

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

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

---

47 See supra note 22.

48 See supra note 23.

49 17 CFR 240.17Ad-22(e)(15).

50 See supra note 26.

would also provide that DTC may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap in accordance with proposed Section 8(b) of Rule 4.

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

Each Loss Allocation Notice would specify the relevant Event Period and the round to which it relates. The first Loss Allocation Notice in any first, second, or subsequent round would expressly state that such Loss Allocation Notice reflects the beginning of the first, second, or subsequent round, as the case may be, and that each Participant in that round has five (5) Business Days from the issuance of such first Loss Allocation Notice for the round[51] to notify DTC of its election to terminate its business with DTC pursuant to proposed Section 8(b) of Rule 4, and thereby benefit from its Loss Allocation Cap.[52]

Loss allocation obligations would continue to be calculated based upon a Participant's pro rata share of the loss.[53] As proposed, each Participant's pro rata share of losses and liabilities to be allocated in any round would be equal to (i) (A) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the first day of the Event Period,[54] less (B) its Additional Participants Fund Deposit, if any, on such day, divided by (ii) (A) the sum of the Required Participants Fund Deposits of all Participants subject to loss allocation in such round, as such Required Participants Fund Deposits were fixed on such day, less (B) the sum of any Additional Participants Fund Deposits, if any, of all Participants subject to loss allocation in such round on such day.[55]

As proposed, Participants would have two (2) Business Days after DTC issues a first round Loss Allocation Notice to pay the amount specified in any such notice. In contrast to the current Section 4, under which DTC may apply the Actual Participants Fund Deposits of

---

51 i.e., the Loss Allocation Termination Notification Period for that round.

52 See supra note 33.

53 See supra note 16.

54 See supra note 17.

55 See supra note 10.

Participants directly to the satisfaction of loss allocation amounts, under proposed Section 5, DTC would require Participants to pay their loss allocation amounts (leaving their Actual Participants Fund Deposits intact).[56] On a subsequent round (i.e., if the first round did not cover the entire loss of the Event Period because DTC was only able to allocate up to the sum of the Loss Allocation Caps of those Participants included in the round), Participants would also have two (2) Business Days after notice by DTC to pay their loss allocation amounts (again subject to their Loss Allocation Caps), unless a Participant timely notified (or will timely notify) DTC of its election to terminate its business with DTC with respect to a prior loss allocation round.

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

Section 6

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

The heading "Obligations of Participant Upon Termination" would be added to Section 6 of Rule 4. As discussed above, DTC is proposing to add proposed Section 6(a) to Rule 4, which would (i) clarify the requirements for the Voluntary Retirement of a Participant, and (ii) address the situation where a Participant submits a Voluntary Retirement Notice and subsequently

---

[56] See supra note 32.

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

DTC is proposing to add Proposed Section 6(b), titled "Upon Termination Following Settlement Charge or Loss Allocation." Proposed Section 6(b) would state that if a Participant timely notifies DTC of its election to terminate its business with DTC in respect of a pro rata settlement charge as set forth in proposed Section 4 of Rule 4 or a loss allocation as set forth in proposed Section 5 of Rule 4, defined as a "Termination Notice", the Participant would be required to: (1) specify in the Termination Notice a Participant Termination Date, which date shall be no later than ten Business Days following the last day of the applicable Settlement Charge Termination Notification Period or Loss Allocation Termination Notification Period; (2) cease all activities and use of the Corporation's services other than activities and services necessary to terminate the business of the Participant with DTC; and (3) ensure that all activities and use of DTC services by such Participant cease on or prior to the Participant Termination Date.

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

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

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

Section 8

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

Pursuant to proposed Section 8(a), if a Participant, within five (5) Business Days after issuance of a Settlement Charge Notice pursuant to proposed Section 4 of Rule 4**,** gives notice to DTC of its election to terminate its business with DTC, the Participant would remain obligated for (i) its pro rata settlement charge that was the subject of such Settlement Charge Notice and (ii) all other pro rata settlement charges made by DTC until the Participant Termination Date. Subject to proposed Section 8(c), the terminating Participant's obligation would be limited to the amount of its Aggregate Required Deposit and Investment, as fixed on the day of the pro rata settlement charge that was the subject of the Settlement Charge Notice, plus 100% of the amount thereof, which is substantively the same limitation as provided for pro rata charges in current Section 8 of Rule 4.[57]

Pursuant to proposed Section 8(b), if a Participant, within five (5) Business Days after the issuance of a first Loss Allocation Notice for any round pursuant to proposed Section 5 of Rule 4 gives notice to DTC of its election to terminate its business with DTC, the Participant would remain liable for (i) the loss allocation that was the subject of such notice and (ii) all other loss allocations made by DTC with respect to the same Event Period. Subject to proposed Section 8(c), the obligation of a Participant which elects to terminate its business with DTC would be limited to the amount of its Aggregate Required Deposit and Investment, as fixed on the first day of the Event Period, plus 100% of the amount thereof, which is substantively the same limitation as provided for pro rata charges in current Section 8 of Rule 4.[58]

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

---

57 See supra note 20.

58 See supra note 35.

Proposed Section 8(d) would retain the last paragraph in current Section 8 of Rule 4, replacing "pro rata charge" with "pro rata settlement charge" and" loss allocation."[59] Proposed Section 8(d) would provide that if the amount of the Actual Participants Fund Deposit of a Participant is insufficient to satisfy a pro rata settlement charge pursuant to proposed Section 4 and proposed Section 8(a) or a loss allocation pursuant to proposed Section 5 and proposed Section 8(b), the Participant would be obligated to Deposit the amount of any such deficiency to the Participants Fund notwithstanding the fact that the Participant subsequently ceases to be a Participant.

Section 9

Pursuant to the proposed rule change, proposed Section 9 of Rule 4 would provide that the recovery and repayment provisions in current Rule 4 apply to both pro rata settlement charges and loss allocations.[60] Specifically, proposed Section 9 would provide that if an amount is charged ratably pursuant to proposed Section 4 or allocated ratably pursuant to proposed Section 5 and such amount is recovered by DTC, in whole or in part, the net amount of the recovery shall be repaid ratably (on the same basis that it was originally charged or allocated) to the Persons against which the amount was originally charged or allocated by (i) crediting the appropriate amounts to the Actual Participants Fund Deposits of Persons which are still Participants and (ii) paying the appropriate amounts in cash to Persons which are not still Participants. In addition, proposed Section 9 would clarify that no loss allocation under proposed Rule 4 would constitute a waiver of any claim DTC may have against a Participant for any losses or liabilities to which the Participant is subject under DTC Rules and Procedures, including, without limitation, any loss or liability to which it may be subject under proposed Rule 4.

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

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

Section 1

Section 1(a) and Section 1(b). Section 1(a) addresses, among other things, the formula for determining the Required Participants Fund Deposits of Participants. DTC is proposing to insert the words "or wind-down" to make it clear that the formulas for determining the Required

---

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

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

Participants Fund Deposits of Participants and the amount of the minimum Required Participants Fund Deposit would be fixed by DTC so as to assure that the aggregate amount of Required Participants Fund Deposits of Participants will be increased to provide for the costs and expenses incurred by it incidental to the wind-down of DTC, in addition to the voluntary liquidation of DTC.[61] Further, DTC proposes to delete the extraneous phrase "if any." For increased clarity and readability, DTC is proposing to consolidate Section 1(b) into Section 1(a), and to relocate the sentences "The Corporation may require a Participant to Deposit an additional amount to the Participants Fund pursuant to Section 2 of Rule 9(A). Any such additional amount shall be part of the Required Participants Fund Deposit of such Participant." from Section 1(a) to a new proposed Section 1(b). In addition to the relocation, DTC would add a defined term for such additional amount, as "Additional Participants Fund Deposit," for drafting convenience and transparency throughout proposed Rule 4. Further, DTC proposes to add the headings "Required Participants Fund Deposits" and "Additional Participants Fund Deposits" to Section 1(a) and proposed Section 1(b), respectively.

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

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

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

Section 1(f). Section 1(f) addresses, among other things, the permitted use of the Participants Fund. For consistency with the balance of Section 1(f), the first paragraph would be amended to state that the Actual Participants Fund Deposits of Participants "may be used or invested" instead of stating "shall be applied." Section 1(f) provides, in part, that the Participants

---

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

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

Section 1(g) (consolidated into proposed Section 1(f)). Pursuant to the proposed rule change, DTC would consolidate current Section 1(g) into proposed Section 1(f), and modify language to make it clear that DTC may invest cash in the Participants Fund in accordance with the Clearing Agency Investment Policy adopted by DTC.[62] Further, language would be streamlined by replacing "securities, repurchase agreements or deposits" with "financial assets," and "securities and repurchase agreements in which such cash is invested" with "its investment of such cash."

Section 1(h) (proposed Section 1(g)).

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

---

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

Section 2

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

Section 2(a)-2(d) (Proposed Section 2(a)). For clarity, DTC is proposing to consolidate Sections 2(b)-2(d) into proposed Section 2(a) and would add the heading "Required Preferred Stock Investments" to proposed Section 2(a). In addition, DTC proposes to modify certain language to update references and cross-references to specific subsections to reflect the proposed changes to the numbering of the subsections in proposed Section 2 of Rule 4.

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

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

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

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

C. Proposed Changes to Rule 1

DTC is proposing to amend Rule 1 (Definitions; Governing Law) to add cross-references to proposed terms that would be defined in Rule 4, and to delete one defined term. The defined terms to be added are: "Additional Participants Fund Deposit," "Corporate Contribution," "CTA Participant," "Declared Non-Default Loss Event," "Default Loss Event," "Event Period," "Loss Allocation Cap," "Loss Allocation Notice," "Loss Allocation Termination Notification Period," "Participant Default," "Participant Termination Date," "Settlement Charge Cap," "Settlement

Charge Notice," "Settlement Charge Termination Notification Period," "Termination Notice," "Voluntary Retirement," Voluntary Retirement Date," and "Voluntary Retirement Notice". The term "Section 8 Pro Rata Charge" would be deleted from Rule 1, because it would be deleted from proposed Rule 4 as no longer necessary.

D. Proposed Changes to Rule 2

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

Participant Outreach

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

Implementation Timeframe

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

(b) Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[63] and Rules 17Ad-22(e)(7)(i), 17Ad-22(e)(13) and (e)(23)(i),[64] each as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the Rules 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.[65] The proposed rule changes to (1) require a Corporate Contribution to a loss, (2)

---

63 15 U.S.C. 78q-1(b)(3)(F).

64 17 CFR 240.17Ad-22(e)(7)(i), (e)(13) and (e)(23)(i).

65 15 U.S.C. 78q-1(b)(3)(F).

introduce an Event Period, and (3) introduce the concept of "rounds" (and accompanying Loss Allocation Notices) and apply this concept to the timing of loss allocation payments and the Participant termination process in connection with the loss allocation process, taken together, are intended to enhance the overall resiliency of DTC's loss allocation process

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

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

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

Taken together, the foregoing proposed rule changes would establish a stronger (for all the reasons discussed above) and clearer loss allocation process for DTC, which DTC believes would allow it to take timely action to address losses. The ability to timely address losses would

allow DTC to continue to meet its clearance and settlement obligations, especially in circumstances that may involve a series of substantially contemporaneous loss events. Therefore, DTC believes that these proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.

By reducing the time within which DTC is required to return the Actual Participants Fund Deposit of a former Participant, DTC would enable firms that have exited DTC to have access to their funds sooner than under current Rule 4 while maintaining the protection of DTC and its provision of clearance and settlement services. DTC would continue to be protected under the proposed rule change, which will maintain the provision that DTC may offset the return of funds against the amount of any loss or liability of DTC arising out of or relating to the obligations of the former Participant to DTC, and would provide that DTC could retain the funds for up to two (2) years. As such, DTC would maintain a necessary level of coverage for possible claims arising in connection with the DTC activities of a former Participant. Therefore, DTC believes that this proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.

The proposed rule changes to clarify the Voluntary Retirement of a Participant would improve the clarity of the Rule and help to ensure that DTC's Voluntary Retirement process is transparent and clear to Participants. Having clear Voluntary Retirement provisions would enable Participants to better understand the Voluntary Retirement process and provide Participants with increased predictability and certainty regarding their rights and obligations with respect to such process. Enabling Participants to readily understand DTC's Voluntary Retirement process and their rights and obligations in connection thereto would help a Participant that is voluntarily terminating its business with DTC, and the membership at large, to understand the point at which a Participant may no longer a Participant of DTC, and would thereby promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.

Rule 17Ad-22(e)(7)(i) under the Act requires, in part, that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by DTC, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity, by maintaining sufficient liquid resources to effect same-day settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios.[66] By clarifying the remedies available to DTC with respect to a Participant Default, including the application of the Participants Fund as a liquidity resource, and by clarifying and providing the related processes, the proposed rule change is designed so that DTC may manage its settlement and funding flows on a timely basis and apply the Participants Fund as a liquid resource in order to effect same day settlement of payment obligations with a high degree of confidence. Therefore, DTC believes that the proposed rule changes with respect

---

66 17 CFR 240.17Ad-22(e)(7)(i).

to the application of the Actual Participants Fund Deposits of non-defaulting Participants to complete settlement are consistent with Rule 17Ad-22(e)(7)(i) under the Act.

Rule 17Ad-22(e)(13) under the Act requires, in part, that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure DTC has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations.[67] The proposed rule changes to (1) require a defined Corporate Contribution to a loss, (2) introduce an Event Period, (3) introduce the concept of "rounds" (and accompanying Loss Allocation Notices) and apply this concept to the timing of loss allocation payments and the Participant termination process in connection with the loss allocation process, taken together, are designed to enhance the resiliency of DTC's loss allocation process. Having a resilient loss allocation process would help ensure that DTC can effectively and timely address losses relating to or arising out of Default Loss Events and/or Declared Non-Default Loss Events, which in turn would help DTC contain losses and continue to conduct its clearance and settlement business. In addition, by providing clarity as to the application of the Participants Fund to fund settlement in the event of a Participant Default, the proposed rule change is designed to clarify that DTC is authorized to use the Participants Fund to fund settlement. Therefore, DTC believes that the proposed rule changes to enhance the resiliency of DTC's loss allocation process, and to provide clarity as to the application of the Participants Fund to fund settlement, are consistent with Rule 17Ad-22(e)(13) under the Act.

Rule 17Ad-22(e)(23)(i) under the Act requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures, including key aspects of DTC's default rules and procedures.[68] The proposed rule changes to (i) separate the provisions for the use of the Participants Fund for settlement and for loss allocation, (ii) make clarifying changes to the provisions regarding the application of the Participants Fund to complete settlement and for the allocation of losses, (iii) further align the loss allocation rules of the DTCC Clearing Agencies, (iv) improve the overall transparency and accessibility of the provisions in the Rules governing loss allocation, and (v) make technical and conforming changes, would not only ensure that DTC's loss allocation rules are, to the extent practicable and appropriate, consistent with the loss allocation rules of the other DTCC Clearing Agencies, but also would help to ensure that DTC's loss allocation rules are transparent and clear to Participants. Aligning the loss allocation rules of the DTCC Clearing Agencies would provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies. Having transparent and clear loss allocation rules would enable Participants to better understand the key aspects of DTC's Rules and Procedures relating to Participant Default, as well as non-default events, and provide Participants with increased predictability and certainty regarding their exposures and obligations. As such, DTC believes that the proposed rule changes with respect to pro rata settlement charges, and to align the loss allocation rules across the DTCC Clearing

---

67 Id. at 240.17Ad-22(e)(13).

68 Id. at 240.17Ad-22(e)(23)(i).

Agencies and to improve the overall transparency and accessibility of DTC's loss allocation rules are consistent with Rule 17Ad-22(e)(23)(i) under the Act.

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

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

DTC does not believe that the proposed rule changes to clarify the remedies available to DTC with respect to a Participant Default, including the application of the Participants Fund as a liquidity resource, and to clarify and provide the related processes, would impact competition.[69] The proposed rule changes retain the existing core concepts of the pro rata use of the Participants Fund deposits of non-defaulting Participants to complete settlement when a Participant fails to settle, and does not materially change their rights to elect to terminate their business with DTC and limit their exposure to settlement charges. Based on the foregoing, DTC believes that the proposed rule changes relating to pro rata settlement charges would not have any impact on competition.

DTC believes that the proposed rule change to replace the discretionary application of DTC retained earnings to losses and liabilities with a mandatory and defined Corporate Contribution would impact competition, but would not impose a burden on competition.[70] By requiring a defined corporate contribution to losses and liabilities that are incurred by DTC before the allocation of losses to Participants, the proposed rule change would relieve Participants of a defined amount of potential obligations, which would allow them to apply those resources elsewhere. Based on the foregoing, DTC believes that the proposed rule changes relating to the Corporate Contribution would not impose a burden on competition, but may promote competition.

DTC does not believe that the proposed rule changes to enhance the resiliency of DTC's loss allocation process would impact competition.[71] As described above, the proposed rule changes to (1) introduce an Event Period, and (2) introduce the concept of "rounds" (and accompanying Loss Allocation Notices) and apply this concept to the timing of loss allocation payments and the Participant termination process in connection with the loss allocation process, taken together, are intended to enhance the overall resiliency of DTC's loss allocation process,

---

69 15 U.S.C. 78q-1(b)(3)(I).

70 Id.

71 Id.

and would apply equally to all Participants. Moreover, the proposed changes with respect to loss allocation retain the core concept of the allocation of losses and liabilities among Participants proportionally to the amount of risk that their activities present to DTC as measured by their Required Participants Fund Deposits.[72] Since there would not be a change to the mutualized obligations with respect to a loss arising from a Default Loss Event or Declared Non-Default Loss Event, the proposed rule changes with respect to loss allocation would not substantively affect the rights and obligations of Participants.

DTC believes that the proposed rule change to reduce the time after a Participant ceases to be a Participant within which DTC would be required to return the amount of the Actual Participants Fund Deposit of the former Participant may have an impact on competition, but would not impose a burden on competition.[73] This proposed rule change is intended to enable firms who have exited DTC to have use of their funds sooner, while at the same time retaining the existing requirements around the return. The reduction of the applicable timeframe from four (4) years to two (2) years would improve systemic efficiency by releasing the resources of the former Participant sooner, allowing them to allocate those resources where needed. Based on the foregoing, DTC believes the proposed rule change to reduce the time within which DTC is required to return the Actual Participants Fund Deposit of a former Participant would not impose a burden on competition, but may promote competition.

DTC also does not believe that the proposed rule changes to (i) further align the loss allocation rules of the DTCC Clearing Agencies, (ii) increase the transparency and accessibility of provisions in the Rules governing loss allocation, and (iii) make technical and conforming changes, would impact competition.[74] These changes would apply equally to all Participants. Further alignment of the loss allocation rules of the DTCC Clearing Agencies are intended to increase the consistency of the Rules with the rules of other DTCC Clearing Agencies in order to provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies. Having transparent and accessible provisions in the Rules governing loss allocation are intended to improve the readability and clarity of the Rules regarding the loss allocation process. Clarifying DTC's Voluntary Retirement provisions would improve the clarity of the Rules and help ensure that DTC's Voluntary Retirement process is transparent and clear to all Participants. Making technical and conforming changes to ensure the Rules remain clear and accurate would facilitate Participants' understanding of the Rules and their obligations thereunder. As such, DTC believes that these proposed rule changes would not have any impact on competition.

---

72 Supra note 10.

73 15 U.S.C. 78q-1(b)(3)(I).

74 Id.

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

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

6. Extension of Time Period for Commission Action

DTC does not consent to an extension of the time period specified in Section 19(b)(2) of the Act[75] for Commission action.

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

(a) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) Not applicable.

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

The proposed rule changes in proposed Section 5, proposed Section 6, and proposed Section 8 of Rule 4 relating to loss allocation are similar to proposed changes to NSCC's and FICC's loss allocation rules.[76] The remaining proposed rule changes are not based on the rules of another self-regulatory organization or the Commission.

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

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act of 2010

Not applicable.

11. Exhibits

Exhibit 1 Not applicable.

---

75 Id. at 78s(b)(2).

76 Supra note 4.

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

Exhibit 2 Not applicable.

Exhibit 3 Not applicable.

Exhibit 4 Changes to the Rules proposed by this Amendment.

Exhibit 5 Proposed changes to the Rules.

SR-DTC-2017-022 Amendment No. 1
EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[_____]; File No. SR-DTC-2017-022)

[DATE]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Amend the Loss Allocation Rules and Make Other Changes

On December 18, 2017, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2017-022 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder.[2] The proposed rule change was published in the Federal Register on January 8, 2018.[3] Notice is hereby given that on June 28, 2018, DTC filed with the Commission Amendment No. 1 to the proposed rule change, as described in Items I, II and III below, which Items have been prepared by the clearing agency.[4] Amendment No. 1 supersedes and replaces the Advance Notice in its entirety. The Commission is publishing this notice to solicit comments on Amendment No. 1 to the Advance Notice from interested persons.

---

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 82426 (January 2, 2018), 83 FR 913 (January 8, 2018) (SR-DTC-2017-022).

4 On June 28, 2018, DTC filed this proposed rule change as an advance notice (SR-DTC-2017-804) 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.

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

The proposed rule change would revise Rule 4 (Participants Fund and Participants Investment) to (i) provide separate sections for (x) the use of the Participants Fund[5] as a liquidity resource for settlement and (y) loss allocation among Participants of losses and liabilities arising out of Participant defaults or due to non-default events; and (ii) enhance the resiliency of DTC's loss allocation process so that DTC can take timely action to contain multiple loss events that occur in succession during a short period of time. In connection therewith, the proposed rule change would (i) align the loss allocation rules of the three clearing agencies of The Depository Trust & Clearing Corporation ("DTCC"), namely DTC, National Securities Clearing Corporation ("NSCC"), and Fixed Income Clearing Corporation ("FICC") (collectively, the "DTCC Clearing Agencies"), so as to provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies, (ii) increase transparency and accessibility of the provisions relating to the use of the Participants Fund as a liquidity resource for settlement and the loss allocation provisions, by enhancing their readability and clarity, (iii) require a defined corporate contribution to losses and liabilities that are incurred by DTC prior to any allocation among Participants, whether such losses and liabilities arise out of Participant defaults or due to non-default events, (iv) reduce the time within which DTC is required to return a former Participant's Actual Participants Fund Deposit, and (v) make conforming and technical changes. In addition, the proposed rule change would amend Section 6 of Rule 4 to clarify the

---

5 Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of DTC ("Rules"), available at http://www.dtcc.com/legal/rules-and-procedures.aspx.

requirements for a Participant that wants to voluntarily terminate its business with DTC, and to align, where appropriate, with the proposed voluntary termination provisions of the NSCC and FICC rules. The proposed rule change would also amend Rule 1 (Definitions; Governing Law) to add cross-references to terms that would be defined in proposed Rule 4, and would amend Rule 2 (Participants and Pledgees), in relevant part, to align with proposed Section 6 of Rule 4, as discussed below.

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

Description of the Amendment

This filing constitutes Amendment No. 1 ("Amendment") to rule filing SR-DTC-2017-022 ("Rule Filing") previously filed by DTC on December 18, 2017.[6] This Amendment amends and replaces the Rule Filing in its entirety. DTC submits this Amendment in order to further clarify the operation of the proposed rule changes on loss

6 See Securities Exchange Act Release No. 82426 (January 2, 2018), 83 FR 913 (January 8, 2018) (SR-DTC-2017-022).

allocation by providing additional information and examples. This Amendment would also clarify the requirements for a Participant that wants to voluntarily terminate its business with DTC. In particular, this Amendment would:

(i) Clarify that the term "Participant Default," referring to the failure of a Participant to satisfy any obligation to DTC, includes the failure of a Defaulting Participant to satisfy its obligations as provided in Rule 9(B).[7]

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

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

---

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

In addition, proposed Section 5 of Rule 4 would make it clear that any CTA Participant for which DTC ceases to act on a non-Business Day, triggering an Event Period that commences on the next Business Day, would be deemed to be a Participant on the first day of that Event Period.

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

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

(vi) Clarify that, although a CTA Participant would not be allocated a ratable share of losses and liabilities arising out of or relating to its own Default Loss Event, it would remain obligated to DTC for such losses and liabilities. More particularly, pursuant to the Amendment, the proposed

rule change would provide that no loss allocation under proposed Rule 4 would constitute a waiver of any claim DTC may have against a Participant for any losses or liabilities to which the Participant is subject under DTC Rules and Procedures, including, without limitation, any loss or liability to which it may be subject under proposed Rule 4.

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

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

Nature of the Proposed Change

The proposed rule change would revise Rule 4 (Participants Fund and Participants Investment) to (i) provide separate sections for (x) the use of the Participants Fund as a liquidity resource for settlement and (y) loss allocation among Participants of losses and liabilities arising out of Participant defaults or due to non-default events; and (ii) enhance the resiliency of DTC's loss allocation process so that DTC can take timely action to contain multiple loss events that occur in succession during a short period of time. In connection therewith, the proposed rule change would (i) align the loss allocation rules of the DTCC Clearing Agencies, so as to provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies,[8] (ii) increase transparency and accessibility of the provisions

---

[8] On December 18, 2017, NSCC and FICC submitted proposed rule changes and advance notices to enhance their rules regarding allocation of losses. Securities Exchange Act Release Nos. 82428 (January 2, 2018), 83 FR 897 (January 8,

relating to the use of the Participants Fund as a liquidity resource for settlement and the loss allocation provisions, by enhancing their readability and clarity, (iii) require a defined corporate contribution to losses and liabilities that are incurred by DTC prior to any allocation among Participants, whether such losses and liabilities arise out of Participant defaults or due to non-default events, (iv) reduce the time within which DTC is required to return a former Participant's Actual Participants Fund Deposit, and (v) make conforming and technical changes. In addition, the proposed rule change would amend Section 6 of Rule 4 to clarify the requirements for a Participant that wants to voluntarily terminate its business with DTC, and to align, where appropriate, with the proposed voluntary termination provisions of the NSCC and FICC rules. The proposed rule change would also amend Rule 1 (Definitions; Governing Law) to add cross-references to terms that would be defined in proposed Rule 4, and would amend Rule 2 (Participants and Pledgees), in relevant part, to align with proposed Section 6 of Rule 4, as discussed below.

(i) Background

Current Rule 4 provides a single set of tools and a common process for the use of the Participants Fund for both liquidity purposes to complete settlement among non-

---

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

defaulting Participants, if one or more Participants fails to settle,[9] and for the satisfaction of losses and liabilities due to Participant defaults[10] or certain other losses or liabilities

---

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

[10] The failure of a Participant to satisfy its settlement obligation constitutes a liability to DTC. Insofar as DTC undertakes to complete settlement among Participants other than the Participant that failed to settle, that liability may give rise to losses as well. DTC is designed to provide settlement finality at the end of the day and notwithstanding the failure to settle of a Participant or Affiliated Family of Participants with the largest net settlement obligation, a "cover 1" standard. There are no reversals of deliveries; a Participant that fails to settle will not receive securities that were intended to be delivered to it, because it has not paid for them. These securities, among others, serve as collateral for DTC to use to secure a borrowing of funds in order, in accordance with its Rules and Procedures, to settle with non-defaulting Participants (including those delivering Participants that delivered to the non-settling Participant). To this end, delivery versus payment transactions ("DVP") will not be processed intraday to a receiving Participant that will incur a related payment obligation unless that Participant satisfies risk management controls. The two risk management controls are the Collateral Monitor and Net Debit Cap. Net Debit Caps limit the potential settlement obligation of any Participant to an amount for which DTC has sufficient liquidity resources to cover this risk. The Collateral Monitor tests whether a Participant has sufficient collateral for DTC to pledge or liquidate if that Participant were to fail to meet its settlement obligation. To process a DVP,

incident to the business of DTC.[11] The proposed rule change would amend and add provisions to separate use of the Participants Fund as a liquidity resource to complete settlement, reflected in proposed Section 4 of Rule 4, and for loss allocation, reflected in proposed Section 5 of Rule 4. There wouldn't be any substantive change to the rights and obligations of Participants under proposed Sections 4 and 5 of Rule 4.[12] The proposed rule changes reinforce the distinction, conceptual and sequential, between the mechanisms to complete settlement on a Business Day and to mutualize losses that may result from a failure to settle, or other loss-generating events. The change is also proposed so that the loss allocation provisions of proposed Section 5 of Rule 4 more closely align to similar provisions of the NSCC and FICC rules, to the extent appropriate.

---

the value of the delivery that is debited to the receiving Participant cannot cause the net debit balance of the Participant to exceed its Net Debit Cap, and the amount of the net debit balance after giving effect to the debit must be fully collateralized. Accordingly, DTC may incur a liability or loss whenever it completes settlement despite the failure to settle of a Participant, or Affiliated Family of Participants, because it is either using the Participants Fund deposits of other Participants in the manner specified in existing and proposed Rule 4 and/or borrowing the necessary funds. DTC obligations under the line of credit include the obligation to pay interest on loans outstanding and to repay the loan; the Participants Fund is designed as not only a direct liquidity resource but as a back-up liquidity resource to satisfy these liabilities. As to the Participants Fund itself, DTC undertakes in Section 9 of existing and proposed Rule 4, to restore funds to Participants whose deposits may have been charged if there is ultimately any excess recovery. It should be noted that the Defaulting Participant remains principally obligated for all losses, costs and expenses associated with its Participant Default and, so, a recovery out of the estate of a Defaulting Participant is at least a hypothetical possibility.

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

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

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

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

---

13 See Rule 4, Section 5, supra note 5.

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

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

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

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

---

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

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

Application of the Participants Fund. Current Section 4 of Rule 4 addresses the application of the Participants Fund if DTC incurs a loss or liability, which would include application of the Participants Fund to complete settlement[17] or the allocation of losses once determined, including non-default losses. For both liquidity and loss scenarios, current Section 4 of Rule 4 provides that an application of the Participants Fund would be apportioned among Participants ratably in accordance with their Required Participants Fund Deposits, less any additional amount that a Participant was required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A).[18] It also provides for the optional use of an amount of DTC's retained earnings and undivided profits.

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

Current Rule 4 further requires Participants whose Actual Participants Fund Deposits have been ratably charged to restore their Required Participants Fund Deposits,

---

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

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

if such charges create a deficiency. Such payments are due upon demand. Iterative pro rata charges relating to the same loss or liability are permitted in order to satisfy the loss or liability.

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

Overview of the Proposed Rule Changes

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

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

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

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

---

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

distinguish application of the Participants Fund to fund settlement from pro rata loss allocation charges that would be established in proposed Section 5 of Rule 4.

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

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

The proposed rule change also would retain the concept of providing each non-defaulting Participant an opportunity to elect to terminate its business with DTC and thereby cap its exposure to further pro rata settlement charges. The proposed rule change would shorten the notification period for the election to terminate from ten (10) Business

---

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

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

Days to five (5) Business Days,[22] and would also change the beginning date of such notification period from the receipt of the notice to the date of the issuance of the Settlement Charge Notice.[23] A Participant that elects to terminate its business with DTC would, subject to its cap, remain responsible for (i) its pro rata settlement charge that was the subject of the Settlement Charge Notice and (ii) all other pro rata settlement charges until the Participant Termination Date (as defined below and in the proposed rule change). The proposed cap on pro rata settlement charges of a Participant that has timely notified DTC of its election to terminate its business with DTC would be the amount of its Aggregate Required Deposit and Investment, as fixed on the day of the pro rata settlement charge that was the subject of the Settlement Charge Notice, plus 100% of the amount thereof ("Settlement Charge Cap"). The proposed Settlement Charge Cap would be no greater than the current cap.[24]

---

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

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

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

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

---

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

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

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

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

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

(1) Mandatory Corporate Contribution.

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

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

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

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

---

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

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

28 17 CFR 240.17Ad-22(e)(15).

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

Days in order to permit DTC to replenish the Corporate Contribution.[30] To ensure transparency, Participants would receive notice of any such reduction to the Corporate Contribution.

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

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

The proposed rule changes relating to the calculation and mandatory application of the Corporate Contribution are set forth in proposed Section 5 of Rule 4.

(2) Introducing an Event Period.

The proposed rule change would clearly define the obligations of DTC and its Participants regarding the allocation of losses or liabilities relating to or arising out of a Default Loss Event or a Declared Non-Default Loss Event. The proposed rule change would define "Default Loss Event" as the determination by DTC to cease to act for a Participant pursuant to Rule 10, Rule 11, or Rule 12 (such Participant, a "CTA

---

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

Participant"). "Declared Non-Default Loss Event" would be defined as the determination by the Board of Directors that a loss or liability incident to the clearance and settlement business of DTC may be a significant and substantial loss or liability that may materially impair the ability of DTC to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among Participants in order to ensure that DTC may continue to offer clearance and settlement services in an orderly manner. In order to balance the need to manage the risk of sequential loss events against Participants' need for certainty concerning maximum loss allocation exposures, DTC is proposing to introduce the concept of an "Event Period" to address the losses and liabilities that may arise from or relate to multiple Default Loss Events and/or Declared Non-Default Loss Events that arise in quick succession. Specifically, the proposal would group Default Loss Events and Declared Non-Default Loss Events occurring in a period of ten (10) Business Days ("Event Period") for purposes of allocating losses to Participants in one or more rounds, subject to the limits of loss allocation set forth in the proposed rule change and as explained below.[31] In the case of a loss or liability arising from or relating to a Default Loss Event, an Event Period would begin on the day on which DTC notifies Participants that it has ceased to act for a Participant (or the next Business Day, if such day is not a Business Day). In the case of a Declared Non-Default Loss Event, the Event Period would begin on the day that DTC notifies Participants of

---

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

the Declared Non-Default Loss Event (or the next Business Day, if such day is not a Business Day). If a subsequent Default Loss Event or Declared Non-Default Loss Event occurs within the Event Period, any losses or liabilities arising out of or relating to any such subsequent event would be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period. An Event Period may include both Default Loss Events and Declared Non-Default Loss Events, and there would not be separate Event Periods for Default Loss Events or Declared Non-Default Loss Events occurring within overlapping ten (10) Business Day periods.

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

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

---

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

(3) Introducing the concept of "rounds" and Loss Allocation Notice.

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

Each loss allocation would be communicated to Participants by the issuance of a notice that advises each Participant of the amount being allocated to it (each, a "Loss Allocation Notice"). The calculation of each Participant's pro rata allocation charge would be similar to the current Section 4 calculation of a pro rata charge except that, for greater simplicity, it would not include the current distinction for common members of another clearing agency pursuant to a Clearing Agency Agreement.[33] In addition, for enhanced clarity as to the date of determination of the ratio, it would be based on the

---

[33] See supra note 20.

Required Participants Fund Deposits as fixed on the first day of the Event Period, as opposed to the current language "at the time the loss or liability was discovered."[34]

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

---

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

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

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

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

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

For example, for illustrative purposes only, after the required Corporate Contribution, if DTC has a $4 billion loss determined with respect to an Event Period and the sum of Loss Allocation Caps for all Participants subject to the loss allocation is $3

---

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

38 See supra note 23.

billion, the first round would begin when DTC issues the first Loss Allocation Notice for that Event Period. DTC could issue one or more Loss Allocation Notices for the first round until the sum of losses allocated equals $3 billion. Once the $3 billion is allocated, the first round would end and DTC would need a second round in order to allocate the remaining $1 billion of loss. DTC would then issue a Loss Allocation Notice for the $1 billion and this notice would be the first Loss Allocation Notice for the second round. The issuance of the Loss Allocation Notice for the $1 billion would begin the second round.

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

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

(4) Capping terminating Participants' loss allocation exposure and related changes.

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

As proposed, if a Participant timely provides notice of its election to terminate its business with DTC as provided in proposed Section 8(b) of Rule 4, its maximum payment obligation with respect to any loss allocation round would be the amount of its

Aggregate Required Deposit and Investment, as fixed on the first day of the Event Period, plus 100% of the amount thereof ("Loss Allocation Cap"),[39] provided that the Participant complies with the requirements of the termination process in proposed Section 6(b) of Rule 4. DTC may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap. If a Participant's Loss Allocation Cap exceeds the Participant's then-current Required Participants Fund Deposit, it must still pay the excess amount.

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

Specifically, the first round and each subsequent round of loss allocation would allocate losses up to a round cap of the aggregate of all Loss Allocation Caps of those Participants included in the round. If a Participant provides notice of its election to terminate its business with DTC, it would be subject to loss allocation in that round, up to its Loss Allocation Cap. If the first round of loss allocation does not fully cover DTC's losses, a second round will be noticed to those Participants that did not elect to terminate in the previous round. As noted above, the amount of any second or subsequent round

---

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

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

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

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

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

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

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

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

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

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

---

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

42 See supra note 11.

determination, which is referred to in the proposed rule as a Declared Non-Default Loss Event, as discussed above.

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

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

D. Loss Allocation Waterfall Comparison

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

Assumptions:

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

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

(iii) Participant B defaults seven Business Days after DTC ceases to act for Participant A (Day 8). On the same day, DTC ceases to act for

Participant B, and notifies Participants of the cease to act. After applying Participant B's Participants Fund and liquidating Participant B's Collateral, DTC has a loss of $350 million.

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

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

Current Loss Allocation:

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

With respect to the losses arising out of Participant B's default, DTC will contribute $68 million (($364 million - $91 million) * 25%) from the balance of its retained earnings and undivided profits, and then allocate the remaining loss of $282 million ($350 million - $68 million) to Participants. Because Participant X voluntarily

retired before DTC ceased to act for Participant B, Participant X is not subject to loss allocation with respect to losses arising out of Participant B's default.

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

Proposed Loss Allocation:

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

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

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

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

E. Clarifying Changes Regarding Voluntary Retirement

Section 1 of Rule 2 provides that a Participant may terminate its business with DTC by notifying DTC in the appropriate manner.[43] To provide additional transparency to Participants with respect to the voluntary retirement of a Participant, and to align, where appropriate, with the proposed rule changes of NSCC and FICC with respect to voluntary termination, DTC is proposing to add proposed Section 6(a) to Rule 4, which would be titled, "Upon Any Voluntary Retirement." Proposed Section 6(a) of Rule 4 would (i) clarify the requirements[44] for a Participant that wants to voluntarily terminate

---

43 Section 1 of Rule 2 provides, in relevant part, that "[a] Participant may terminate its business with the Corporation by notifying the Corporation as provided in Sections 7 or 8 of Rule 4 or, if for a reason other than those specified in said Sections 7 and 8, by notifying the Corporation thereof; the Participant shall, upon receipt of such notice by the Corporation, cease to be a Participant. In the event that a Participant shall cease to be a Participant, the Corporation shall thereupon cease to make sits services available to the Participant, except that the Corporation may perform services on behalf of the Participant or its successor in interest necessary to terminate the business of the Participant or its successor with the Corporation, and the Participant or its successor shall pay to the Corporation the fees and charges provided by these Rules with respect to services performed by the Corporation subsequent to the time when the Participant ceases to be a Participant." Supra note 5. DTC is proposing to modify the provision to clarify that the termination would be subject to proposed Section 6 of Rule 4.

44 The requirements would reflect current practice.

its business with DTC, and (ii) address the situation where a Participant submits a Voluntary Retirement Notice (defined below) and subsequently receives a Settlement Charge Notice or the first Loss Allocation Notice in a round on or prior to the Voluntary Retirement Date (defined below).

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

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

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

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

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

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

---

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

46 The purpose of this proposed provision is to clarify that a failure of a Participant to comply with proposed Section 6(a) of Rule 4 would mean that the Participant would continue to be a Participant, as if the Voluntary Retirement Notice had not been received by DTC. For example, Participant A submits a Voluntary Retirement Notice to DTC on April 1st and indicates a Voluntary Retirement Date of April 15th, but fails to comply with the requirements of proposed Section 6(a)

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

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

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

---

of Rule 4 by the Voluntary Retirement Date. The Participant would continue to be a Participant after the Voluntary Retirement Date. If an Event Period subsequently occurs before the Participant submits a new Voluntary Retirement Notice and voluntarily retires in compliance with proposed Section 6(a), such Participant would be obligated to pay its pro rata shares of losses and liabilities arising from that Event Period.

payment, except that DTC may offset against such payment the amount of any known loss or liability to DTC arising out of or related to the obligations of the former Participant to DTC.

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

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

(ii) Proposed Rule Changes

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

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

Section 3

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

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

the Participants Fund deposits and Participants Investment of a Participant that has failed to satisfy its obligations to DTC.

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

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

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

Section 4 and Section 5

As noted above, current Section 4 of Rule 4 provides that if DTC incurs a loss or liability which is not satisfied by charging the Participant responsible for the loss pursuant to Section 3 of Rule 4, then DTC may, in any order and in any amount as DTC may determine, in its sole discretion, to the extent necessary to satisfy such loss or liability, ratably apply some or all of the Actual Participants Fund Deposits of all other Participants to such loss or liability and/or charge the existing retained earnings and undivided profits of DTC. This provision relates to losses and liabilities that may be due

to the failure of a Participant to satisfy obligations to DTC, if the Actual Participants Fund Deposit of that Participant does not fully satisfy the obligation, or to losses and liabilities for which no single Participant is obligated, i.e., a "non-default loss."

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

Proposed Section 4

Pursuant to the proposed rule change, current Section 4 would be replaced in its entirety by proposed Section 4, and titled "Application of Participants Fund Deposits of Non-Defaulting Participants." First, for clarity, proposed Section 4 would expressly state that "[t]he Participants Fund shall constitute a liquidity resource which may be applied by the Corporation in such amounts as the Corporation shall determine, in its sole discretion, to fund settlement if there is a Defaulting Participant and the amount charged to the Actual Participants Fund Deposit of the Defaulting Participant pursuant to Section 3 of this Rule is not sufficient to complete settlement. In that case, the Corporation may apply the Actual Participants Fund Deposits of Participants other than the Defaulting

Participant (each, a "non-defaulting Participant") as provided in this Section and/or apply such other liquidity resources as may be available to the Corporation from time to time, including the End-of-Day Credit Facility."

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

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

Proposed Section 4 would also provide a period of time within which a Participant could notify DTC of its election to terminate its business with DTC and thereby cap its liability, by providing that a Participant would have a period of five (5)

---

47 See supra note 20.

48 See supra note 21.

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

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

Current Section 5 of Rule 4 provides that "[e]xcept as provided in Section 8 of this Rule, if a pro rata charge is made pursuant to Section 4 of the current Rule against the Required Participants Fund Deposit of a Participant, and, as a consequence, the Actual Participants Fund Deposit of such Participant is less than its Required Participants Fund Deposit, the Participant shall, upon the demand of the Corporation, within such time as the Corporation shall require, Deposit to the Participants Fund the amount in cash needed to eliminate any resulting deficiency in its Required Participants Fund Deposit. If the Participant shall fail to make such deposit to the Participants Fund, the Corporation may take disciplinary action against the Participant pursuant to these Rules. Any disciplinary action which the Corporation takes pursuant to these Rules, or the voluntary

---

49 See supra note 22.

50 Proposed Section 6(b) is discussed below.

or involuntary cessation of participation by the Participant, shall not affect the obligations of the Participant to the Corporation or any remedy to which the Corporation may be entitled under applicable law."

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

Proposed Section 5

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

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

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

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

Under proposed Section 5, the loss allocation waterfall would begin with a new mandatory Corporate Contribution from DTC. Rule 4 currently provides that the use of any retained earnings and undivided profits by DTC is a voluntary contribution of a discretionary amount of its retained earnings. Proposed Section 5 of Rule 4 would, instead, require a defined corporate contribution to losses and liabilities that are incurred by DTC with respect to an Event Period. As proposed, the Corporate Contribution to losses or liabilities that are incurred by DTC with respect to an Event Period would be

defined as an amount that is equal to fifty percent (50%) of the amount calculated by DTC in respect of its General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the Event Period.[51] DTC's General Business Risk Capital Requirement, as defined in DTC's Clearing Agency Policy on Capital Requirements,[52] is, at a minimum, equal to the regulatory capital that DTC is required to maintain in compliance with Rule 17Ad-22(e)(15) under the Act.[53]

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

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

Proposed Section 5 of Rule 4 would provide that DTC shall apply the Corporate Contribution to losses and liabilities that arise out of or relate to one or more Default Loss

---

51 See supra note 26.

52 See supra note 27.

53 17 CFR 240.17Ad-22(e)(15).

54 See supra note 30.

Events and/or Declared Non-Default Loss Events that occur within an Event Period. The proposed rule change also provides that if losses and liabilities with respect to such Event Period remain unsatisfied following application of the Corporate Contribution, DTC would allocate such losses and liabilities to Participants, as described below.

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

Pursuant to the proposed rule change, DTC would notify Participants subject to loss allocation of the amounts being allocated to them by a Loss Allocation Notice in successive rounds of loss allocations. Proposed Section 5 would state that a loss allocation "round" would mean a series of loss allocations relating to an Event Period, the

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

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

Loss allocation obligations would continue to be calculated based upon a Participant's pro rata share of the loss.[57] As proposed, each Participant's pro rata share of losses and liabilities to be allocated in any round would be equal to (i) (A) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the

---

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

56 See supra note 37.

57 See supra note 20.

first day of the Event Period,[58] less (B) its Additional Participants Fund Deposit, if any, on such day, divided by (ii) (A) the sum of the Required Participants Fund Deposits of all Participants subject to loss allocation in such round, as such Required Participants Fund Deposits were fixed on such day, less (B) the sum of any Additional Participants Fund Deposits, if any, of all Participants subject to loss allocation in such round on such day.[59]

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

Under the proposal, if a Participant fails to make its required payment in respect of a Loss Allocation Notice by the time such payment is due, DTC would have the right

---

58 See supra note 21.

59 See supra note 16.

60 See supra note 36.

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

Section 6

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

deficiency in its Required Participants Fund Deposit) of Rule 4 and (b) to discharge any liability of the Participant to DTC resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant.

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

DTC is proposing to add Proposed Section 6(b), titled "Upon Termination Following Settlement Charge or Loss Allocation." Proposed Section 6(b) would state that if a Participant timely notifies DTC of its election to terminate its business with DTC in respect of a pro rata settlement charge as set forth in proposed Section 4 of Rule 4 or a loss allocation as set forth in proposed Section 5 of Rule 4, defined as a "Termination Notice", the Participant would be required to: (1) specify in the Termination Notice a

Participant Termination Date, which date shall be no later than ten Business Days following the last day of the applicable Settlement Charge Termination Notification Period or Loss Allocation Termination Notification Period; (2) cease all activities and use of the Corporation's services other than activities and services necessary to terminate the business of the Participant with DTC; and (3) ensure that all activities and use of DTC services by such Participant cease on or prior to the Participant Termination Date.

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

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

For clarity, DTC is proposing to consolidate the requirements from current Section 6 of Rule 4 into proposed Section 6(c) of Rule 4, titled "After Any Termination," and modify them to conform to other proposed rule changes. In particular, DTC is proposing to clarify that a Participant that ceases to be such would continue to be subject to proposed Section 5 of Rule 4 for any Event Period for which it was a Participant on the first day of the Event Period. Proposed Section 6(c) of Rule 4 would state that whenever

a Participant ceases to be such, it would continue to be obligated (i) to satisfy any deficiency in the amounts of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including any deficiency the Participant is required to satisfy pursuant to proposed Sections 3 or 4 of Rule 4, (ii) subject to proposed Section 8, to satisfy any loss allocation pursuant to proposed Section 5 of Rule 4, and (iii) to discharge any liability of the Participant to DTC resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant.

Section 8

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

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

substantively the same limitation as provided for pro rata charges in current Section 8 of Rule 4.[61]

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

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

---

61 See supra note 24.

62 See supra note 39.

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

Section 9

Pursuant to the proposed rule change, proposed Section 9 of Rule 4 would provide that the recovery and repayment provisions in current Rule 4 apply to both pro rata settlement charges and loss allocations.[64] Specifically, proposed Section 9 would provide that if an amount is charged ratably pursuant to proposed Section 4 or allocated ratably pursuant to proposed Section 5 and such amount is recovered by DTC, in whole or in part, the net amount of the recovery shall be repaid ratably (on the same basis that it was originally charged or allocated) to the Persons against which the amount was originally charged or allocated by (i) crediting the appropriate amounts to the Actual Participants Fund Deposits of Persons which are still Participants and (ii) paying the appropriate

---

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

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

amounts in cash to Persons which are not still Participants. In addition, proposed Section 9 would clarify that no loss allocation under proposed Rule 4 would constitute a waiver of any claim DTC may have against a Participant for any losses or liabilities to which the Participant is subject under DTC Rules and Procedures, including, without limitation, any loss or liability to which it may be subject under proposed Rule 4.

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

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

Section 1

Section 1(a) and Section 1(b). Section 1(a) addresses, among other things, the formula for determining the Required Participants Fund Deposits of Participants. DTC is proposing to insert the words "or wind-down" to make it clear that the formulas for determining the Required Participants Fund Deposits of Participants and the amount of the minimum Required Participants Fund Deposit would be fixed by DTC so as to assure that the aggregate amount of Required Participants Fund Deposits of Participants will be increased to provide for the costs and expenses incurred by it incidental to the wind-down of DTC, in addition to the voluntary liquidation of DTC.[65] Further, DTC proposes to

---

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

delete the extraneous phrase "if any." For increased clarity and readability, DTC is proposing to consolidate Section 1(b) into Section 1(a), and to relocate the sentences "The Corporation may require a Participant to Deposit an additional amount to the Participants Fund pursuant to Section 2 of Rule 9(A). Any such additional amount shall be part of the Required Participants Fund Deposit of such Participant." from Section 1(a) to a new proposed Section 1(b). In addition to the relocation, DTC would add a defined term for such additional amount, as "Additional Participants Fund Deposit," for drafting convenience and transparency throughout proposed Rule 4. Further, DTC proposes to add the headings "Required Participants Fund Deposits" and "Additional Participants Fund Deposits" to Section 1(a) and proposed Section 1(b), respectively.

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

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

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

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

Section 1(g) (consolidated into proposed Section 1(f)). Pursuant to the proposed rule change, DTC would consolidate current Section 1(g) into proposed Section 1(f), and modify language to make it clear that DTC may invest cash in the Participants Fund in

accordance with the Clearing Agency Investment Policy adopted by DTC.[66] Further, language would be streamlined by replacing "securities, repurchase agreements or deposits" with "financial assets," and "securities and repurchase agreements in which such cash is invested" with "its investment of such cash."

Section 1(h) (proposed Section 1(g)).

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

Section 2

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

---

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

Section 2(a)-2(d) (Proposed Section 2(a)). For clarity, DTC is proposing to consolidate Sections 2(b)-2(d) into proposed Section 2(a) and would add the heading "Required Preferred Stock Investments" to proposed Section 2(a). In addition, DTC proposes to modify certain language to update references and cross-references to specific subsections to reflect the proposed changes to the numbering of the subsections in proposed Section 2 of Rule 4.

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

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

Sections 2(g) 2(i) (Proposed Sections 2(d) 2(f)). DTC proposes to add the headings "Dividends on Preferred Stock Investments of Participants," "Sale of Preferred Stock Investments of Participants," and "Permitted Transfers of Preferred Stock Investments of Participants" to proposed Sections 2(d), 2(e), and 2(f), respectively. Proposed Sections 2(e) and 2(f) would be modified to update cross-references to certain

subsections. In addition, proposed Section 2(f) would be modified to renumber paragraphs and internal lists for consistency with the numbering schemes in Rule 4.

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

C. Proposed Changes to Rule 1

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

D. Proposed Changes to Rule 2

Section 1. The proposed rule change would modify Section 1 of Rule 2 by adding "subject to Section 6 of Rule 4" to the end of the following provision: "A Participant may

terminate its business with the Corporation by notifying the Corporation as provided in Sections 7 or 8 of Rule 4 or, if for a reason other than those specified in said Sections 7 and 8, by notifying the Corporation thereof; the Participant shall, upon receipt of such notice by the Corporation, cease to be a Participant." DTC is proposing to add this language in order to clarify that the termination would be subject to the requirements in proposed Section 6 of Rule 4.

Participant Outreach

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

Implementation Timeframe

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

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, DTC believes that the proposed rule change is consistent with

Section 17A(b)(3)(F) of the Act[67] and Rules 17Ad-22(e)(7)(i), 17Ad-22(e)(13) and (e)(23)(i),[68] each as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(F) of the Act requires that the Rules 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.[69] The proposed rule changes to (1) require a Corporate Contribution to a loss, (2) introduce an Event Period, and (3) introduce the concept of "rounds" (and accompanying Loss Allocation Notices) and apply this concept to the timing of loss allocation payments and the Participant termination process in connection with the loss allocation process, taken together, are intended to enhance the overall resiliency of DTC's loss allocation process

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

---

67 15 U.S.C. 78q-1(b)(3)(F).

68 17 CFR 240.17Ad-22(e)(7)(i), (e)(13) and (e)(23)(i).

69 15 U.S.C. 78q-1(b)(3)(F).

to the Corporate Contribution would enhance the overall resiliency of DTC's loss allocation process by specifying the calculation and application of DTC's Corporate Contribution, including the proposed replenishment period, and would allow Participants to better assess the adequacy of DTC's loss allocation process.

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

By introducing the concept of "rounds" (and accompanying Loss Allocation Notices) and applying this concept to the timing of loss allocation payments and the Participant termination process in connection with the loss allocation process, DTC would (i) set forth a defined amount that it would allocate to Participants during each round (i.e., the round cap), (ii) advise Participants of loss allocation obligation information as well as round information through the issuance of Loss Allocation Notices, and (iii) provide Participants with the option to limit their loss allocation

exposure after the issuance of the first Loss Allocation Notice in each round. These proposed rule changes would enhance the overall resiliency of DTC's loss allocation process because they would expressly permit DTC to continue the loss allocation process in successive rounds until all of DTC's losses are allocated and enable DTC to identify continuing Participants for purposes of calculating subsequent loss allocation obligations in successive rounds. Moreover, the proposed rule changes would define for Participants a clear manner and process in which they could cap their loss allocation exposure to DTC.

Taken together, the foregoing proposed rule changes would establish a stronger (for all the reasons discussed above) and clearer loss allocation process for DTC, which DTC believes would allow it to take timely action to address losses. The ability to timely address losses would allow DTC to continue to meet its clearance and settlement obligations, especially in circumstances that may involve a series of substantially contemporaneous loss events. Therefore, DTC believes that these proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.

By reducing the time within which DTC is required to return the Actual Participants Fund Deposit of a former Participant, DTC would enable firms that have exited DTC to have access to their funds sooner than under current Rule 4 while maintaining the protection of DTC and its provision of clearance and settlement services. DTC would continue to be protected under the proposed rule change, which will maintain the provision that DTC may offset the return of funds against the amount of any loss or liability of DTC arising out of or relating to the obligations of the former Participant to

DTC, and would provide that DTC could retain the funds for up to two (2) years. As such, DTC would maintain a necessary level of coverage for possible claims arising in connection with the DTC activities of a former Participant. Therefore, DTC believes that this proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.

The proposed rule changes to clarify the Voluntary Retirement of a Participant would improve the clarity of the Rule and help to ensure that DTC's Voluntary Retirement process is transparent and clear to Participants. Having clear Voluntary Retirement provisions would enable Participants to better understand the Voluntary Retirement process and provide Participants with increased predictability and certainty regarding their rights and obligations with respect to such process. Enabling Participants to readily understand DTC's Voluntary Retirement process and their rights and obligations in connection thereto would help a Participant that is voluntarily terminating its business with DTC, and the membership at large, to understand the point at which a Participant may no longer a Participant of DTC, and would thereby promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.

Rule 17Ad-22(e)(7)(i) under the Act requires, in part, that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by DTC, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity, by maintaining sufficient liquid resources to effect same-day settlement of payment obligations with a high degree

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

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

---

70 17 CFR 240.17Ad-22(e)(7)(i).

71 Id. at 240.17Ad-22(e)(13).

conduct its clearance and settlement business. In addition, by providing clarity as to the application of the Participants Fund to fund settlement in the event of a Participant Default, the proposed rule change is designed to clarify that DTC is authorized to use the Participants Fund to fund settlement. Therefore, DTC believes that the proposed rule changes to enhance the resiliency of DTC's loss allocation process, and to provide clarity as to the application of the Participants Fund to fund settlement, are consistent with Rule 17Ad-22(e)(13) under the Act.

Rule 17Ad-22(e)(23)(i) under the Act requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures, including key aspects of DTC's default rules and procedures.[72] The proposed rule changes to (i) separate the provisions for the use of the Participants Fund for settlement and for loss allocation, (ii) make clarifying changes to the provisions regarding the application of the Participants Fund to complete settlement and for the allocation of losses, (iii) further align the loss allocation rules of the DTCC Clearing Agencies, (iv) improve the overall transparency and accessibility of the provisions in the Rules governing loss allocation, and (v) make technical and conforming changes, would not only ensure that DTC's loss allocation rules are, to the extent practicable and appropriate, consistent with the loss allocation rules of the other DTCC Clearing Agencies, but also would help to ensure that DTC's loss allocation rules are transparent and clear to Participants. Aligning the loss allocation rules of the DTCC Clearing Agencies would provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more

---

72 Id. at 240.17Ad-22(e)(23)(i).

DTCC Clearing Agencies. Having transparent and clear loss allocation rules would enable Participants to better understand the key aspects of DTC's Rules and Procedures relating to Participant Default, as well as non-default events, and provide Participants with increased predictability and certainty regarding their exposures and obligations. As such, DTC believes that the proposed rule changes with respect to pro rata settlement charges, and to align the loss allocation rules across the DTCC Clearing Agencies and to improve the overall transparency and accessibility of DTC's loss allocation rules are consistent with Rule 17Ad-22(e)(23)(i) under the Act.

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

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

DTC does not believe that the proposed rule changes to clarify the remedies available to DTC with respect to a Participant Default, including the application of the Participants Fund as a liquidity resource, and to clarify and provide the related processes, would impact competition.[73] The proposed rule changes retain the existing core concepts of the pro rata use of the Participants Fund deposits of non-defaulting Participants to

---

[73] 15 U.S.C. 78q-1(b)(3)(I).

complete settlement when a Participant fails to settle, and does not materially change their rights to elect to terminate their business with DTC and limit their exposure to settlement charges. Based on the foregoing, DTC believes that the proposed rule changes relating to pro rata settlement charges would not have any impact on competition.

DTC believes that the proposed rule change to replace the discretionary application of DTC retained earnings to losses and liabilities with a mandatory and defined Corporate Contribution would impact competition, but would not impose a burden on competition.[74] By requiring a defined corporate contribution to losses and liabilities that are incurred by DTC before the allocation of losses to Participants, the proposed rule change would relieve Participants of a defined amount of potential obligations, which would allow them to apply those resources elsewhere. Based on the foregoing, DTC believes that the proposed rule changes relating to the Corporate Contribution would not impose a burden on competition, but may promote competition.

DTC does not believe that the proposed rule changes to enhance the resiliency of DTC's loss allocation process would impact competition.[75] As described above, the proposed rule changes to (1) introduce an Event Period, and (2) introduce the concept of "rounds" (and accompanying Loss Allocation Notices) and apply this concept to the timing of loss allocation payments and the Participant termination process in connection with the loss allocation process, taken together, are intended to enhance the overall resiliency of DTC's loss allocation process, and would apply equally to all Participants. Moreover, the proposed changes with respect to loss allocation retain the core concept of

---

74 Id.

75 Id.

the allocation of losses and liabilities among Participants proportionally to the amount of risk that their activities present to DTC as measured by their Required Participants Fund Deposits.[76] Since there would not be a change to the mutualized obligations with respect to a loss arising from a Default Loss Event or Declared Non-Default Loss Event, the proposed rule changes with respect to loss allocation would not substantively affect the rights and obligations of Participants.

DTC believes that the proposed rule change to reduce the time after a Participant ceases to be a Participant within which DTC would be required to return the amount of the Actual Participants Fund Deposit of the former Participant may have an impact on competition, but would not impose a burden on competition.[77] This proposed rule change is intended to enable firms who have exited DTC to have use of their funds sooner, while at the same time retaining the existing requirements around the return. The reduction of the applicable timeframe from four (4) years to two (2) years would improve systemic efficiency by releasing the resources of the former Participant sooner, allowing them to allocate those resources where needed. Based on the foregoing, DTC believes the proposed rule change to reduce the time within which DTC is required to return the Actual Participants Fund Deposit of a former Participant would not impose a burden on competition, but may promote competition.

DTC also does not believe that the proposed rule changes to (i) further align the loss allocation rules of the DTCC Clearing Agencies, (ii) increase the transparency and accessibility of provisions in the Rules governing loss allocation, and (iii) make technical

---

76 Supra note 14.

77 15 U.S.C. 78q-1(b)(3)(I).

and conforming changes, would impact competition.[78] These changes would apply equally to all Participants. Further alignment of the loss allocation rules of the DTCC Clearing Agencies are intended to increase the consistency of the Rules with the rules of other DTCC Clearing Agencies in order to provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies. Having transparent and accessible provisions in the Rules governing loss allocation are intended to improve the readability and clarity of the Rules regarding the loss allocation process. Clarifying DTC's Voluntary Retirement provisions would improve the clarity of the Rules and help ensure that DTC's Voluntary Retirement process is transparent and clear to all Participants. Making technical and conforming changes to ensure the Rules remain clear and accurate would facilitate Participants' understanding of the Rules and their obligations thereunder. As such, DTC believes that these proposed rule changes would not have any impact on competition.

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

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

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

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

---

78 Id.

(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 e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2017-022 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-DTC-2017-022. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (http://dtcc.com/legal/sec-rule-filings.aspx). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2017-022 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[79]

Secretary

---

79 17 CFR 200.30-3(a)(12).

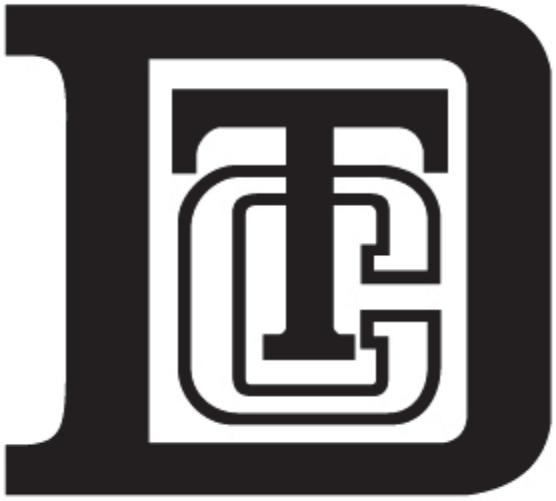
SR-DTC-2017-022 Amendment No. 1
EXHIBIT 4

Bolded, underlined text indicates added language.

~~**Bolded, strikethrough text**~~ indicates deleted language.

Bold, wave double underlined and italicized text indicates additional language proposed by this Amendment No. 1

~~**Bold, strikethrough and dotted underlined text**~~ indicates deleted language proposed by this Amendment No. 1



RULES

BY-LAWS

ORGANIZATION CERTIFICATE

THE DEPOSITORY TRUST COMPANY

RULE 1
DEFINITIONS; GOVERNING LAW

****

Section 2. Set forth below are certain other terms defined in these Rules, and the place in these Rules where such other terms are defined and used:

Defined Term	Rule	Section
Additional Participants Fund Deposit	**Rule 4**	**Section 1**
Cash	Rule 4(A)	Section 1
Contra Party	Rule 9(B)	Section 1
Corporate Contribution	**Rule 4**	**Section 5**
Custodian	Rule 2	Section 1
CTA Participant	***Rule 4***	***Section 5***
Declared Non-Default Loss Event	**Rule 4**	**Section 5**
Deemed Net Additions	Rule 9(B)	Section 2
Defaulting Participant	Rule 9(B)	Section 2
Default Loss Event	**Rule 4**	**Section 5**
End-of-Day Credit Facility	Rule 4	Section 2
Event Period	**Rule 4**	**Section 5**
FATCA	Rule 2	Section 9
FATCA Certification	Rule 2	Section 9
FATCA Compliance Date	Rule 2	Section 9
FATCA Compliant	Rule 2	Section 9
FFI Participant	Rule 2	Section 9
Interested Person	Rule 22	Section 1
Loss Allocation Cap	**Rule 4**	**Section 5**
Loss Allocation Notice	**Rule 4**	**Section 5**
Loss Allocation Termination Notification Period	**Rule 4**	**Section 5**
MMI Funding Acknowledgment	Rule 9(C)	Section 1
MMI Optimization	Rule 9(C)	Section 1
Net-Net Credit Balance	Rule 9(D)	
Net-Net Debit Balance	Rule 9(D)	
Panel	Rule 22	Section 3
Participant Default	**Rule 4**	**Section 3**
Participant Representative	Rule 7	Section 1
Participant Termination Date	**Rule 4**	**Section 6**
P&I Cash Advance	Rule 4(A)	Section 3
P&I Credit Facility	Rule 4(A)	Section 3
P&I Finance Cost	Rule 4(A)	Section 3
P&I Finance Period	Rule 4(A)	Section 3
P&I Payment Date	Rule 4(A)	Section 3
P&I Receipt Date	Rule 4(A)	Section 3

P&I Reversal Date	Rule 4(A)	Section 3
P&I Scheduled Payment	Rule 4(A)	Section 3
P&I Security Interest	Rule 4(A)	Section 3
Pool	Rule 22	Section 3
Preferred Stock Security Interest	Rule 4	Section 2
~~**Section 8 Pro Rata Charge**~~	~~**Rule 4**~~	~~**Section 6**~~
Settlement Charge Cap	**Rule 4**	**Section 4**
Settlement Charge Notice	**Rule 4**	**Section 4**
Settlement Charge Termination Notification Period	**Rule 4**	**Section 4**
Settling Bank Refusal	Rule 9(D)	
Short Charge	Rule 9(B)	Section 2
Special Representative	Rule 6	
Termination Notice	**Rule 4**	**Section 6**
Time of Insolvency	Rule 12	Section 4
Transaction	Rule 6	
Voluntary Retirement	***Rule 4***	***Section 6***
Voluntary Retirement Date	***Rule 4***	***Section 6***
Voluntary Retirement Notice	***Rule 4***	***Section 6***
Voting Rights	Rule 6	

****

RULE 2

PARTICIPANTS AND PLEDGEES

Section 1. The Corporation shall make its services, or certain of its services, available to partnerships, corporations or other organizations or entities which (i) apply to the Corporation for the use of such services, (ii) meet the qualifications specified in Rule 3, (iii) are approved by the Corporation and (iv) if required, make a Required Participants Fund Deposit pursuant to Section 1 of Rule 4 and Required Preferred Stock Investment pursuant to Section 2 of Rule 4. The Corporation shall approve applications only upon a determination by the Corporation that the applicant meets the standards of financial condition, operational capability and character defined below:

(a) the applicant has demonstrated that it has sufficient financial ability to make any Required Participants Fund Deposit and Required Preferred Stock Investment and meet all of its anticipated obligations to the Corporation;

(b) the applicant has demonstrated that it has adequate personnel capable of handling transactions with the Corporation and adequate physical facilities, books and records and procedures to fulfill its anticipated commitments to, and to meet the operational requirements of, the Corporation, other Participants and Pledgees with necessary promptness and accuracy and to conform to any condition and requirement which the Corporation reasonably deems necessary for its protection;

(c) the Corporation has received no substantial information which would reasonably and adversely reflect on the applicant or its Controlling Management to such extent that access of the applicant to the Corporation should be denied; and any such applicant may be deemed not to meet the qualifications set forth in this paragraph if:

(i) the Corporation shall have reasonable grounds to believe that the applicant or its Controlling Management to be responsible for (A) making a misstatement of a material fact or omitting to state a material fact to the Corporation in connection with its application to become a Participant or thereafter or (B) fraudulent acts or the violation of the Securities Act, the Exchange Act, the Investment Company Act, the Investment Advisers Act or any rule or regulation thereunder;

(ii) the applicant or its Controlling Management has been convicted within the ten years preceding the filing of its application to become a Participant or at any time thereafter of any crime, felony or misdemeanor which involves the purchase, sale or transfer of any security or the breach of fiduciary duty, or arose out of conduct of the business of a broker, dealer, investment company, investment adviser, underwriter, bank, trust company, fiduciary, insurance company or other financial institution; or involves robbery, larceny, embezzlement, fraudulent conversion, forgery or misappropriation of funds, securities or other property; or involves any violation of Section 1341, 1342 or 1343 of Title 18 of the United States Code;

(iii) the applicant or its Controlling Management is permanently or temporarily enjoined by order, judgment or decree of any court or other governmental authority of competent jurisdiction from acting as a broker, dealer, investment company, investment adviser, underwriter, bank, trust company, fiduciary, insurance company or other financial institution or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase, sale or Delivery of any security, and the enforcement of such injunction or prohibition has not been stayed;

(iv) the applicant or its Controlling Management has been expelled or suspended, or had its participation terminated from a national securities association or exchange registered under the Exchange Act, a self-regulatory organization as defined in Section 3(a)(26) of the Exchange Act, or a corporation which engages in clearance and settlement activities or a securities depository or has been barred or suspended from being associated with any member of such an exchange, association, corporation or securities depository;

(v) the applicant is subject to statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934, or an order of similar effect issued by a Federal or State banking authority, or other examining authority or regulator, including a non-U.S. examining authority or regulator.

(d) the applicant meets the requirements set forth in the Policy Statement on the Admission of Participants set forth in these Rules

(e) with regard to any applicant that shall be an FFI Participant, such applicant must be FATCA Compliant.

In addition to items (a) through (c) above, the Corporation shall retain the right to deny membership to an applicant if the Corporation becomes aware of any factor or circumstance about the applicant or its Controlling Management which may impact the suitability of that particular applicant as a Participant of the Corporation. Further, applicants are required to inform the Corporation as to any member of its Controlling Management that is or becomes subject to statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act).

The Corporation may approve the application of any applicant, either unconditionally or on an appropriate temporary or other conditional basis, if the Corporation determines that any standard specified in this Section, as applied to such applicant or its Controlling Management**,** is unduly or disproportionately severe or that the conduct of such applicant or its Controlling Management has been such as not to make it against the interest of the Corporation, other Participants or Pledgees or the public to approve such application.

Notwithstanding the foregoing, the Corporation may decline to accept the application of any applicant upon a determination by the Corporation that the Corporation does not have adequate personnel, space, data processing capacity or other operational capability at that time to perform its services for additional Participants without impairing the ability of the Corporation to provide services for its existing Participants, to assure the prompt, accurate and orderly processing and settlement of Securities transactions, to safeguard the funds and Securities held by or for the Corporation for Participants or Pledgees or otherwise to carry out its functions; provided, however, that applicants whose applications are denied pursuant to this paragraph shall be approved as promptly as the capabilities of the Corporation permit in the order in which their applications were filed with the Corporation.

The Corporation may, from time to time, determine those Participants that shall be required to fulfill, within the time frames established by the Corporation, certain operational testing requirements (the scope of such testing to be determined by the Corporation in its sole discretion) and related reporting requirements (such as reporting the test results to the Corporation in a manner specified by the Corporation) that may be imposed by the Corporation to test and monitor the continuing operational capability of the Participant. Such Participants shall, as so required, comply with the subject operational testing requirement within specified time frames. The Corporation may assess a fine on any Participant that fails to comply with operational testing and related reporting requirements within the specified time frame.

The Corporation has established standards for designating those Participants who shall be required to participate in annual business continuity and disaster recovery testing that the Corporation reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event that business continuity and disaster recovery plans are required to be activated. The standards shall take into account factors such as:

(1) activity-based thresholds; (2) significant operational issues of the Participant during the twelve months prior to the designation; and (3) past performance of the Participant with respect to operational testing. The specific standards adopted by the Corporation and any updates or modifications thereto shall be published to Participants and applied on a prospective basis.

Upon notification that the Participant has been designated to participate in the annual business continuity and disaster recovery testing, as described above, Participants shall be required to fulfill, within the timeframes established by the Corporation, certain testing requirements (the scope of such testing to be determined by the Corporation in its sole discretion) and related reporting requirements (such as reporting the test results to the Corporation in a manner specified by the Corporation) that may be imposed by the Corporation.

The Corporation shall apply the foregoing requirements on a nondiscriminatory basis. Any applicant aggrieved by action taken by the Corporation in applying such qualifications shall be entitled to a right of appeal in accordance with Rule 22.

The entities which have made a Required Participants Fund Deposit pursuant to Section 1 of Rule 4 and Required Preferred Stock Investment pursuant to Section 2 of Rule 4 and to which the Corporation makes all of its services available shall be known as Participants. The entities which, if required, have made a Required Participants Fund Deposit pursuant to Section 1 of Rule 4 and Required Preferred Stock Investment pursuant to Section 2 of Rule 4 and to which the Corporation makes only certain of its services available shall be known as Limited Participants. For purposes of these Rules, the term "Participant" shall include the term "Limited Participant" unless the (i) context otherwise requires or (ii) the Procedures otherwise provide.

The Corporation may at any time cease either temporarily or definitively to make its services available to a Participant in accordance with these Rules and the Participant shall, upon receipt of notice thereof given by the Corporation as provided in these Rules cease to be a Participant; provided, however, that if the Corporation notifies a Participant that it has ceased to act for it only with respect to a particular transaction or transactions, the Participant shall continue to be a Participant. A Participant may terminate its business with the Corporation by notifying the Corporation as provided in Sections 7 or 8 of Rule 4 or, if for a reason other than those specified in said Sections 7 and 8, by notifying the Corporation thereof; the Participant shall, upon receipt of such notice by the Corporation, cease to be a Participant***, subject to Section 6 of Rule 4***. In the event that a Participant shall cease to be a Participant, the Corporation shall thereupon cease to make its services available to the Participant, except that the Corporation may perform services on behalf of the Participant or its successor in interest necessary to terminate the business of the Participant or its successor with the Corporation, and the Participant or its successor shall pay to the Corporation the fees and charges provided by these Rules with respect to services performed by the Corporation subsequent to the time when the Participant ceases to be a Participant. The Corporation shall immediately notify the SEC if it temporarily or definitively ceases to make its services available to a Participant in accordance with these Rules.

****

RULE 4

PARTICIPANTS FUND AND PARTICIPANTS INVESTMENT

Section 1. **Participants Fund**

The Participants Fund shall comprise the Actual Participants Fund Deposits of all Participants, as provided in these Rules and as specified in the Procedures.

(a) **Required Participants Fund Deposits**

Each Participant shall be required to make a Required Participants Fund Deposit in accordance with one or more formulas based upon the Participant's use of the facilities of the Corporation; provided, however, that (i) each Participant other than a Limited Participant shall be required to make at least a minimum Required Participants Fund Deposit and (ii) depending upon the services it utilizes, a Limited Participant may or may not be required to make a Required Participants Fund Deposit. The formulas for determining the Required Participants Fund Deposits of Participants and the amount of the minimum Required Participants Fund Deposit shall be fixed by the Corporation and specified in the Procedures so as to assure that the aggregate amount of Required Participants Fund Deposits of Participants will be increased to provide for costs and expenses incurred by it incidental to the voluntary liquidation **or wind-down** of the Corporation~~**, if any**~~.

The Corporation may from time to time change the formulas for determining the Required Participants Fund Deposits of Participants and the amount of the minimum Required Participants Fund Deposit; provided, however, that notice of such change shall be given to each Participant at least ten Business Days in advance of the effective date thereof. ~~**The Corporation may require a Participant to Deposit an additional amount to the Participants Fund pursuant to Section 2 of Rule 9(A). Any such additional amount shall be part of the Required Participants Fund Deposit of such Participant.**~~

~~**(b)**~~ The Corporation shall determine on a daily basis for each Participant the amount of its Required Participants Fund Deposit, and the Corporation shall notify each Participant of any change in the amount of its Required Participants Fund Deposit. If the Actual Participants Fund Deposit of a Participant is less than the amount of its Required Participants Fund Deposit, the Participant shall Deposit to the Participants Fund, in the manner specified in the Procedures, the amount needed to eliminate the deficiency. If the Actual Participants Fund Deposit of a Participant is more than the amount of its Required Participants Fund Deposit, the Corporation shall pay to the Participant from the Participants Fund, in the manner specified in the Procedures, the amount of the excess, or such lesser amount as the Participant may request; provided, however, that the Corporation may determine, in its sole discretion, not to return such excess deposit (i) if the Collateral Monitor with respect to any Account Family of the Participant is negative or will be negative as a consequence thereof, (ii) if any Account Family of the Participant will, immediately after the return of such excess deposit, have a negative balance which exceeds the Net Debit Cap for that Account Family, (iii) until any amount which is

required to be charged or levied against the Participant or its Required Participants Fund Deposit is paid by the Participant to the Corporation, (iv) if the Corporation determines that the recent use of any service of the Corporation by the Participant is materially different from its prior use of such service and that a higher Required Participants Fund Deposit is thereby justified and (v) until after the amounts, if any, to be charged or levied against the Participant or its Required Participants Fund Deposit on account of transactions which occurred previously have been satisfied. Notwithstanding the foregoing, the Corporation may withhold all or part of any excess deposit of a Participant if the Corporation determines, in its sole discretion, that such action is necessary for the protection of the Corporation, other Participants or Pledgees.

(b) Additional Participants Fund Deposits

The Corporation may require a Participant to Deposit, on demand, an additional amount to the Participants Fund pursuant to Section 2 of Rule 9(A) (an "Additional Participants Fund Deposit"). Any such Additional Participants Fund Deposit shall be part of the Required Participants Fund Deposit of such Participant.

(c) **Voluntary Participants Fund Deposits**

A Participant may make a Voluntary Participants Fund Deposit to the Participants Fund, ~~as~~**in the manner** specified in the Procedures. A Voluntary Participants Fund Deposit shall not be part of the Required Participants Fund Deposit of the Participant but shall be part of its Actual Participants Fund Deposit.

(d) **Cash Participants Fund**

The Required Participants Fund Deposit~~,~~ ***(including*** **any Additional Participants Fund Deposit*)*** and any Voluntary Participants Fund Deposit of a Participant shall be in cash. All amounts due to or from a Participant in connection with increases and decreases in its Required Participants Fund Deposit~~, *(including* pursuant to this Section or Section 2 of Rule 9(A)) and~~**any Additional Participants Fund Deposit*),*** any Voluntary Participants Fund Deposit**, and any charge pursuant to Section 5 of this Rule,** may be credited to or debited from its Settlement Account.

(e) **Allocation of Participants Fund Deposits Among Account Families**

A Participant with more than one Account Family may, in the manner specified in the Procedures, designate the portion of its Actual Participants Fund Deposit to be allocated to each Account Family at the opening of business each Business Day. The Corporation shall not be obligated to make any allocations in accordance with such instructions if the Corporation determines, in its sole discretion, that such action might result in financial loss to the Corporation, other Participants or Pledgees. The Corporation may allocate **among Account Families**, in the manner specified in the Procedures, any portion of the Actual Participants Fund Deposit of a Participant which is not allocated by the Participant.

(f) **Maintenance, Permitted Use and Investment of Participants Fund**

The Actual Participants Fund Deposits of Participants to the Participants Fund shall be held by the Corporation and ~~shall~~**may** be ~~applied~~**used or invested** as provided in these Rules and as specified in the Procedures.

The **Actual** Participants Fund ~~shall be limited to the satisfaction of losses or~~ **Deposits of Participants may be used (i) to satisfy the obligations of Participants to the Corporation, as provided in Section 3 of this Rule, (ii) to fund settlement among non-defaulting Participants, as provided in Section 4 of this Rule and (iii) to satisfy losses and** liabilities of the Corporation incident to the business of the Corporation**, as provided in Section 5 of this Rule**. For purposes of this ~~Section~~**Rule**, the term "business" with respect to the Corporation shall mean the doing of all things in connection with or relating to the Corporation's performance of the services specified in the first and second paragraphs of Rule 6 or the cessation of such services. Notwithstanding anything to the contrary in this Rule, the Participants Fund may be used as provided in any Clearing Agency Agreement.

~~(g)~~ The cash in the Participants Fund may be partially or wholly invested by the Corporation~~, in its sole discretion, for its account in securities issued or guaranteed as to principal and interest by the United States or agencies or instrumentalities of the United States or repurchase agreements relating to securities issued or guaranteed as to principal and interest by the United States or agencies or instrumentalities of the United States and to the extent not so invested shall be deposited by the Corporation in its name in a depository or depositories selected by the Corporation. Any securities, repurchase agreements or deposits~~ **in accordance with the Clearing Agency Investment Policy adopted by the Corporation. Any financial assets** in which cash in the Participants Fund is invested may be sold by the Corporation or Pledged as security for loans made to the Corporation, as provided in Rule 4(A). The Corporation shall pay interest to a Participant on the cash such Participant has Deposited to the Participants Fund at the rate the Corporation earns on ~~securities and repurchase agreement in which~~**its investment of** such cash ~~is invested~~ or as specified in the Procedures.

(g) Return of Participants Fund Deposits to Participants

~~(h)~~ After three months from when a Person has ceased to be a Participant, the Corporation shall return to such Person (or its successor in interest or legal representative) the amount of the Actual Participants Fund Deposit of the former Participant plus accrued and unpaid interest to the date of such payment (including any amount added to the Actual Participants Fund Deposit of the former Participant pursuant to Section 2(~~h~~**e**) of this Rule), provided that the Corporation receives such indemnities and guarantees as the Corporation deems satisfactory with respect to the matured and contingent obligations of the former Participant to the Corporation. Otherwise, within ~~four~~**two** years after a Person has ceased to be a Participant, the Corporation shall return to such Person (or its successor in interest or legal representative) the amount of the Actual Participants Fund Deposit of the former Participant plus accrued and unpaid

interest to the date of such payment, except that the Corporation may offset against such payment the amount of any known loss or liability ~~to~~**of** the Corporation arising out of ~~a~~**or** related to the obligations of the former Participant to the Corporation.

Section 2. **Participants Investment**

The Participants Investment shall comprise the Required Preferred Stock Investments of all Participants, as provided in these Rules and as specified in the Procedures.

(a) **Required Preferred Stock Investments**

Each Participant shall be required to make a Required Preferred Stock Investment in accordance with one or more formulas based upon the Participant's use of the facilities of the Corporation; provided, however, that (i) each Participant other than a Limited Participant shall be required to make at least a minimum Required Preferred Stock Investment and (ii) depending upon the services it utilizes, a Limited Participant may or may not be required to make a Required Preferred Stock Investment. The formulas for determining the Required Preferred Stock Investments of Participants and the amount of the minimum Required Preferred Stock Investment shall be fixed by the Corporation and specified in the Procedures. The Corporation may from time to time change the formulas for determining the Required Preferred Stock Investments of Participants and the amount of the minimum Required Preferred Stock Investment; provided, however, that notice of such change shall be given to each Participant at least ten Business Days in advance of the effective date thereof.

~~**(b)**~~ The Corporation shall determine on a quarterly basis for each Participant the amount of its Required Preferred Stock Investment, and the Corporation shall notify each Participant of any change in the amount of its Required Preferred Stock Investment. If the Actual Preferred Stock Investment of a Participant is less than the amount of its Required Preferred Stock Investment, such Participant shall purchase, in the manner specified in the Procedures, the number of outstanding shares of Preferred Stock needed to eliminate the deficiency. If the Actual Preferred Stock Investment of a Participant is more than the amount of its Required Preferred Stock Investment, such Participant shall sell, in the manner specified in the Procedures, the number of its shares of Preferred Stock needed to eliminate the excess. The Corporation, acting as agent and attorney-in-fact for its Participants, shall effect the foregoing purchases and sales of shares of Preferred Stock on their behalf, so that each Participant shall own the amount of its Required Preferred Stock Investment, as adjusted from time to time in accordance with the provisions of ~~**Paragraph (a) of this Section 2 and**~~ this Paragraph ~~**(b)**~~.

~~**(c)**~~ A Participant may not purchase from the Corporation or any other Participant any shares of Preferred Stock in excess of the amount of its Required Preferred Stock Investment.

~~**(d)**~~ Except as otherwise provided in ~~**this Paragraph or**~~ Paragraph (~~**i**~~**if**) of this Section, all purchases and sales of Preferred Stock pursuant to these Rules shall be made in cash at a price equal to the aggregate Preferred Stock Par Value of the shares plus

accrued and unpaid dividends thereon to the date of such purchase or sale; provided, however, that (i) the portion of the price equal to the aggregate Preferred Stock Par Value of the shares shall be paid on the date of such purchase and sale and (ii) the portion of the price equal to the accrued and unpaid dividends thereon shall be paid on the first Preferred Stock Dividend Date following the date of such purchase and sale if dividends are paid on the Preferred Stock on such Preferred Stock Dividend Date.

All amounts due to or from Participants in connection with purchases and sales of Preferred Stock shall be credited to or debited from their Settlement Accounts, except that any amounts due to a Person which has ceased to be a Participant shall be paid to such account as the former Participant shall designate for this purpose. The Corporation, acting as agent and attorney-in-fact for its Participants, shall effect all payments on their behalf, at the times and in the amounts provided in these Rules and as specified in the Procedures, without any further action or consent required on the part of such Participants, and, without limiting the generality of the foregoing, the Corporation may apply all dividends paid on the Preferred Stock to the payments required to be made to all past and present holders of Preferred Stock pursuant to this Section.

Any determination by the Corporation of a number of shares of Preferred Stock to be purchased or sold pursuant to these Rules shall be made by converting any fraction into a decimal rounded to the nearest one-hundred-thousandth and by rounding to the nearest one-hundred-thousandth the product of any such decimal and any number of shares of Preferred Stock. In order to make the products of all such determinations by the Corporation pursuant to any one provision of these Rules consistent with the total number of shares of Preferred Stock being purchased and sold, the Corporation shall randomly assign to ~~a~~**or** deduct from the number of shares of Preferred Stock being purchased from or sold to any Participant the difference between such total number of shares of Preferred Stock and the sum of such products.

(b) Allocation of Preferred Stock Investments Among Account Families

~~(e)~~ A Participant with more than one Account Family may, in the manner specified in the Procedures, designate the portion of its Actual Preferred Stock Investment to be allocated to each Account Family at the opening of business each Business Day. The Corporation shall not be obligated to make any allocations in accordance with such instructions if the Corporation determines, in its sole discretion, that such action might result in financial loss to the Corporation, other Participants or Pledgees. The Corporation may allocate **among Account Families**, in the manner specified in the Procedures, any portion of the Actual Preferred Stock Investment of a Participant which is not allocated by the Participant.

(c) Security Interest in Preferred Stock Investments of Participants

~~(f)~~ To secure the obligations of Participants to the Corporation, the Corporation, acting as agent and attorney-in-fact for its Participants, may (i) Pledge the entire right, title and interest of any Participant in and to some or all of its shares of Preferred Stock, together with all distributions thereon, proceeds thereof and

replacements or substitutions therefor (a "Preferred Stock Security Interest"), as collateral security for the obligations of the Corporation to its Lenders under any credit facility maintained by the Corporation for the purpose of funding the end-of-day settlement of transactions processed through the facilities of the Corporation (an "End-of-Day Credit Facility") or (ii) sell some or all of the shares of Preferred Stock of any Participant to other Participants (who shall be obligated to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and apply the proceeds of such sale to the obligations of such Participant to the Corporation. Any such Pledge of a Preferred Stock Security Interest pursuant to this Paragraph ~~(f)~~, shall be made by appropriate entries on the books of the Corporation (and such entries**, together with these Rules,** shall be deemed to be a security agreement for purposes of the NYUCC) or by any other means provided in the NYUCC, and each Participant hereby grants to the Corporation an irrevocable power of attorney (coupled with an interest) to execute and deliver, in the name and on behalf of such Participant, any and all additional documents, instruments, agreements and financing statements necessary or desirable as determined by the Corporation, in its sole discretion, to create and perfect the Pledge of the Preferred Stock Security Interest by the Corporation to its Lenders under the End-of-Day Credit Facility. Any such sale of shares of Preferred Stock pursuant to this Paragraph ~~(f)~~, and **any** application of the proceeds thereof as provided herein, shall be effected by the Corporation without any further action or consent required on the part of the Participant whose shares of Preferred Stock are sold, and the Settlement Account of such Participant shall be credited with the full amount of such proceeds.

(d) Dividends on Preferred Stock Investments of Participants

~~(g)~~ The Corporation shall pay dividends on the Preferred Stock at a rate fixed by the Board of Directors in accordance with the Organization Certificate of the Corporation.

(e) Sale of Preferred Stock Investments of Participants

~~(h)~~ Promptly after a Person has ceased to be a Participant, the Corporation, acting as agent and attorney-in-fact for such Person (or its successor in interest or legal representative), shall sell all of the shares of Preferred Stock of the former Participant to current Participants (who shall be required to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and add the proceeds thereof to the Actual Participants Fund Deposit of the former Participant for disposition in accordance with Section 1(~~h~~**g**) of this Rule.

(f) Permitted Transfers of Preferred Stock Investments of Participants

~~(i)~~ Shares of Preferred Stock may be transferred from a Participant to another Person, subject to the provisions of **this** Paragraph ~~**(f) of this Section 2**~~:

(1) ~~(A)~~ if (~~1~~**A**) such Participant gives the Corporation at least twenty Business Days prior written notice of the proposed transfer and (~~2~~**B**) such transfer is effected in the course of or pursuant to

(~~x~~**i**) a merger or consolidation of such Participant into or with such Person or (~~y~~**ii**) a sale of all or substantially all of the business and assets of such Participant to such Person and (~~3~~**C**) such Person is also a Participant; or

(2) ~~(B)~~ if (~~1~~**A**) such Participant (~~x~~**i**) gives the Corporation and all other Participants at least twenty Business Days prior written notice of the proposed transfer and (~~y~~**ii**) offers to sell the shares to such other Participants (pro rata their Required Preferred Stock Investments at the time of such offer) at the lower of (~~1~~**x**) the aggregate purchase price that such Person has agreed to pay for the shares or (~~H~~**y**) the aggregate Preferred Stock Par Value of the shares and (~~2~~**B**) the Corporation, acting as agent and attorney-in-fact for such other Participants, declines on their behalf to purchase the shares on such terms.

No shares of Preferred Stock may be purchased, sold or transferred except in accordance with this Paragraph ~~(i)~~ or in connection with the quarterly reallocation of shares of Preferred Stock pursuant to Paragraph (~~b~~**a**) of this Section.

Section 3. **Application of Participants Fund Deposits and Preferred Stock Investments to Participant Default**

If a Participant is ***a Participant that is a Defaulting Participant pursuant to Rule 9(B) or is otherwise*** obligated to the Corporation**~~, other than for a pro rata charge~~** pursuant to **~~Section 5 of this Rule~~these Rules and the Procedures~~,~~** and fails to satisfy ***any*** such obligation **(a "Participant Default")**, including**,** without limitation**,** the obligation of the Participant to reimburse the Corporation for the amount of any payment with respect to such Participant paid by or owing from the Corporation to any other clearing agency pursuant to a Clearing Agency Agreement, the Corporation shall**, to the extent necessary to eliminate such obligation, apply some or all of the Actual Participants Fund Deposit of such Participant to such obligation to satisfy the Participant Default.**

If any such application of the Actual Participants Fund Deposit of a Participant is insufficient to satisfy such obligation, the Corporation may, in such order and ~~in~~ such amounts as the Corporation shall determine, in its sole discretion, to the extent necessary to ~~eliminate~~**satisfy** such obligation:

~~**(a) apply some or all of the Actual Participants Fund Deposit of such Participant to such obligation;**~~

(~~b~~**a**) Pledge some or all of the shares of Preferred Stock of such Participant to its Lenders as collateral security for a loan under the End-of-Day **Credit** Facility**, and apply the proceeds of such loan to satisfy such obligation**; and/or

(~~c~~**b**) sell some or all of the shares of Preferred Stock of such Participant to other Participants (who shall be required to purchase such shares pro rata their Required

Preferred Stock Investments at the time of such purchase), and apply the proceeds of such sale to such obligation.

If the Corporation takes any of the foregoing actions, the Participant shall, upon the demand of the Corporation, within such time as the Corporation shall require:

(a) Deposit to the Participants Fund the amount in cash needed to eliminate any resulting deficiency in its Required Participants Fund Deposit;

(b) wire to the Corporation an amount in cash sufficient to discharge any loan secured by its shares of Preferred Stock; and/or

(c) repurchase any of its shares of Preferred Stock sold to other Participants.

If the Participant shall fail to take any action demanded by the Corporation, the Corporation may take disciplinary action against the Participant pursuant to these Rules. Any disciplinary action which the Corporation takes pursuant to these Rules, or the voluntary or involuntary cessation of participation by the Participant, shall not affect the obligation of the Participant to the Corporation or any remedy to which the Corporation may be entitled under applicable law.

Section 4. **Application of Participants Fund Deposits of Non-Defaulting Participants**

~~**If the Corporation incurs a loss or liability which is not satisfied by charging the Participant or Participants responsible for causing the loss or liability pursuant to Section 3 of this Rule, the Corporation shall, in such order and in such amounts as the Corporation shall determine, in its sole discretion, to the extent necessary to satisfy such loss or liability:**~~

~~**(a) apply some or all of the Actual Participants Fund Deposits of all other Participants to such loss or liability, in which case:**~~

~~**(1) with respect to any loss or liability incurred by the Corporation in connection with any payment required to be made by the Corporation to any other clearing agency pursuant to a Clearing Agency Agreement, the Actual Participants Fund Deposit of each Participant that is concurrently a member of such other clearing agency, excluding the Participant or Participants responsible for causing the loss or liability, shall be applied pro rata (A) its Required Participants Fund Deposit (as such Required Participants Fund Deposit was fixed at the time the loss or liability was discovered) less (B) any portion of such Required Participants Fund Deposit attributable to any additional amount that such Participant was required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A); or**~~

~~**(2) with respect to any other loss or liability incurred by the Corporation, the Actual Participants Fund Deposit of each**~~

~~Participant, excluding the Participant or Participants responsible for causing the loss or liability, shall be applied pro rata (A) its Required Participants Fund Deposit (as such Required Participants Fund Deposit was fixed at the time the loss or liability was discovered) less (B) any portion of such Required Participants Fund Deposit attributable to any additional amount that such Participant was required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A); and/or~~

~~(b) charge the existing retained earnings and undivided profits of the Corporation.~~

The Participants Fund shall constitute a liquidity resource which may be applied by the Corporation in such amounts as the Corporation shall determine, in its sole discretion, to fund settlement ~~among non-defaulting Participants in the event of the failure of a~~*if there is a Defaulting* Participant ~~to satisfy its settlement obligation on any Business Day. If~~*and* the amount charged to the Actual Participants Fund Deposit of ~~a~~*the Defaulting* Participant pursuant to Section 3 of this Rule is not sufficient to complete settlement, ~~among non-defaulting Participants on that Business Day.~~ *In that case,* the Corporation may apply the Actual Participants Fund Deposits of ~~non-defaulting~~ Participants *other than the Defaulting Participant (each, a "non-defaulting Participant")* as provided in this Section and/or apply such other liquidity resources as may be available to the Corporation from time to time, including the End-of-Day Credit Facility.

If the Participants Fund is applied to ~~**a loss or liability**~~**complete settlement**, the Corporation shall promptly after the event notify each Participant and the SEC of the amount applied and the reasons therefor **("Settlement Charge Notice")**.

Each non-defaulting Participant's pro rata share of such application of the Participants Fund *(each, a "pro rata settlement charge")* shall be equal to (i) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the Business Day of such application less its Additional Participants Fund Deposit, if any, on that day, divided by (ii) the sum of the Required Participants Fund Deposits of all non-defaulting Participants, as such Required Participants Fund Deposits were fixed on that day, less the sum of the Additional Participants Fund Deposits, if any, of such non-defaulting Participants on that day.

~~**A Participant's maximum obligation with respect to its pro rata share of such application of the Participants Fund (each a "pro rata settlement charge") shall be equal to the amount set forth in Section 8(a) of this Rule ("Settlement Charge Cap").**~~ **A Participant shall have a period of five Business Days following issuance of a Settlement Charge Notice (such period, a "Settlement Charge Termination Notification Period") to notify the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(a) of this Rule~~~~and thereby benefit from its Settlement Charge Cap~~.**

If a Participant notifies the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(a) of this Rule, it shall comply with the provisions of Section 6*(b)* of this Rule. *If a Participant so complies, its maximum obligation with respect to its pro rata settlement charges shall be equal to the amount set forth in Section 8(a) of this Rule ("Settlement Charge Cap").* If, after notifying the Corporation of its election to terminate its business with the Corporation pursuant to Section ~~6~~*8(a)* of this Rule, the Participant fails to comply with the provisions of Section 6*(b)* of this Rule, its election to terminate its business with the Corporation shall be deemed void and it will remain subject to further pro rata settlement charges as may be charged against it as if it had not given such notice.

~~Notwithstanding Section 1(a) of this Rule, t~~The Corporation may retain the entire amount of the Actual Participants Fund Deposit of a Participant subject to a pro rata settlement charge, up to the amount of the Participant's Settlement Charge Cap ~~in accordance with Section 8(a) of this Rule~~.

~~Section 5.~~ **~~Except as provided in~~ Subject to** Section 8 of this Rule, if **~~a pro rata charge is made pursuant to Section 4 of this Rule against the Required~~the Actual** Participants Fund Deposit of a Participant**~~,~~ is applied as provided in this Section** and, as a consequence, the Actual Participants Fund Deposit of such Participant is less than its Required Participants Fund Deposit, the Participant shall, upon the demand of the Corporation, within such time as the Corporation shall require, Deposit to the Participants Fund the amount in cash needed to eliminate any resulting deficiency in its Required Participants Fund Deposit. If the Participant shall fail to make such ~~d~~**D**eposit to the Participants Fund, the Corporation may take disciplinary action against the Participant pursuant to these Rules. Any disciplinary action which the Corporation takes pursuant to these Rules, or the voluntary or involuntary cessation of participation by the Participant, shall not affect the obligations of the Participant to the Corporation or any remedy to which the Corporation may be entitled under applicable law.

***Section 5*. Loss Allocation Waterfall**

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

"CTA Participant" shall mean a Participant for which the Corporation has ceased to act pursuant to Rule 10, Rule 11 or Rule 12.

"Default Loss Event" shall mean the determination by the Corporation to cease to act for a Participant pursuant to Rule 10, Rule 11, or Rule 12.

"Declared Non-Default Loss Event" shall mean the determination by the Board of Directors that a loss or liability incident to the clearance and settlement business of the Corporation may be a significant and substantial loss or liability that may materially impair the ability of the Corporation to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among Participants in order to ensure that the Corporation may continue to offer clearance and settlement services in an orderly manner.

If the Corporation incurs a loss or liability ~~(i)~~ relating to or arising out of a ~~Participant Default which is not satisfied pursuant to Section 3 of this Rule and the Corporation has ceased to act for such Participant (a "~~Default Loss Event~~") or~~ *a* ~~(ii)~~otherwise incident to the business of the Corporation, as determined below (a "~~Declared Non-Default Loss Event~~"), the Corporation shall address the loss or liability as follows:

Default Loss Events and/or Declared Non-Default Loss Events that occur within a period of ten Business Days (an "Event Period") shall be grouped together for purposes of applying the limits on loss allocations set forth in ~~Section 8 of~~ this Rule. In the case of a Default Loss Event, an Event Period begins on the day that the Corporation notifies Participants that it has ceased to act for a Participant (or the next Business Day, if such day is not a Business Day).

In the case of a Declared Non-Default Loss Event, an Event Period begins on the day that the Corporation notifies Participants of the ~~determination by the Board of Directors that the applicable loss or liability incident to the business of the Corporation may be a significant and substantial loss or liability that may materially impair the ability of the Corporation to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among Participants in order to ensure that the Corporation may continue to offer clearance and settlement services in an orderly manner~~ ***Declared Non-Default Loss Event (or the next Business Day, if such day is not a Business Day)*****, which notification shall be issued promptly following any such determination.**

If a subsequent Default Loss Event or Declared Non-Default Loss Event occurs during an Event Period, any losses or liabilities relating to or arising out of any such subsequent event shall be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period.

Each CTA Participant shall be obligated to the Corporation for the entire amount of any loss or liability incurred by the Corporation arising out of or relating to any Default Loss Event with respect to such CTA Participant. To the extent that such loss or liability is not satisfied pursuant to Section 3 of this Rule, the Corporation shall apply a Corporate Contribution thereto and charge the remaining amount of such liability or loss ratably to other Participants, as further provided below.

The Corporation shall apply the Corporate Contribution to losses and liabilities that arise out of or relate to one or more Default Loss Events and/or Declared Non-Default Loss Events that occur within an Event Period. If losses and liabilities with respect to such Event Period remain unsatisfied following application of the Corporate Contribution, the Corporation shall allocate such losses and liabilities to Participants, subject to the requirements and limitations below.

Each Participant that is a Participant on the first day of an Event Period shall be obligated to pay its pro rata share of losses and liabilities arising out of or relating to each Default Loss Event (other than a Default Loss Event with respect to which it is the CTA Participant) and each Declared Non-Default Loss Event occurring during the Event Period. Any Participant for which the Corporation ceases to act on a non-Business Day, triggering an

Event Period that commences on the next Business Day, shall be deemed to be a Participant on the first day of that Event Period. ~~In the case of losses and liabilities relating to or arising out of a Declared Non-Default Loss Event, all Participants shall be subject to loss allocation. In the case of losses and liabilities relating to or arising out of a Default Loss Event, only non-defaulting Participants shall be subject to loss allocation. After a first round of loss allocations with respect to an Event Period, only Participants that have not submitted a Termination Notice (as defined below) in accordance with Section 6(b) of this Rule shall be subject to further loss allocation with respect to that Event Period. The Corporation shall notify Participants subject to loss allocation of the amounts being allocated to them ("Loss Allocation Notice") in successive rounds of loss allocations. Notwithstanding Section 1(a) of this Rule, the Corporation may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap (as defined below) in accordance with Section 8(b) of this Rule.~~ A loss allocation "round" means a series of loss allocations relating to an Event Period, the aggregate amount of which is limited by the sum of the Loss Allocation Caps of affected Participants (a "round cap"). When the aggregate amount of losses allocated in a round equals the round cap, any additional losses relating to the applicable Event Period shall be allocated in one or more subsequent rounds, in each case subject to a round cap for that round. The Corporation may continue the loss allocation process in successive rounds until all losses from the Event Period are allocated among Participants that have not submitted a Termination Notice in accordance with Section 6(b) of this Rule.

Each loss allocation shall be communicated to Participants by the issuance of a *notice that advises each Participant of the amount being allocated to it* (*each, a* "Loss Allocation Notice"). ~~Each Loss Allocation Notice shall specify the relevant Event Period and the round to which it relates. The first Loss Allocation Notice in any first, second, or subsequent round shall expressly state that such Loss Allocation Notice reflects the beginning of the first, second, or subsequent round, as the case may be, and that each Participant in such round has five Business Days from the issuance of such first Loss Allocation Notice for the round (such period, a "Loss Allocation Termination Notification Period") to notify the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(b) of this Rule, and thereby benefit from its Loss Allocation Cap. Participants shall pay to the Corporation the amount specified in any first round Loss Allocation Notice on the second Business Day after the Corporation issues any such notice. Participants shall pay to the Corporation the amount specified in any subsequent round Loss Allocation Notice on the second Business Day after the Corporation issues such notice, unless the Participant has timely notified (or will timely notify) the Corporation of its election to terminate its business with the Corporation with respect to a prior loss allocation round pursuant to Section 8(b) of this Rule. Each Participant's maximum payment obligation with respect to any loss allocation round shall be equal to the amount set forth in Section 8(b) of this Rule ("Loss Allocation Cap"), subject to Section 8(c) of this Rule.~~Each Participant's pro rata share of losses and liabilities to be allocated in any round shall be equal to (i) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the first day of the applicable Event Period, less its Additional Participants Fund Deposit, if any, on such day, divided by (ii) the sum of the Required Participants Fund Deposits of all Participants subject to loss allocation in such round, as such Required Participants Fund Deposits were fixed on such day, less the sum of

any Additional Participants Fund Deposits, if any, of all Participants subject to loss allocation in such round on such day.

Each Loss Allocation Notice shall specify the relevant Event Period and the round to which it relates. The first Loss Allocation Notice in any first, second, or subsequent round shall expressly state that such Loss Allocation Notice reflects the beginning of the first, second, or subsequent round, as the case may be, and that each Participant in such round has five Business Days from the issuance of such first Loss Allocation Notice for the round (such period, a "Loss Allocation Termination Notification Period") to notify the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(b) of this Rule, and thereby benefit from its Loss Allocation Cap. If a Participant so complies, its maximum obligation with respect to its loss allocation charges shall be equal to the amount set forth in Section 8(b) of this Rule ("Loss Allocation Cap").

Participants shall pay to the Corporation the amount specified in any first round Loss Allocation Notice on the second Business Day after the Corporation issues any such notice. Participants shall pay to the Corporation the amount specified in any subsequent round Loss Allocation Notice on the second Business Day after the Corporation issues such notice, unless the Participant has timely notified (or will timely notify) the Corporation of its election to terminate its business with the Corporation with respect to a prior loss allocation round pursuant to Section 8(b) of this Rule.

The Corporation may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap in accordance with Section 8(b) of this Rule.

If a Participant fails to make payment to the Corporation in respect of a Loss Allocation Notice by the time such payment is due, the Corporation shall have the right to proceed against such Participant as a Participant that has failed to satisfy an obligation in accordance with Section 3 of this Rule.

All amounts due from a Participant pursuant to this Section may be debited from its Settlement Account when due.

If a Participant notifies the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(b) of this Rule, the Participant shall comply with the provisions of Section 6*(b)* of this Rule. If, after notifying the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(b) of this Rule, the Participant fails to comply with the provisions of Section 6(b) of this Rule, its election to terminate its business with the Corporation shall be deemed void and any further losses resulting from the applicable Event Period may be allocated against it as if it had not given such notice.

For any loss allocation pursuant to this Section 5, whether arising out of or relating to a Default Loss Event or a Declared Non-Default Loss Event, the Corporation's corporate contribution to losses or liabilities that are incurred by the Corporation with respect to an Event Period ("Corporate Contribution") shall be an amount that is equal to fifty percent

(50%) of the amount calculated by the Corporation in respect of its General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the Event Period. The Corporation's General Business Risk Capital Requirement, as defined in its Clearing Agency Policy on Capital Requirements, is, at a minimum, equal to the regulatory capital that the Corporation is required to maintain in compliance with Rule 17Ad-22(e)(15) under the Exchange Act. If the Corporate Contribution is applied by the Corporation against a loss or liability relating to an Event Period, the Corporate Contribution for any subsequent Event Periods occurring during the two hundred fifty (250) Business Days thereafter shall be reduced to the remaining unused portion of the Corporate Contribution amount that applied for the first Event Period. The Corporation shall notify Participants of any such reduction to the Corporate Contribution.

Nothing in these Rules shall prevent the Corporation from voluntarily applying amounts greater than the Corporate Contribution against any loss or liability of the Corporation, whether a Default Loss Event or a Declared Non-Default Loss Event, if the Board of Directors, in its sole discretion, believes such to be appropriate under the factual situation existing at the time.

Section 6. **Obligations of Participant Upon Termination**

~~**Whenever a Participant ceases to be such, it shall continue to be obligated (a) to satisfy any deficiency in the amount of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including (i) any deficiency resulting from a pro rata charge with respect to which the Participant has given notice to the Corporation of its election to terminate its business with the Corporation pursuant to Section 8 of this Rule (a "Section 8 Pro Rata Charge") and (ii) any deficiency the Participant is required to satisfy pursuant to Section 3 or 5 of this Rule (other than any deficiency referred to in the preceding clause (i) or, subject to Section 8 of this Rule, any pro rata charge under Section 5 of this Rule arising after the Section 8 Pro Rata Charge) and (b) to discharge any liability of the Participant to the Corporation resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant; provided, however, that, subject to Section 8 of this Rule, the aggregate liability of the Participant for any Section 8 Pro Rata Charge shall not exceed the amount of its Aggregate Required Deposit and Investment, as fixed immediately prior to the time of such charge, plus 100% of the amount thereof.**~~

(a) Upon Any ~~Termination~~*Voluntary Retirement*

~~Subject to Section 8 of this Rule, whenever a Participant ceases to be such, it shall continue to be obligated (i) to satisfy any deficiency in the amounts of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including any deficiency the Participant is required to satisfy pursuant to Sections 3 or 4 of this Rule, and (ii) to discharge any liability of the Participant to the Corporation resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant.~~

If a Participant elects to terminate its business with the Corporation pursuant to Section 1 of Rule 2 for reasons other than those specified in Section 8 of this Rule (a "Voluntary Retirement"), the Participant shall:

(1) provide a written notice of such termination to the Corporation ("Voluntary Retirement Notice"), as provided for in Section 1 of Rule 2;

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

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

(4) ensure that all activities and use of Corporation's services by the Participant cease on or prior to the Voluntary Retirement Date.

If the Participant fails to comply with the requirements of this Paragraph (a), its Voluntary Retirement Notice shall be deemed void.

If a Participant submits a Voluntary Retirement Notice and subsequently receives a Settlement Charge Notice or the first Loss Allocation Notice in a round on or prior to the Voluntary Retirement Date, such Participant must timely submit a Termination Notice in order to benefit from its Settlement Charge Cap or Loss Allocation Cap, respectively. In such a case, the Termination Notice shall supersede and void the pending Voluntary Retirement Notice submitted by the Participant.

(b) Upon Termination Following Settlement Charge or Loss Allocation

If a Participant timely notifies the Corporation of its election to terminate its business with the Corporation in respect of a settlement charge as set forth in Section 4 of this Rule or a loss allocation as set forth in Section 5 of this Rule ("Termination Notice"), the Participant shall:

(1) specify in the Termination Notice an effective date of termination ("Participant Termination Date"), which date shall be no later than ten Business Days following the last day of the applicable Settlement Charge Termination Notification Period or Loss Allocation Termination Notification Period;

(2) cease all *activities and use of the Corporation's services other than activities and services necessary to terminate the business of the Participant with the Corporation*~~activity that would result in transactions being submitted to the Corporation for clearance and settlement after the Participant Termination Date~~; and

(3) ensure that all activities and use of Corporation*'s* services ~~for which~~*by* such Participant ~~may have any obligation to the~~

~~Corporation~~ cease *on or* prior to the Participant Termination Date.

A Participant that terminates its business with the Corporation in compliance with this Paragraph (b) shall nevertheless remain obligated for its pro rata share of losses and liabilities with respect to any Event Period for which it is otherwise obligated hereunder; however, its aggregate obligation shall be limited to the amount of its Loss Allocation Cap (as fixed in the round for which it withdrew).

If the Participant fails to comply with the requirements of this Paragraph (b), its Termination Notice will be deemed void, and the Participant will remain subject to further pro rata settlement charges pursuant to Section 4 of this Rule or loss allocations pursuant to Section 5 of this Rule as if it had not given such Termination Notice.

(c) After Any Termination

Whenever a Participant ceases to be such, it shall continue to be obligated (i) to satisfy any deficiency in the amounts of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including any deficiency the Participant is required to satisfy pursuant to Sections 3 or 4 of this Rule, (ii) subject to Section 8 of this Rule, to satisfy any loss allocation pursuant to Section 5 of this Rule, and (iii) to discharge any liability of the Participant to the Corporation resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant.

Section 7. **Increased Participants Fund Deposits and Preferred Stock Investments**

Except for any **~~increase in the amount of the Required~~Additional** Participants Fund Deposit**~~s of a Participant pursuant to Section 2~~, which shall be Deposited on demand as provided in Section 1(b)** of **this** Rule **~~9(A)~~**, the Corporation shall give a Participant at least ten Business Days prior notice of any proposed increase in its Required Participants Fund Deposit or Required Preferred Stock Investment.

(a) **Required Participants Fund Deposits**

If a Participant does not, within the time allowed, give the Corporation notice (in the manner specified in Section 4 of Rule 2) of its election to terminate its business with the Corporation, the Participant shall be required to Deposit the amount needed to satisfy any such increase in its Required Participants Fund Deposit, and the obligation of the Participant to make such deposit shall not be affected by any subsequent voluntary or involuntary cessation of participation of the Participant. From and after the time such increase becomes effective, the obligations of the Participant to the Corporation shall be determined in accordance with such increased Required Participants Fund Deposit of the Participant whether or not the appropriate amount has been Deposited in the Participants Fund. For purposes of this Section, an increase in the Required Participants Fund Deposit of a Participant shall include an increase resulting from the application of the

formulas provided for in Section 1**(a)** of this Rule and shall also include an increase resulting from a change in such formulas.

(b) **Required Preferred Stock Investments**

If a Participant does not, within the time allowed, give the Corporation notice (in the manner specified in Section 4 of Rule 2) of its election to terminate its business with the Corporation, the Participant shall be required to purchase the number of shares of Preferred Stock needed to satisfy any such increase in its Required Preferred Stock Investment, and the obligation of the Participant to make such purchase shall not be affected by any subsequent voluntary or involuntary cessation of participation of the Participant. From and after the time such increase becomes effective, the obligations of the Participant to the Corporation shall be determined in accordance with such increased Required Preferred Stock Investment of the Participant whether or not the appropriate number of shares of Preferred Stock have been purchased. For purposes of this Section, an increase in the Required Preferred Stock Investment of a Participant shall include an increase resulting from the application of the formulas provided for in Section 2**(a)** of this Rule and shall also include any increase resulting from a change in such formulas.

Section 8. **Termination; Obligation for Pro Rata Settlement Charges and Loss Allocations**

(a) Settlement Charges

If a Participant, within **~~ten~~five** Business Days after **~~receipt~~the issuance** of **~~notice of a pro rata charge for a loss or liability incurred by the Corporation~~a Settlement Charge Notice** pursuant to Section 4 of this Rule**~~,~~** gives notice to the Corporation of its election to terminate its business with the Corporation, the Participant shall nevertheless remain obligated for **~~such pro rata charge. The Corporation may also make additional pro rata charges~~(i) its pro rata settlement charge related to such Settlement Charge Notice and (ii) all other pro rata settlement charges ~~until~~through the Participant Termination Date. ~~attributable to the same loss or liability. In that event, notwithstanding the limitation set forth in Section 6 of this Rule, t~~*Subject to Section 8(c), t*~~T~~**he obligation of a Participant which elects to terminate its business with the Corporation pursuant to this **~~Section~~Paragraph** shall be limited to the **~~greater of (a) the~~** amount of its Aggregate Required Deposit and Investment, as fixed **~~immediately prior to~~on** the **~~time~~day** of the **~~first~~** pro rata **settlement** charge **that was the subject of the Settlement Charge Notice**, plus 100% of the amount thereof**~~, or (b) the amount of all prior pro rata charges attributable to the same loss or liability with respect to which the Participant has not timely exercised its right to limit its obligation as provided above~~**.

(b) Loss Allocations

If a Participant, within five Business Days after the issuance of a first Loss Allocation Notice for any round pursuant to Section 5 of this Rule gives notice to the Corporation of its election to terminate its business with the Corporation, the

Participant shall nevertheless remain liable for (i) the loss allocation that was the subject of such Loss Allocation Notice and (ii) all other loss allocations made by the Corporation with respect to the same Event Period. ***Subject to 8(c),*** ***t*~~T~~**he obligation of a Participant which elects to terminate its business with the Corporation pursuant to this Paragraph shall be limited to the amount of its Aggregate Required Deposit and Investment, as fixed on the first day of the Event Period, plus 100% of the amount thereof.**

(c) Maximum Obligation

Notwithstanding anything to the contrary, under no circumstances shall the aggregate obligation of a Participant to the Corporation pursuant to both Paragraph (a) and Paragraph (b) of this Section 8 exceed the amount of its Aggregate Required Deposit and Investment, as fixed on the earlier of the day specified in the last sentence of Paragraph (a) or the day specified in the last sentence of Paragraph (b), plus 100% of the amount thereof.

(d) Obligation to Replenish Deposit

If the amount of the Actual Participants Fund Deposit of a Participant is insufficient to satisfy a pro rata **settlement** charge~~, as limited by~~ **pursuant to** Section ~~6~~**4** of this Rule and **Paragraph (a) of this Section or a loss allocation pursuant to Section 5 of this Rule and Paragraph (b) of** this Section, the Participant shall be obligated to Deposit the amount of any such deficiency to the Participants Fund notwithstanding the fact that the Participant subsequently ceases to be a Participant.

Section 9. ***No Waiver;*** **Recovery and Repayment**

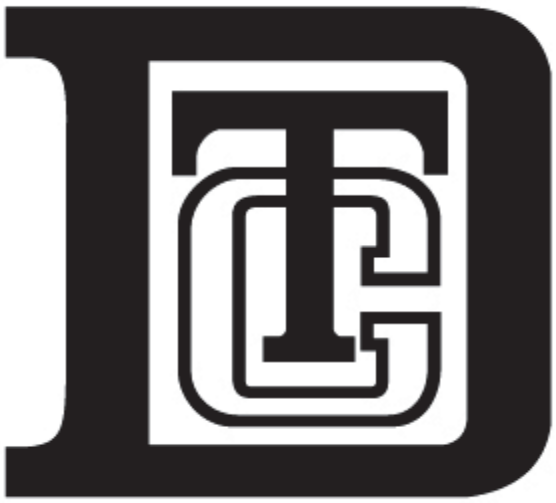
No loss allocation under this Rule shall constitute a waiver of any claim the Corporation may have against a Participant for any losses or liabilities to which the Participant is subject under these Rules and Procedures, including, without limitation, any loss or liability to which it may be subject under this Rule. If ~~a loss~~**any amount is** charged ~~pro rata~~**pursuant to Section 4 of this Rule or pursuant to Section 5 of this Rule and such amount** is afterward recovered by the Corporation, in whole or in part, the net amount of the recovery shall be ~~credited~~**repaid ratably (on the same basis that it was originally charged or allocated)** to the Persons against ~~whom~~**which** the ~~loss~~**amount** was **originally** charged ~~in proportion to the amounts charged against them~~ by (a) crediting the appropriate amount~~s~~ to the Actual Participants Fund Deposits of Persons which are still Participants and (b) paying the appropriate amount~~s~~ in cash to Persons which are not still Participants.

****

SR-DTC-2017-022 Amendment No. 1
EXHIBIT 5

Bolded, underlined text indicates added language.

~~**Bolded, strikethrough text**~~ indicates deleted language.



RULES

BY-LAWS

ORGANIZATION CERTIFICATE

THE DEPOSITORY TRUST COMPANY

RULE 1
DEFINITIONS; GOVERNING LAW

****

Section 2. Set forth below are certain other terms defined in these Rules, and the place in these Rules where such other terms are defined and used:

Defined Term	Rule	Section
Additional Participants Fund Deposit	**Rule 4**	**Section 1**
Cash	Rule 4(A)	Section 1
Contra Party	Rule 9(B)	Section 1
Corporate Contribution	**Rule 4**	**Section 5**
Custodian	Rule 2	Section 1
CTA Participant	**Rule 4**	**Section 5**
Declared Non-Default Loss Event	**Rule 4**	**Section 5**
Deemed Net Additions	Rule 9(B)	Section 2
Defaulting Participant	Rule 9(B)	Section 2
Default Loss Event	**Rule 4**	**Section 5**
End-of-Day Credit Facility	Rule 4	Section 2
Event Period	**Rule 4**	**Section 5**
FATCA	Rule 2	Section 9
FATCA Certification	Rule 2	Section 9
FATCA Compliance Date	Rule 2	Section 9
FATCA Compliant	Rule 2	Section 9
FFI Participant	Rule 2	Section 9
Interested Person	Rule 22	Section 1
Loss Allocation Cap	**Rule 4**	**Section 5**
Loss Allocation Notice	**Rule 4**	**Section 5**
Loss Allocation Termination Notification Period	**Rule 4**	**Section 5**
MMI Funding Acknowledgment	Rule 9(C)	Section 1
MMI Optimization	Rule 9(C)	Section 1
Net-Net Credit Balance	Rule 9(D)	
Net-Net Debit Balance	Rule 9(D)	
Panel	Rule 22	Section 3
Participant Default	**Rule 4**	**Section 3**
Participant Representative	Rule 7	Section 1
Participant Termination Date	**Rule 4**	**Section 6**
P&I Cash Advance	Rule 4(A)	Section 3
P&I Credit Facility	Rule 4(A)	Section 3
P&I Finance Cost	Rule 4(A)	Section 3
P&I Finance Period	Rule 4(A)	Section 3
P&I Payment Date	Rule 4(A)	Section 3
P&I Receipt Date	Rule 4(A)	Section 3

P&I Reversal Date	Rule 4(A)	Section 3
P&I Scheduled Payment	Rule 4(A)	Section 3
P&I Security Interest	Rule 4(A)	Section 3
Pool	Rule 22	Section 3
Preferred Stock Security Interest	Rule 4	Section 2
~~**Section 8 Pro Rata Charge**~~	~~**Rule 4**~~	~~**Section 6**~~
Settlement Charge Cap	**Rule 4**	**Section 4**
Settlement Charge Notice	**Rule 4**	**Section 4**
Settlement Charge Termination Notification Period	**Rule 4**	**Section 4**
Settling Bank Refusal	Rule 9(D)	
Short Charge	Rule 9(B)	Section 2
Special Representative	Rule 6	
Termination Notice	**Rule 4**	**Section 6**
Time of Insolvency	Rule 12	Section 4
Transaction	Rule 6	
Voluntary Retirement	**Rule 4**	**Section 6**
Voluntary Retirement Date	**Rule 4**	**Section 6**
Voluntary Retirement Notice	**Rule 4**	**Section 6**
Voting Rights	Rule 6	

****

RULE 2

PARTICIPANTS AND PLEDGEES

Section 1. The Corporation shall make its services, or certain of its services, available to partnerships, corporations or other organizations or entities which (i) apply to the Corporation for the use of such services, (ii) meet the qualifications specified in Rule 3, (iii) are approved by the Corporation and (iv) if required, make a Required Participants Fund Deposit pursuant to Section 1 of Rule 4 and Required Preferred Stock Investment pursuant to Section 2 of Rule 4. The Corporation shall approve applications only upon a determination by the Corporation that the applicant meets the standards of financial condition, operational capability and character defined below:

(a) the applicant has demonstrated that it has sufficient financial ability to make any Required Participants Fund Deposit and Required Preferred Stock Investment and meet all of its anticipated obligations to the Corporation;

(b) the applicant has demonstrated that it has adequate personnel capable of handling transactions with the Corporation and adequate physical facilities, books and records and procedures to fulfill its anticipated commitments to, and to meet the operational requirements of, the Corporation, other Participants and Pledgees with necessary promptness and accuracy and to conform to any condition and requirement which the Corporation reasonably deems necessary for its protection;

(c) the Corporation has received no substantial information which would reasonably and adversely reflect on the applicant or its Controlling Management to such extent that access of the applicant to the Corporation should be denied; and any such applicant may be deemed not to meet the qualifications set forth in this paragraph if:

(i) the Corporation shall have reasonable grounds to believe that the applicant or its Controlling Management to be responsible for (A) making a misstatement of a material fact or omitting to state a material fact to the Corporation in connection with its application to become a Participant or thereafter or (B) fraudulent acts or the violation of the Securities Act, the Exchange Act, the Investment Company Act, the Investment Advisers Act or any rule or regulation thereunder;

(ii) the applicant or its Controlling Management has been convicted within the ten years preceding the filing of its application to become a Participant or at any time thereafter of any crime, felony or misdemeanor which involves the purchase, sale or transfer of any security or the breach of fiduciary duty, or arose out of conduct of the business of a broker, dealer, investment company, investment adviser, underwriter, bank, trust company, fiduciary, insurance company or other financial institution; or involves robbery, larceny, embezzlement, fraudulent conversion, forgery or misappropriation of funds, securities or other property; or involves any violation of Section 1341, 1342 or 1343 of Title 18 of the United States Code;

(iii) the applicant or its Controlling Management is permanently or temporarily enjoined by order, judgment or decree of any court or other governmental authority of competent jurisdiction from acting as a broker, dealer, investment company, investment adviser, underwriter, bank, trust company, fiduciary, insurance company or other financial institution or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase, sale or Delivery of any security, and the enforcement of such injunction or prohibition has not been stayed;

(iv) the applicant or its Controlling Management has been expelled or suspended, or had its participation terminated from a national securities association or exchange registered under the Exchange Act, a self-regulatory organization as defined in Section 3(a)(26) of the Exchange Act, or a corporation which engages in clearance and settlement activities or a securities depository or has been barred or suspended from being associated with any member of such an exchange, association, corporation or securities depository;

(v) the applicant is subject to statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934, or an order of similar effect issued by a Federal or State banking authority, or other examining authority or regulator, including a non-U.S. examining authority or regulator.

(d) the applicant meets the requirements set forth in the Policy Statement on the Admission of Participants set forth in these Rules

(e) with regard to any applicant that shall be an FFI Participant, such applicant must be FATCA Compliant.

In addition to items (a) through (c) above, the Corporation shall retain the right to deny membership to an applicant if the Corporation becomes aware of any factor or circumstance about the applicant or its Controlling Management which may impact the suitability of that particular applicant as a Participant of the Corporation. Further, applicants are required to inform the Corporation as to any member of its Controlling Management that is or becomes subject to statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act).

The Corporation may approve the application of any applicant, either unconditionally or on an appropriate temporary or other conditional basis, if the Corporation determines that any standard specified in this Section, as applied to such applicant or its Controlling Management**,** is unduly or disproportionately severe or that the conduct of such applicant or its Controlling Management has been such as not to make it against the interest of the Corporation, other Participants or Pledgees or the public to approve such application.

Notwithstanding the foregoing, the Corporation may decline to accept the application of any applicant upon a determination by the Corporation that the Corporation does not have adequate personnel, space, data processing capacity or other operational capability at that time to perform its services for additional Participants without impairing the ability of the Corporation to provide services for its existing Participants, to assure the prompt, accurate and orderly processing and settlement of Securities transactions, to safeguard the funds and Securities held by or for the Corporation for Participants or Pledgees or otherwise to carry out its functions; provided, however, that applicants whose applications are denied pursuant to this paragraph shall be approved as promptly as the capabilities of the Corporation permit in the order in which their applications were filed with the Corporation.

The Corporation may, from time to time, determine those Participants that shall be required to fulfill, within the time frames established by the Corporation, certain operational testing requirements (the scope of such testing to be determined by the Corporation in its sole discretion) and related reporting requirements (such as reporting the test results to the Corporation in a manner specified by the Corporation) that may be imposed by the Corporation to test and monitor the continuing operational capability of the Participant. Such Participants shall, as so required, comply with the subject operational testing requirement within specified time frames. The Corporation may assess a fine on any Participant that fails to comply with operational testing and related reporting requirements within the specified time frame.

The Corporation has established standards for designating those Participants who shall be required to participate in annual business continuity and disaster recovery testing that the Corporation reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event that business continuity and disaster recovery plans are required to be activated. The standards shall take into account factors such as:

(1) activity-based thresholds; (2) significant operational issues of the Participant during the twelve months prior to the designation; and (3) past performance of the Participant with respect to operational testing. The specific standards adopted by the Corporation and any updates or modifications thereto shall be published to Participants and applied on a prospective basis.

Upon notification that the Participant has been designated to participate in the annual business continuity and disaster recovery testing, as described above, Participants shall be required to fulfill, within the timeframes established by the Corporation, certain testing requirements (the scope of such testing to be determined by the Corporation in its sole discretion) and related reporting requirements (such as reporting the test results to the Corporation in a manner specified by the Corporation) that may be imposed by the Corporation.

The Corporation shall apply the foregoing requirements on a nondiscriminatory basis. Any applicant aggrieved by action taken by the Corporation in applying such qualifications shall be entitled to a right of appeal in accordance with Rule 22.

The entities which have made a Required Participants Fund Deposit pursuant to Section 1 of Rule 4 and Required Preferred Stock Investment pursuant to Section 2 of Rule 4 and to which the Corporation makes all of its services available shall be known as Participants. The entities which, if required, have made a Required Participants Fund Deposit pursuant to Section 1 of Rule 4 and Required Preferred Stock Investment pursuant to Section 2 of Rule 4 and to which the Corporation makes only certain of its services available shall be known as Limited Participants. For purposes of these Rules, the term "Participant" shall include the term "Limited Participant" unless the (i) context otherwise requires or (ii) the Procedures otherwise provide.

The Corporation may at any time cease either temporarily or definitively to make its services available to a Participant in accordance with these Rules and the Participant shall, upon receipt of notice thereof given by the Corporation as provided in these Rules cease to be a Participant; provided, however, that if the Corporation notifies a Participant that it has ceased to act for it only with respect to a particular transaction or transactions, the Participant shall continue to be a Participant. A Participant may terminate its business with the Corporation by notifying the Corporation as provided in Sections 7 or 8 of Rule 4 or, if for a reason other than those specified in said Sections 7 and 8, by notifying the Corporation thereof; the Participant shall, upon receipt of such notice by the Corporation, cease to be a Participant**, subject to Section 6 of Rule 4**. In the event that a Participant shall cease to be a Participant, the Corporation shall thereupon cease to make its services available to the Participant, except that the Corporation may perform services on behalf of the Participant or its successor in interest necessary to terminate the business of the Participant or its successor with the Corporation, and the Participant or its successor shall pay to the Corporation the fees and charges provided by these Rules with respect to services performed by the Corporation subsequent to the time when the Participant ceases to be a Participant. The Corporation shall immediately notify the SEC if it temporarily or definitively ceases to make its services available to a Participant in accordance with these Rules.

****

RULE 4

PARTICIPANTS FUND AND PARTICIPANTS INVESTMENT

Section 1. **Participants Fund**

The Participants Fund shall comprise the Actual Participants Fund Deposits of all Participants, as provided in these Rules and as specified in the Procedures.

(a) **Required Participants Fund Deposits**

Each Participant shall be required to make a Required Participants Fund Deposit in accordance with one or more formulas based upon the Participant's use of the facilities of the Corporation; provided, however, that (i) each Participant other than a Limited Participant shall be required to make at least a minimum Required Participants Fund Deposit and (ii) depending upon the services it utilizes, a Limited Participant may or may not be required to make a Required Participants Fund Deposit. The formulas for determining the Required Participants Fund Deposits of Participants and the amount of the minimum Required Participants Fund Deposit shall be fixed by the Corporation and specified in the Procedures so as to assure that the aggregate amount of Required Participants Fund Deposits of Participants will be increased to provide for costs and expenses incurred by it incidental to the voluntary liquidation **or wind-down** of the Corporation~~**, if any**~~.

The Corporation may from time to time change the formulas for determining the Required Participants Fund Deposits of Participants and the amount of the minimum Required Participants Fund Deposit; provided, however, that notice of such change shall be given to each Participant at least ten Business Days in advance of the effective date thereof. ~~**The Corporation may require a Participant to Deposit an additional amount to the Participants Fund pursuant to Section 2 of Rule 9(A). Any such additional amount shall be part of the Required Participants Fund Deposit of such Participant.**~~

~~**(b)**~~ ——The Corporation shall determine on a daily basis for each Participant the amount of its Required Participants Fund Deposit, and the Corporation shall notify each Participant of any change in the amount of its Required Participants Fund Deposit. If the Actual Participants Fund Deposit of a Participant is less than the amount of its Required Participants Fund Deposit, the Participant shall Deposit to the Participants Fund, in the manner specified in the Procedures, the amount needed to eliminate the deficiency. If the Actual Participants Fund Deposit of a Participant is more than the amount of its Required Participants Fund Deposit, the Corporation shall pay to the Participant from the Participants Fund, in the manner specified in the Procedures, the amount of the excess, or such lesser amount as the Participant may request; provided, however, that the Corporation may determine, in its sole discretion, not to return such excess deposit (i) if the Collateral Monitor with respect to any Account Family of the Participant is negative

or will be negative as a consequence thereof, (ii) if any Account Family of the Participant will, immediately after the return of such excess deposit, have a negative balance which exceeds the Net Debit Cap for that Account Family, (iii) until any amount which is required to be charged or levied against the Participant or its Required Participants Fund Deposit is paid by the Participant to the Corporation, (iv) if the Corporation determines that the recent use of any service of the Corporation by the Participant is materially different from its prior use of such service and that a higher Required Participants Fund Deposit is thereby justified and (v) until after the amounts, if any, to be charged or levied against the Participant or its Required Participants Fund Deposit on account of transactions which occurred previously have been satisfied. Notwithstanding the foregoing, the Corporation may withhold all or part of any excess deposit of a Participant if the Corporation determines, in its sole discretion, that such action is necessary for the protection of the Corporation, other Participants or Pledgees.

(b) Additional Participants Fund Deposits

The Corporation may require a Participant to Deposit, on demand, an additional amount to the Participants Fund pursuant to Section 2 of Rule 9(A) (an "Additional Participants Fund Deposit"). Any such Additional Participants Fund Deposit shall be part of the Required Participants Fund Deposit of such Participant.

(c) **Voluntary Participants Fund Deposits**

A Participant may make a Voluntary Participants Fund Deposit to the Participants Fund, ~~as~~**in the manner** specified in the Procedures. A Voluntary Participants Fund Deposit shall not be part of the Required Participants Fund Deposit of the Participant but shall be part of its Actual Participants Fund Deposit.

(d) **Cash Participants Fund**

The Required Participants Fund Deposit~~,~~ **(including any Additional Participants Fund Deposit)** and any Voluntary Participants Fund Deposit of a Participant shall be in cash. All amounts due to or from a Participant in connection with increases and decreases in its Required Participants Fund Deposit (**including ~~pursuant to this Section or Section 2 of Rule 9(A)) and~~any Additional Participants Fund Deposit),** any Voluntary Participants Fund Deposit**, and any charge pursuant to Section 5 of this Rule,** may be credited to or debited from its Settlement Account.

(e) **Allocation of Participants Fund Deposits Among Account Families**

A Participant with more than one Account Family may, in the manner specified in the Procedures, designate the portion of its Actual Participants Fund Deposit to be allocated to each Account Family at the opening of business each Business Day. The Corporation shall not be obligated to make any allocations in accordance with such instructions if the Corporation determines, in its sole discretion, that such action might result in financial loss to the Corporation, other Participants or Pledgees. The Corporation may allocate **among Account Families**, in the manner specified in the

Procedures, any portion of the Actual Participants Fund Deposit of a Participant which is not allocated by the Participant.

(f) **Maintenance, Permitted Use and Investment of Participants Fund**

The Actual Participants Fund Deposits of Participants to the Participants Fund shall be held by the Corporation and ~~shall~~**may** be ~~applied~~**used or invested** as provided in these Rules and as specified in the Procedures.

The **Actual** Participants Fund ~~shall be limited to the satisfaction of losses or~~ **Deposits of Participants may be used (i) to satisfy the obligations of Participants to the Corporation, as provided in Section 3 of this Rule, (ii) to fund settlement among non-defaulting Participants, as provided in Section 4 of this Rule and (iii) to satisfy losses and** liabilities of the Corporation incident to the business of the Corporation**, as provided in Section 5 of this Rule**. For purposes of this ~~Section~~**Rule**, the term "business" with respect to the Corporation shall mean the doing of all things in connection with or relating to the Corporation's performance of the services specified in the first and second paragraphs of Rule 6 or the cessation of such services. Notwithstanding anything to the contrary in this Rule, the Participants Fund may be used as provided in any Clearing Agency Agreement.

~~(g)~~ The cash in the Participants Fund may be partially or wholly invested by the Corporation~~, in its sole discretion, for its account in securities issued or guaranteed as to principal and interest by the United States or agencies or instrumentalities of the United States or repurchase agreements relating to securities issued or guaranteed as to principal and interest by the United States or agencies or instrumentalities of the United States and to the extent not so invested shall be deposited by the Corporation in its name in a depository or depositories selected by the Corporation. Any securities, repurchase agreements or deposits~~ **in accordance with the Clearing Agency Investment Policy adopted by the Corporation. Any financial assets** in which cash in the Participants Fund is invested may be sold by the Corporation or Pledged as security for loans made to the Corporation, as provided in Rule 4(A). The Corporation shall pay interest to a Participant on the cash such Participant has Deposited to the Participants Fund at the rate the Corporation earns on ~~securities and repurchase agreement in which~~**its investment of** such cash ~~is invested~~ or as specified in the Procedures.

(g) Return of Participants Fund Deposits to Participants

~~(h)~~ After three months from when a Person has ceased to be a Participant, the Corporation shall return to such Person (or its successor in interest or legal representative) the amount of the Actual Participants Fund Deposit of the former Participant plus accrued and unpaid interest to the date of such payment (including any amount added to the Actual Participants Fund Deposit of the former Participant pursuant to Section 2(~~h~~**e**) of this Rule), provided that the Corporation receives such indemnities and guarantees as the Corporation deems satisfactory with respect to the matured and contingent obligations of the former Participant to the Corporation. Otherwise, within

~~four~~**two** years after a Person has ceased to be a Participant, the Corporation shall return to such Person (or its successor in interest or legal representative) the amount of the Actual Participants Fund Deposit of the former Participant plus accrued and unpaid interest to the date of such payment, except that the Corporation may offset against such payment the amount of any known loss or liability ~~to~~**of** the Corporation arising out of ~~a~~**or** related to the obligations of the former Participant to the Corporation.

Section 2. **Participants Investment**

The Participants Investment shall comprise the Required Preferred Stock Investments of all Participants, as provided in these Rules and as specified in the Procedures.

(a) **Required Preferred Stock Investments**

Each Participant shall be required to make a Required Preferred Stock Investment in accordance with one or more formulas based upon the Participant's use of the facilities of the Corporation; provided, however, that (i) each Participant other than a Limited Participant shall be required to make at least a minimum Required Preferred Stock Investment and (ii) depending upon the services it utilizes, a Limited Participant may or may not be required to make a Required Preferred Stock Investment. The formulas for determining the Required Preferred Stock Investments of Participants and the amount of the minimum Required Preferred Stock Investment shall be fixed by the Corporation and specified in the Procedures. The Corporation may from time to time change the formulas for determining the Required Preferred Stock Investments of Participants and the amount of the minimum Required Preferred Stock Investment; provided, however, that notice of such change shall be given to each Participant at least ten Business Days in advance of the effective date thereof.

~~**(b)**~~ The Corporation shall determine on a quarterly basis for each Participant the amount of its Required Preferred Stock Investment, and the Corporation shall notify each Participant of any change in the amount of its Required Preferred Stock Investment. If the Actual Preferred Stock Investment of a Participant is less than the amount of its Required Preferred Stock Investment, such Participant shall purchase, in the manner specified in the Procedures, the number of outstanding shares of Preferred Stock needed to eliminate the deficiency. If the Actual Preferred Stock Investment of a Participant is more than the amount of its Required Preferred Stock Investment, such Participant shall sell, in the manner specified in the Procedures, the number of its shares of Preferred Stock needed to eliminate the excess. The Corporation, acting as agent and attorney-in-fact for its Participants, shall effect the foregoing purchases and sales of shares of Preferred Stock on their behalf, so that each Participant shall own the amount of its Required Preferred Stock Investment, as adjusted from time to time in accordance with the provisions of ~~**Paragraph (a) of this Section 2 and**~~ this Paragraph ~~**(b)**~~.

~~**(c)**~~ A Participant may not purchase from the Corporation or any other Participant any shares of Preferred Stock in excess of the amount of its Required Preferred Stock Investment.

~~(d)~~ Except as otherwise provided in ~~this Paragraph or~~ Paragraph (~~i~~**f**) of this Section, all purchases and sales of Preferred Stock pursuant to these Rules shall be made in cash at a price equal to the aggregate Preferred Stock Par Value of the shares plus accrued and unpaid dividends thereon to the date of such purchase or sale; provided, however, that (i) the portion of the price equal to the aggregate Preferred Stock Par Value of the shares shall be paid on the date of such purchase and sale and (ii) the portion of the price equal to the accrued and unpaid dividends thereon shall be paid on the first Preferred Stock Dividend Date following the date of such purchase and sale if dividends are paid on the Preferred Stock on such Preferred Stock Dividend Date.

All amounts due to or from Participants in connection with purchases and sales of Preferred Stock shall be credited to or debited from their Settlement Accounts, except that any amounts due to a Person which has ceased to be a Participant shall be paid to such account as the former Participant shall designate for this purpose. The Corporation, acting as agent and attorney-in-fact for its Participants, shall effect all payments on their behalf, at the times and in the amounts provided in these Rules and as specified in the Procedures, without any further action or consent required on the part of such Participants, and, without limiting the generality of the foregoing, the Corporation may apply all dividends paid on the Preferred Stock to the payments required to be made to all past and present holders of Preferred Stock pursuant to this Section.

Any determination by the Corporation of a number of shares of Preferred Stock to be purchased or sold pursuant to these Rules shall be made by converting any fraction into a decimal rounded to the nearest one-hundred-thousandth and by rounding to the nearest one-hundred-thousandth the product of any such decimal and any number of shares of Preferred Stock. In order to make the products of all such determinations by the Corporation pursuant to any one provision of these Rules consistent with the total number of shares of Preferred Stock being purchased and sold, the Corporation shall randomly assign to ~~a~~**or** deduct from the number of shares of Preferred Stock being purchased from or sold to any Participant the difference between such total number of shares of Preferred Stock and the sum of such products.

(b) Allocation of Preferred Stock Investments Among Account Families

~~(e)~~ A Participant with more than one Account Family may, in the manner specified in the Procedures, designate the portion of its Actual Preferred Stock Investment to be allocated to each Account Family at the opening of business each Business Day. The Corporation shall not be obligated to make any allocations in accordance with such instructions if the Corporation determines, in its sole discretion, that such action might result in financial loss to the Corporation, other Participants or Pledgees. The Corporation may allocate **among Account Families**, in the manner specified in the Procedures, any portion of the Actual Preferred Stock Investment of a Participant which is not allocated by the Participant.

(c) Security Interest in Preferred Stock Investments of Participants

~~(f)~~ To secure the obligations of Participants to the Corporation, the Corporation, acting as agent and attorney-in-fact for its Participants, may (i) Pledge the entire right, title and interest of any Participant in and to some or all of its shares of Preferred Stock, together with all distributions thereon, proceeds thereof and replacements or substitutions therefor (a "Preferred Stock Security Interest"), as collateral security for the obligations of the Corporation to its Lenders under any credit facility maintained by the Corporation for the purpose of funding the end-of-day settlement of transactions processed through the facilities of the Corporation (an "End-of-Day Credit Facility") or (ii) sell some or all of the shares of Preferred Stock of any Participant to other Participants (who shall be obligated to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and apply the proceeds of such sale to the obligations of such Participant to the Corporation. Any such Pledge of a Preferred Stock Security Interest pursuant to this Paragraph ~~(f)~~, shall be made by appropriate entries on the books of the Corporation (and such entries**, together with these Rules,** shall be deemed to be a security agreement for purposes of the NYUCC) or by any other means provided in the NYUCC, and each Participant hereby grants to the Corporation an irrevocable power of attorney (coupled with an interest) to execute and deliver, in the name and on behalf of such Participant, any and all additional documents, instruments, agreements and financing statements necessary or desirable as determined by the Corporation, in its sole discretion, to create and perfect the Pledge of the Preferred Stock Security Interest by the Corporation to its Lenders under the End-of-Day Credit Facility. Any such sale of shares of Preferred Stock pursuant to this Paragraph ~~(f)~~, and **any** application of the proceeds thereof as provided herein, shall be effected by the Corporation without any further action or consent required on the part of the Participant whose shares of Preferred Stock are sold, and the Settlement Account of such Participant shall be credited with the full amount of such proceeds.

(d) Dividends on Preferred Stock Investments of Participants

~~(g)~~ The Corporation shall pay dividends on the Preferred Stock at a rate fixed by the Board of Directors in accordance with the Organization Certificate of the Corporation.

(e) Sale of Preferred Stock Investments of Participants

~~(h)~~ Promptly after a Person has ceased to be a Participant, the Corporation, acting as agent and attorney-in-fact for such Person (or its successor in interest or legal representative), shall sell all of the shares of Preferred Stock of the former Participant to current Participants (who shall be required to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and add the proceeds thereof to the Actual Participants Fund Deposit of the former Participant for disposition in accordance with Section 1(~~h~~**g**) of this Rule.

(f) Permitted Transfers of Preferred Stock Investments of Participants

~~(i)~~ Shares of Preferred Stock may be transferred from a Participant to another Person, subject to the provisions of **this** Paragraph ~~**(f) of this Section 2**~~:

(1) ~~(A)~~ if (~~1~~**A**) such Participant gives the Corporation at least twenty Business Days prior written notice of the proposed transfer and (~~2~~**B**) such transfer is effected in the course of or pursuant to (~~x~~**i**) a merger or consolidation of such Participant into or with such Person or (~~y~~**ii**) a sale of all or substantially all of the business and assets of such Participant to such Person and (~~3~~**C**) such Person is also a Participant; or

(2) ~~(B)~~ if (~~1~~**A**) such Participant (~~x~~**i**) gives the Corporation and all other Participants at least twenty Business Days prior written notice of the proposed transfer and (~~y~~**ii**) offers to sell the shares to such other Participants (pro rata their Required Preferred Stock Investments at the time of such offer) at the lower of (~~1~~**x**) the aggregate purchase price that such Person has agreed to pay for the shares or (~~H~~**y**) the aggregate Preferred Stock Par Value of the shares and (~~2~~**B**) the Corporation, acting as agent and attorney-in-fact for such other Participants, declines on their behalf to purchase the shares on such terms.

No shares of Preferred Stock may be purchased, sold or transferred except in accordance with this Paragraph ~~(i)~~ or in connection with the quarterly reallocation of shares of Preferred Stock pursuant to Paragraph (~~b~~**a**) of this Section.

Section 3. **Application of Participants Fund Deposits and Preferred Stock Investments to Participant Default**

If a Participant is **a Participant that is a Defaulting Participant pursuant to Rule 9(B) or is otherwise** obligated to the Corporation~~, other than for a pro rata charge~~ pursuant to ~~Section 5 of this Rule~~**these Rules and the Procedures**~~,~~ and fails to satisfy **any** such obligation **(a "Participant Default")**, including**,** without limitation**,** the obligation of the Participant to reimburse the Corporation for the amount of any payment with respect to such Participant paid by or owing from the Corporation to any other clearing agency pursuant to a Clearing Agency Agreement, the Corporation shall**, to the extent necessary to eliminate such obligation, apply some or all of the Actual Participants Fund Deposit of such Participant to such obligation to satisfy the Participant Default.**

If any such application of the Actual Participants Fund Deposit of a Participant is insufficient to satisfy such obligation, the Corporation may, in such order and ~~in~~ such amounts as the Corporation shall determine, in its sole discretion, to the extent necessary to ~~eliminate~~**satisfy** such obligation:

~~**(a) apply some or all of the Actual Participants Fund Deposit of such Participant to such obligation;**~~

(~~b~~**a**) Pledge some or all of the shares of Preferred Stock of such Participant to its Lenders as collateral security for a loan under the End-of-Day **Credit** Facility**, and apply the proceeds of such loan to satisfy such obligation**; and/or

(~~c~~**b**) sell some or all of the shares of Preferred Stock of such Participant to other Participants (who shall be required to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and apply the proceeds of such sale to such obligation.

If the Corporation takes any of the foregoing actions, the Participant shall, upon the demand of the Corporation, within such time as the Corporation shall require:

(a) Deposit to the Participants Fund the amount in cash needed to eliminate any resulting deficiency in its Required Participants Fund Deposit;

(b) wire to the Corporation an amount in cash sufficient to discharge any loan secured by its shares of Preferred Stock; and/or

(c) repurchase any of its shares of Preferred Stock sold to other Participants.

If the Participant shall fail to take any action demanded by the Corporation, the Corporation may take disciplinary action against the Participant pursuant to these Rules. Any disciplinary action which the Corporation takes pursuant to these Rules, or the voluntary or involuntary cessation of participation by the Participant, shall not affect the obligation of the Participant to the Corporation or any remedy to which the Corporation may be entitled under applicable law.

Section 4. **Application of Participants Fund Deposits of Non-Defaulting Participants**

~~**If the Corporation incurs a loss or liability which is not satisfied by charging the Participant or Participants responsible for causing the loss or liability pursuant to Section 3 of this Rule, the Corporation shall, in such order and in such amounts as the Corporation shall determine, in its sole discretion, to the extent necessary to satisfy such loss or liability:**~~

~~**(a) apply some or all of the Actual Participants Fund Deposits of all other Participants to such loss or liability, in which case:**~~

~~**(1) with respect to any loss or liability incurred by the Corporation in connection with any payment required to be made by the Corporation to any other clearing agency pursuant to a Clearing Agency Agreement, the Actual Participants Fund Deposit of each Participant that is concurrently a member of such other clearing agency, excluding the Participant or Participants responsible for causing the loss or liability, shall be applied pro rata (A) its Required Participants Fund Deposit (as such Required Participants Fund Deposit was fixed at the time the loss or liability was discovered) less (B) any portion of such Required Participants Fund Deposit attributable to any additional amount that such Participant was required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A); or**~~

~~(2) with respect to any other loss or liability incurred by the Corporation, the Actual Participants Fund Deposit of each Participant, excluding the Participant or Participants responsible for causing the loss or liability, shall be applied pro rata (A) its Required Participants Fund Deposit (as such Required Participants Fund Deposit was fixed at the time the loss or liability was discovered) less (B) any portion of such Required Participants Fund Deposit attributable to any additional amount that such Participant was required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A); and/or~~

~~(b) charge the existing retained earnings and undivided profits of the Corporation.~~

The Participants Fund shall constitute a liquidity resource which may be applied by the Corporation in such amounts as the Corporation shall determine, in its sole discretion, to fund settlement if there is a Defaulting Participant and the amount charged to the Actual Participants Fund Deposit of the Defaulting Participant pursuant to Section 3 of this Rule is not sufficient to complete settlement. In that case, the Corporation may apply the Actual Participants Fund Deposits of Participants other than the Defaulting Participant (each, a "non-defaulting Participant") as provided in this Section and/or apply such other liquidity resources as may be available to the Corporation from time to time, including the End-of-Day Credit Facility.

If the Participants Fund is applied to ~~a loss or liability~~**complete settlement**, the Corporation shall promptly after the event notify each Participant and the SEC of the amount applied and the reasons therefor **("Settlement Charge Notice")**.

Each non-defaulting Participant's pro rata share of such application of the Participants Fund (each, a "pro rata settlement charge") shall be equal to (i) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the Business Day of such application less its Additional Participants Fund Deposit, if any, on that day, divided by (ii) the sum of the Required Participants Fund Deposits of all non-defaulting Participants, as such Required Participants Fund Deposits were fixed on that day, less the sum of the Additional Participants Fund Deposits, if any, of such non-defaulting Participants on that day.

A Participant shall have a period of five Business Days following issuance of a Settlement Charge Notice (such period, a "Settlement Charge Termination Notification Period") to notify the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(a) of this Rule.

If a Participant notifies the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(a) of this Rule, it shall comply with the provisions of Section 6(b) of this Rule. If a Participant so complies, its maximum obligation with respect to its pro rata settlement charges shall be equal to the amount set forth in Section 8(a) of

this Rule ("Settlement Charge Cap"). If, after notifying the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(a) of this Rule, the Participant fails to comply with the provisions of Section 6(b) of this Rule, its election to terminate its business with the Corporation shall be deemed void and it will remain subject to further pro rata settlement charges as may be charged against it as if it had not given such notice.

The Corporation may retain the entire amount of the Actual Participants Fund Deposit of a Participant subject to a pro rata settlement charge, up to the amount of the Participant's Settlement Charge Cap.

~~***Section 5.*** **Except as provided in**~~ **Subject to** Section 8 of this Rule, if ~~**a pro rata charge is made pursuant to Section 4 of this Rule against the Required**~~**the Actual** Participants Fund Deposit of a Participant~~**,**~~ **is applied as provided in this Section** and, as a consequence, the Actual Participants Fund Deposit of such Participant is less than its Required Participants Fund Deposit, the Participant shall, upon the demand of the Corporation, within such time as the Corporation shall require, Deposit to the Participants Fund the amount in cash needed to eliminate any resulting deficiency in its Required Participants Fund Deposit. If the Participant shall fail to make such ~~**d**~~**D**eposit to the Participants Fund, the Corporation may take disciplinary action against the Participant pursuant to these Rules. Any disciplinary action which the Corporation takes pursuant to these Rules, or the voluntary or involuntary cessation of participation by the Participant, shall not affect the obligations of the Participant to the Corporation or any remedy to which the Corporation may be entitled under applicable law.

***Section 5*.** **Loss Allocation Waterfall**

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

"CTA Participant" shall mean a Participant for which the Corporation has ceased to act pursuant to Rule 10, Rule 11 or Rule 12.

"Default Loss Event" shall mean the determination by the Corporation to cease to act for a Participant pursuant to Rule 10, Rule 11, or Rule 12.

"Declared Non-Default Loss Event" shall mean the determination by the Board of Directors that a loss or liability incident to the clearance and settlement business of the Corporation may be a significant and substantial loss or liability that may materially impair the ability of the Corporation to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among Participants in order to ensure that the Corporation may continue to offer clearance and settlement services in an orderly manner.

If the Corporation incurs a loss or liability relating to or arising out of a Default Loss Event or a Declared Non-Default Loss Event, the Corporation shall address the loss or liability as follows:

Default Loss Events and/or Declared Non-Default Loss Events that occur within a period of ten Business Days (an "Event Period") shall be grouped together for purposes of

applying the limits on loss allocations set forth in this Rule. In the case of a Default Loss Event, an Event Period begins on the day that the Corporation notifies Participants that it has ceased to act for a Participant (or the next Business Day, if such day is not a Business Day).

In the case of a Declared Non-Default Loss Event, an Event Period begins on the day that the Corporation notifies Participants of the Declared Non-Default Loss Event (or the next Business Day, if such day is not a Business Day), which notification shall be issued promptly following any such determination.

If a subsequent Default Loss Event or Declared Non-Default Loss Event occurs during an Event Period, any losses or liabilities relating to or arising out of any such subsequent event shall be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period.

Each CTA Participant shall be obligated to the Corporation for the entire amount of any loss or liability incurred by the Corporation arising out of or relating to any Default Loss Event with respect to such CTA Participant. To the extent that such loss or liability is not satisfied pursuant to Section 3 of this Rule, the Corporation shall apply a Corporate Contribution thereto and charge the remaining amount of such liability or loss ratably to other Participants, as further provided below.

The Corporation shall apply the Corporate Contribution to losses and liabilities that arise out of or relate to one or more Default Loss Events and/or Declared Non-Default Loss Events that occur within an Event Period. If losses and liabilities with respect to such Event Period remain unsatisfied following application of the Corporate Contribution, the Corporation shall allocate such losses and liabilities to Participants, subject to the requirements and limitations below.

Each Participant that is a Participant on the first day of an Event Period shall be obligated to pay its pro rata share of losses and liabilities arising out of or relating to each Default Loss Event (other than a Default Loss Event with respect to which it is the CTA Participant) and each Declared Non-Default Loss Event occurring during the Event Period. Any Participant for which the Corporation ceases to act on a non-Business Day, triggering an Event Period that commences on the next Business Day, shall be deemed to be a Participant on the first day of that Event Period. A loss allocation "round" means a series of loss allocations relating to an Event Period, the aggregate amount of which is limited by the sum of the Loss Allocation Caps of affected Participants (a "round cap"). When the aggregate amount of losses allocated in a round equals the round cap, any additional losses relating to the applicable Event Period shall be allocated in one or more subsequent rounds, in each case subject to a round cap for that round. The Corporation may continue the loss allocation process in successive rounds until all losses from the Event Period are allocated among Participants that have not submitted a Termination Notice in accordance with Section 6(b) of this Rule.

Each loss allocation shall be communicated to Participants by the issuance of a notice that advises each Participant of the amount being allocated to it (each, a "Loss

Allocation Notice"). Each Participant's pro rata share of losses and liabilities to be allocated in any round shall be equal to (i) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the first day of the applicable Event Period, less its Additional Participants Fund Deposit, if any, on such day, divided by (ii) the sum of the Required Participants Fund Deposits of all Participants subject to loss allocation in such round, as such Required Participants Fund Deposits were fixed on such day, less the sum of any Additional Participants Fund Deposits, if any, of all Participants subject to loss allocation in such round on such day.

Each Loss Allocation Notice shall specify the relevant Event Period and the round to which it relates. The first Loss Allocation Notice in any first, second, or subsequent round shall expressly state that such Loss Allocation Notice reflects the beginning of the first, second, or subsequent round, as the case may be, and that each Participant in such round has five Business Days from the issuance of such first Loss Allocation Notice for the round (such period, a "Loss Allocation Termination Notification Period") to notify the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(b) of this Rule, and thereby benefit from its Loss Allocation Cap. If a Participant so complies, its maximum obligation with respect to its loss allocation charges shall be equal to the amount set forth in Section 8(b) of this Rule ("Loss Allocation Cap").

Participants shall pay to the Corporation the amount specified in any first round Loss Allocation Notice on the second Business Day after the Corporation issues any such notice. Participants shall pay to the Corporation the amount specified in any subsequent round Loss Allocation Notice on the second Business Day after the Corporation issues such notice, unless the Participant has timely notified (or will timely notify) the Corporation of its election to terminate its business with the Corporation with respect to a prior loss allocation round pursuant to Section 8(b) of this Rule.

The Corporation may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap in accordance with Section 8(b) of this Rule.

If a Participant fails to make payment to the Corporation in respect of a Loss Allocation Notice by the time such payment is due, the Corporation shall have the right to proceed against such Participant as a Participant that has failed to satisfy an obligation in accordance with Section 3 of this Rule.

All amounts due from a Participant pursuant to this Section may be debited from its Settlement Account when due.

If a Participant notifies the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(b) of this Rule, the Participant shall comply with the provisions of Section 6(b) of this Rule. If, after notifying the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(b) of this Rule, the Participant fails to comply with the provisions of Section 6(b) of this Rule, its election to terminate its business with the Corporation shall be deemed void and any further losses

resulting from the applicable Event Period may be allocated against it as if it had not given such notice.

For any loss allocation pursuant to this Section 5, whether arising out of or relating to a Default Loss Event or a Declared Non-Default Loss Event, the Corporation's corporate contribution to losses or liabilities that are incurred by the Corporation with respect to an Event Period ("Corporate Contribution") shall be an amount that is equal to fifty percent (50%) of the amount calculated by the Corporation in respect of its General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the Event Period. The Corporation's General Business Risk Capital Requirement, as defined in its Clearing Agency Policy on Capital Requirements, is, at a minimum, equal to the regulatory capital that the Corporation is required to maintain in compliance with Rule 17Ad-22(e)(15) under the Exchange Act. If the Corporate Contribution is applied by the Corporation against a loss or liability relating to an Event Period, the Corporate Contribution for any subsequent Event Periods occurring during the two hundred fifty (250) Business Days thereafter shall be reduced to the remaining unused portion of the Corporate Contribution amount that applied for the first Event Period. The Corporation shall notify Participants of any such reduction to the Corporate Contribution.

Nothing in these Rules shall prevent the Corporation from voluntarily applying amounts greater than the Corporate Contribution against any loss or liability of the Corporation, whether a Default Loss Event or a Declared Non-Default Loss Event, if the Board of Directors, in its sole discretion, believes such to be appropriate under the factual situation existing at the time.

Section 6. **Obligations of Participant Upon Termination**

~~**Whenever a Participant ceases to be such, it shall continue to be obligated (a) to satisfy any deficiency in the amount of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including (i) any deficiency resulting from a pro rata charge with respect to which the Participant has given notice to the Corporation of its election to terminate its business with the Corporation pursuant to Section 8 of this Rule (a "Section 8 Pro Rata Charge") and (ii) any deficiency the Participant is required to satisfy pursuant to Section 3 or 5 of this Rule (other than any deficiency referred to in the preceding clause (i) or, subject to Section 8 of this Rule, any pro rata charge under Section 5 of this Rule arising after the Section 8 Pro Rata Charge) and (b) to discharge any liability of the Participant to the Corporation resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant; provided, however, that, subject to Section 8 of this Rule, the aggregate liability of the Participant for any Section 8 Pro Rata Charge shall not exceed the amount of its Aggregate Required Deposit and Investment, as fixed immediately prior to the time of such charge, plus 100% of the amount thereof.**~~

(a) Upon Any Voluntary Retirement

If a Participant elects to terminate its business with the Corporation pursuant to Section 1 of Rule 2 for reasons other than those specified in Section 8 of this Rule (a "Voluntary Retirement"), the Participant shall:

(1) provide a written notice of such termination to the Corporation ("Voluntary Retirement Notice"), as provided for in Section 1 of Rule 2;

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

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

(4) ensure that all activities and use of Corporation's services by the Participant cease on or prior to the Voluntary Retirement Date.

If the Participant fails to comply with the requirements of this Paragraph (a), its Voluntary Retirement Notice shall be deemed void.

If a Participant submits a Voluntary Retirement Notice and subsequently receives a Settlement Charge Notice or the first Loss Allocation Notice in a round on or prior to the Voluntary Retirement Date, such Participant must timely submit a Termination Notice in order to benefit from its Settlement Charge Cap or Loss Allocation Cap, respectively. In such a case, the Termination Notice shall supersede and void the pending Voluntary Retirement Notice submitted by the Participant.

(b) Upon Termination Following Settlement Charge or Loss Allocation

If a Participant timely notifies the Corporation of its election to terminate its business with the Corporation in respect of a settlement charge as set forth in Section 4 of this Rule or a loss allocation as set forth in Section 5 of this Rule ("Termination Notice"), the Participant shall:

(1) specify in the Termination Notice an effective date of termination ("Participant Termination Date"), which date shall be no later than ten Business Days following the last day of the applicable Settlement Charge Termination Notification Period or Loss Allocation Termination Notification Period;

(2) cease all activities and use of the Corporation's services other than activities and services necessary to terminate the business of the Participant with the Corporation; and

(3) ensure that all activities and use of Corporation's services by such Participant cease on or prior to the Participant Termination Date.

A Participant that terminates its business with the Corporation in compliance with this Paragraph (b) shall nevertheless remain obligated for its pro rata share of losses and liabilities with respect to any Event Period for which it is otherwise obligated hereunder; however, its aggregate obligation shall be limited to the amount of its Loss Allocation Cap (as fixed in the round for which it withdrew).

If the Participant fails to comply with the requirements of this Paragraph (b), its Termination Notice will be deemed void, and the Participant will remain subject to further pro rata settlement charges pursuant to Section 4 of this Rule or loss allocations pursuant to Section 5 of this Rule as if it had not given such Termination Notice.

(c) After Any Termination

Whenever a Participant ceases to be such, it shall continue to be obligated (i) to satisfy any deficiency in the amounts of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including any deficiency the Participant is required to satisfy pursuant to Sections 3 or 4 of this Rule, (ii) subject to Section 8 of this Rule, to satisfy any loss allocation pursuant to Section 5 of this Rule, and (iii) to discharge any liability of the Participant to the Corporation resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant.

Section 7. **Increased Participants Fund Deposits and Preferred Stock Investments**

Except for any ~~**increase in the amount of the Required**~~**Additional** Participants Fund Deposit~~**s of a Participant pursuant to Section 2, which shall be Deposited on demand as provided in Section 1(b)**~~ of **this** Rule ~~**9(A)**~~, the Corporation shall give a Participant at least ten Business Days prior notice of any proposed increase in its Required Participants Fund Deposit or Required Preferred Stock Investment.

(a) **Required Participants Fund Deposits**

If a Participant does not, within the time allowed, give the Corporation notice (in the manner specified in Section 4 of Rule 2) of its election to terminate its business with the Corporation, the Participant shall be required to Deposit the amount needed to satisfy any such increase in its Required Participants Fund Deposit, and the obligation of the Participant to make such deposit shall not be affected by any subsequent voluntary or involuntary cessation of participation of the Participant. From and after the time such increase becomes effective, the obligations of the Participant to the Corporation shall be determined in accordance with such increased Required Participants Fund Deposit of the Participant whether or not the appropriate amount has been Deposited in the Participants Fund. For purposes of this Section, an increase in the Required Participants Fund Deposit of a Participant shall include an increase resulting from the application of the formulas provided for in Section 1**(a)** of this Rule and shall also include an increase resulting from a change in such formulas.

(b) **Required Preferred Stock Investments**

If a Participant does not, within the time allowed, give the Corporation notice (in the manner specified in Section 4 of Rule 2) of its election to terminate its business with the Corporation, the Participant shall be required to purchase the number of shares of Preferred Stock needed to satisfy any such increase in its Required Preferred Stock Investment, and the obligation of the Participant to make such purchase shall not be affected by any subsequent voluntary or involuntary cessation of participation of the Participant. From and after the time such increase becomes effective, the obligations of the Participant to the Corporation shall be determined in accordance with such increased Required Preferred Stock Investment of the Participant whether or not the appropriate number of shares of Preferred Stock have been purchased. For purposes of this Section, an increase in the Required Preferred Stock Investment of a Participant shall include an increase resulting from the application of the formulas provided for in Section 2**(a)** of this Rule and shall also include any increase resulting from a change in such formulas.

Section 8. **Termination; Obligation for Pro Rata Settlement Charges and Loss Allocations**

(a) Settlement Charges

If a Participant, within ~~**ten**~~**five** Business Days after ~~**receipt**~~**the issuance** of ~~**notice of a pro rata charge for a loss or liability incurred by the Corporation**~~**a Settlement Charge Notice** pursuant to Section 4 of this Rule~~,~~ gives notice to the Corporation of its election to terminate its business with the Corporation, the Participant shall nevertheless remain obligated for ~~**such pro rata charge. The Corporation may also make additional pro rata charges**~~**(i) its pro rata settlement charge related to such Settlement Charge Notice and (ii) all other pro rata settlement charges through the Participant Termination Date.** ~~**attributable to the same loss or liability. In that event, notwithstanding the limitation set forth in Section 6 of this Rule, t**~~**Subject to Section 8(c), t**he obligation of a Participant which elects to terminate its business with the Corporation pursuant to this ~~**Section**~~**Paragraph** shall be limited to the ~~**greater of (a) the**~~ amount of its Aggregate Required Deposit and Investment, as fixed ~~**immediately prior to**~~**on** the ~~**time**~~**day** of the ~~**first**~~ pro rata **settlement** charge **that was the subject of the Settlement Charge Notice**, plus 100% of the amount thereof~~**, or (b) the amount of all prior pro rata charges attributable to the same loss or liability with respect to which the Participant has not timely exercised its right to limit its obligation as provided above**~~.

(b) Loss Allocations

If a Participant, within five Business Days after the issuance of a first Loss Allocation Notice for any round pursuant to Section 5 of this Rule gives notice to the Corporation of its election to terminate its business with the Corporation, the Participant shall nevertheless remain liable for (i) the loss allocation that was the subject of such Loss Allocation Notice and (ii) all other loss allocations made by the Corporation with respect to the same Event Period. Subject to 8(c), the obligation

of a Participant which elects to terminate its business with the Corporation pursuant to this Paragraph shall be limited to the amount of its Aggregate Required Deposit and Investment, as fixed on the first day of the Event Period, plus 100% of the amount thereof.

(c) Maximum Obligation

Notwithstanding anything to the contrary, under no circumstances shall the aggregate obligation of a Participant to the Corporation pursuant to both Paragraph (a) and Paragraph (b) of this Section 8 exceed the amount of its Aggregate Required Deposit and Investment, as fixed on the earlier of the day specified in the last sentence of Paragraph (a) or the day specified in the last sentence of Paragraph (b), plus 100% of the amount thereof.

(d) Obligation to Replenish Deposit

If the amount of the Actual Participants Fund Deposit of a Participant is insufficient to satisfy a pro rata **settlement** charge~~, as limited by~~**pursuant to** Section ~~6~~**4** of this Rule and **Paragraph (a) of this Section or a loss allocation pursuant to Section 5 of this Rule and Paragraph (b) of** this Section, the Participant shall be obligated to Deposit the amount of any such deficiency to the Participants Fund notwithstanding the fact that the Participant subsequently ceases to be a Participant.

Section 9. **No Waiver; Recovery and Repayment**

No loss allocation under this Rule shall constitute a waiver of any claim the Corporation may have against a Participant for any losses or liabilities to which the Participant is subject under these Rules and Procedures, including, without limitation, any loss or liability to which it may be subject under this Rule. If ~~a loss~~**any amount is** charged ~~pro rata~~**pursuant to Section 4 of this Rule or pursuant to Section 5 of this Rule and such amount** is afterward recovered by the Corporation, in whole or in part, the net amount of the recovery shall be ~~credited~~**repaid ratably (on the same basis that it was originally charged or allocated)** to the Persons against ~~whom~~**which** the ~~loss~~**amount** was **originally** charged ~~in proportion to the amounts charged against them~~ by (a) crediting the appropriate amount~~s~~ to the Actual Participants Fund Deposits of Persons which are still Participants and (b) paying the appropriate amount~~s~~ in cash to Persons which are not still Participants.

****

OMB APPROVAL
OMB Number: 3235-0045 Estimated average burden hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 161

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

File No.* SR 2017 * 804
Amendment No. (req. for Amendments *) 1

Filing by The Depository Trust Company

Pursuant to Rule 19b 4 under the Securities Exchange Act of 1934

Initial * ☐ Amendment * ☑ Withdrawal ☐

Section 19(b)(2) * ☐ Section 19(b)(3)(A) * ☐ Section 19(b)(3)(B) * ☐

Pilot ☐

Extension of Time Period for Commission Action * ☐

Date Expires *

Rule
- ☐ 19b 4(f)(1)
- ☐ 19b 4(f)(2)
- ☐ 19b 4(f)(3)
- ☐ 19b 4(f)(4)
- ☐ 19b 4(f)(5)
- ☐ 19b 4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) * ☑ Section 806(e)(2) * ☐

Security Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 3C(b)(2) * ☐

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

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Contact Information

Provide the name, telephone number, and e mail address of the person on the staff of the self regulatory organization prepared to respond to questions and comments on the action.

First Name * Aimee Last Name * Bandler

Title * Assistant General Counsel

E mail * [redacted]

Telephone * [redacted] Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 06/28/2018

By Lois J. Radisch

(Name *)

(Title *)

Managing Director and Deputy General Counsel

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

[redacted]

Required fields are shown with yellow backgrounds and asterisks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b 4 instructions please refer to the EFFS website.

Form 19b-4 Information *

Add Remove View

The self regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b 4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR [SRO] xx xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0 3 under the Act (17 CFR 240.0 3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

Add Remove View

The Notice section of this Form 19b 4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR [SRO] xx xx). A material failure to comply with these guidelines will result in the proposed rule change, security based swap submission, or advance notice being deemed not properly filed. See also Rule 0 3 under the Act (17 CFR 240.0 3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document ☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document ☐

Copies of any form, report, or questionnaire that the self regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

Add Remove View

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

1. Text of Advance Notice

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The filing of this advance notice with the Securities and Exchange Commission ("Commission") was approved by DTC's Board of Directors on October 18, 2017.

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

Not applicable.

---

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

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

Not applicable.

5. Self-Regulatory Organization's Statement on Comments on the Advance Notice Received from Members, Participants, or Others

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

6. Extension of Time Period for Commission Action

Not applicable.

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

(a) Not applicable.

(b) Not applicable.

(c) Not applicable.

(d) Not applicable.

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

Not applicable.

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

Not applicable.

10. Advance Notice Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act of 2010

Description of Amendment No. 1

This filing constitutes Amendment No. 1 ("Amendment") to advance notice SR-DTC-2017-804 ("Advance Notice") previously filed by DTC on December 18, 2017.[2] This Amendment amends and replaces the Advance Notice in its entirety. DTC submits this Amendment in order to further clarify the operation of the proposed rule changes on loss allocation by providing additional information and examples. This Amendment would also

---

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

clarify the requirements for a Participant that wants to voluntarily terminate its business with DTC. In particular, this Amendment would:

(i) Clarify that the term "Participant Default," referring to the failure of a Participant to satisfy any obligation to DTC, includes the failure of a Defaulting Participant to satisfy its obligations as provided in Rule 9(B).[3]

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

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

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

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

---

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

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

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

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

Nature of the Proposed Change

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

---

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

align, where appropriate, with the proposed voluntary termination provisions of the NSCC and FICC rules. The proposed rule change would also amend Rule 1 (Definitions; Governing Law) to add cross-references to terms that would be defined in proposed Rule 4, and would amend Rule 2 (Participants and Pledgees), in relevant part, to align with proposed Section 6 of Rule 4, as discussed below.

(i) Background

Current Rule 4 provides a single set of tools and a common process for the use of the Participants Fund for both liquidity purposes to complete settlement among non-defaulting Participants, if one or more Participants fails to settle,[5] and for the satisfaction of losses and liabilities due to Participant defaults[6] or certain other losses or liabilities incident to the business

---

5 DTC is a central securities depository providing key services that are structured to support daily settlement of book-entry transfers of securities, in accordance with its Rules and Procedures. In particular, Rule 9(A) (Transactions in Securities and Money Payments), Rule 9(B) (Transactions in Eligible Securities), Rule 9(C) (Transactions in MMI Securities), Rule 9(D) (Settling Banks), and Rule 9(E) (Clearing Agency Agreements) provide the mechanism to achieve a "DVP Model 2 Deferred Net Settlement System" (as defined in Annex D of the Principles for Financial Market Infrastructures issued by The Committee on Payments and Market Infrastructures and the Technical Committee of the International Organization of Securities Commissions (April 2012), available at https://www.bis.org/cpmi/publ/d101a.pdf. Briefly, in relevant part, Rule 9(B) provides that "[e]ach Participant and the Corporation shall settle the balance of the Settlement Account of the Participant on a daily basis in accordance with these Rules and the Procedures. Except as provided in the Procedures, the Corporation shall not be obligated to make any settlement payments to any Participants until the Corporation has received all of the settlement payments that Settling Banks and Participants are required to make to the Corporation." Supra note 1. Pursuant to these provisions of Rule 9(B), securities will be delivered to Participants that satisfy their settlement obligations in the end-of-day net settlement process.

6 The failure of a Participant to satisfy its settlement obligation constitutes a liability to DTC. Insofar as DTC undertakes to complete settlement among Participants other than the Participant that failed to settle, that liability may give rise to losses as well. DTC is designed to provide settlement finality at the end of the day and notwithstanding the failure to settle of a Participant or Affiliated Family of Participants with the largest net settlement obligation, a "cover 1" standard. There are no reversals of deliveries; a Participant that fails to settle will not receive securities that were intended to be delivered to it, because it has not paid for them. These securities, among others, serve as collateral for DTC to use to secure a borrowing of funds in order, in accordance with its Rules and Procedures, to settle with non-defaulting Participants (including those delivering Participants that delivered to the non-settling Participant). To this end, delivery versus payment transactions ("DVP") will not be processed intraday to a receiving Participant that will incur a related payment obligation unless that Participant satisfies risk management controls. The two risk management controls are the Collateral Monitor and Net Debit Cap. Net Debit Caps limit the potential settlement obligation of any

of DTC.[7] The proposed rule change would amend and add provisions to separate use of the Participants Fund as a liquidity resource to complete settlement, reflected in proposed Section 4 of Rule 4, and for loss allocation, reflected in proposed Section 5 of Rule 4. There wouldn't be any substantive change to the rights and obligations of Participants under proposed Sections 4 and 5 of Rule 4.[8] The proposed rule changes reinforce the distinction, conceptual and sequential, between the mechanisms to complete settlement on a Business Day and to mutualize losses that may result from a failure to settle, or other loss-generating events. The change is also proposed so that the loss allocation provisions of proposed Section 5 of Rule 4 more closely align to similar provisions of the NSCC and FICC rules, to the extent appropriate.

The proposed rule change would retain the core principles of current Rule 4 for both application of the Participants Fund as a liquidity resource to complete settlement and for loss allocation, while clarifying or refining certain provisions and introducing certain new concepts relating to loss allocation. In connection with the use of the Participants Fund as a liquidity resource to complete settlement when a Participant fails to settle, the proposed rule would introduce the term "pro rata settlement charge," for the use of the Participants Fund to complete

---

Participant to an amount for which DTC has sufficient liquidity resources to cover this risk. The Collateral Monitor tests whether a Participant has sufficient collateral for DTC to pledge or liquidate if that Participant were to fail to meet its settlement obligation. To process a DVP, the value of the delivery that is debited to the receiving Participant cannot cause the net debit balance of the Participant to exceed its Net Debit Cap, and the amount of the net debit balance after giving effect to the debit must be fully collateralized. Accordingly, DTC may incur a liability or loss whenever it completes settlement despite the failure to settle of a Participant, or Affiliated Family of Participants, because it is either using the Participants Fund deposits of other Participants in the manner specified in existing and proposed Rule 4 and/or borrowing the necessary funds. DTC obligations under the line of credit include the obligation to pay interest on loans outstanding and to repay the loan; the Participants Fund is designed as not only a direct liquidity resource but as a back-up liquidity resource to satisfy these liabilities. As to the Participants Fund itself, DTC undertakes in Section 9 of existing and proposed Rule 4, to restore funds to Participants whose deposits may have been charged if there is ultimately any excess recovery. It should be noted that the Defaulting Participant remains principally obligated for all losses, costs and expenses associated with its Participant Default and, so, a recovery out of the estate of a Defaulting Participant is at least a hypothetical possibility.

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

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

settlement as apportioned among non-defaulting Participants. The existing term generically applied to such a use or to a loss allocation is simply a "pro rata charge".[9]

For loss allocation, the proposed rule change, like current Rule 4, would continue to apply to both default and non-default losses and liabilities, and, to the extent allocated among Participants, would be charged ratably in accordance with their Required Participants Fund Deposits.[10] A new provision would require DTC to contribute to a loss or liability, either arising from a Participant default or non-default event, prior to any allocation among Participants. The proposed rule change would also introduce the new concepts of an "Event Period" and a "round" to address the allocation of losses arising from multiple events that occur in succession during a short period of time. These proposed rule changes would be substantially similar in these respects to analogous proposed rule changes for NSCC and FICC.

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

Current Rule 4 addresses the Participants Fund and Participants Investment requirements and, among other things, the permitted uses of the Participants Fund and Participants Investment.[11] Pursuant to current Rule 4, DTC maintains a cash Participants Fund. The Required Participants Fund Deposit for any Participant is based on the liquidity risk it poses to DTC relative to other Participants.

Default of a Participant. Under current Section 3 of Rule 4, if a Participant is obligated to DTC and fails to satisfy any obligation, DTC may, in such order and in such amounts as DTC shall determine in its sole discretion: (a) apply some or all of the Actual Participants Fund Deposit of such Participant to such obligation; (b) Pledge some or all of the shares of Preferred Stock of such Participant to its lenders as collateral security for a loan under the End-of-Day Credit Facility;[12] and/or (c) sell some or all of the shares of Preferred Stock of such Participant to

---

9 See Rule 4, Section 5, supra note 1.

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

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

12 As part of its liquidity risk management regime, DTC maintains a 364-day committed revolving line of credit with a syndicate of commercial lenders, renewed every year. The committed aggregate amount of the End-of-Day Credit Facility (currently $1.9 billion)

other Participants (who shall be required to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and apply the proceeds of such sale to satisfy such obligation.

Application of the Participants Fund. Current Section 4 of Rule 4 addresses the application of the Participants Fund if DTC incurs a loss or liability, which would include application of the Participants Fund to complete settlement[13] or the allocation of losses once determined, including non-default losses. For both liquidity and loss scenarios, current Section 4 of Rule 4 provides that an application of the Participants Fund would be apportioned among Participants ratably in accordance with their Required Participants Fund Deposits, less any additional amount that a Participant was required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A).[14] It also provides for the optional use of an amount of DTC's retained earnings and undivided profits.

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

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

Rule 4 currently provides that a Participant may, within ten (10) Business Days after receipt of notice of any pro rata charge, notify DTC of its election to terminate its business with DTC, and the exposure of the terminating Participant for pro rata charges would be capped at the greater of (a) the amount of its Aggregate Required Deposit and Investment, as fixed

---

together with the Participants Fund constitute DTC's liquidity resources for settlement. Based on these amounts, DTC sets Net Debit Caps that limit settlement obligations.

13 In contrast to NSCC and FICC, DTC is not a central counterparty and does not guarantee obligations of its membership. The Participants Fund is a mutualized pre-funded liquidity and loss resource. As such, in contrast to NSCC and FICC, DTC does not have an obligation to "repay" the Participants Fund, and the application of the Participants Fund does not convert to a loss. See supra note 6.

14 Section 2 of Rule 9(A) provides, in part, "At the request of the Corporation, a Participant or Pledgee shall immediately furnish the Corporation with such assurances as the Corporation shall require of the financial ability of the Participant or Pledgee to fulfill its commitments and shall conform to any conditions which the Corporation deems necessary for the protection of the Corporation, other Participants or Pledgees, including deposits to the Participants Fund . . ." Supra note 1. Pursuant to the proposed rule change, the additional amount that a Participant is required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A) would be defined as an "Additional Participants Fund Deposit." This is not a new concept, only the addition of a defined term for greater clarity.

immediately prior to the time of the first pro rata charge, plus 100% of the amount thereof, or (b) the amount of all prior pro rata charges attributable to the same loss or liability with respect to which the Participant has not timely exercised its right to terminate.

Overview of the Proposed Rule Changes

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

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

Proposed Section 4 would address the situation of a Defaulting Participant failure to settle (which is one type of Participant Default) if the application of the Actual Participants Fund Deposit of that Defaulting Participant, pursuant to proposed Section 3, is not sufficient to complete settlement among Participants other than the Defaulting Participant (each, a "non-defaulting Participant").[15]

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

---

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

such ratio). The proposed rule change would identify this as a "pro rata settlement charge," in order to distinguish application of the Participants Fund to fund settlement from pro rata loss allocation charges that would be established in proposed Section 5 of Rule 4.

The calculation of each non-defaulting Participant's pro rata settlement charge would be similar to the current Section 4 calculation of a pro rata charge except that, for greater simplicity, it would not include the current distinction for common members of another clearing agency pursuant to a Clearing Agency Agreement.[16] For enhanced clarity as to the date of determination of the ratio, it would be based on the Required Participants Fund Deposits as fixed on the Business Day of the application of the Participants Fund, as opposed to the current language "at the time the loss or liability was discovered."[17]

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

The proposed rule change also would retain the concept of providing each non-defaulting Participant an opportunity to elect to terminate its business with DTC and thereby cap its exposure to further pro rata settlement charges. The proposed rule change would shorten the notification period for the election to terminate from ten (10) Business Days to five (5) Business Days,[18] and would also change the beginning date of such notification period from the receipt of the notice to the date of the issuance of the Settlement Charge Notice.[19] A Participant that elects to terminate its business with DTC would, subject to its cap, remain responsible for (i) its pro rata settlement charge that was the subject of the Settlement Charge Notice and (ii) all other pro rata settlement charges until the Participant Termination Date (as defined below and in the proposed rule change). The proposed cap on pro rata settlement charges of a Participant that has timely notified DTC of its election to terminate its business with DTC would be the amount of its Aggregate Required Deposit and Investment, as fixed on the day of the pro rata settlement

---

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

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

18 DTC believes this shorter period would be sufficient for a Participant to decide whether to give notice to terminate its business with DTC in response to a settlement charge. In addition, a five (5) Business Day pro rata settlement charge notification period would conform to the proposed loss allocation notification period in this proposed rule change and in the proposed rule changes for NSCC and FICC. See infra note 33.

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

charge that was the subject of the Settlement Charge Notice, plus 100% of the amount thereof ("Settlement Charge Cap"). The proposed Settlement Charge Cap would be no greater than the current cap.[20]

The pro rata application of the Actual Participants Fund Deposits of non-defaulting Participants to complete settlement when there is a Participant Default is not the allocation of a loss. A pro rata settlement charge would relate solely to the completion of settlement. New proposed loss allocation concepts described below, including, but not limited to, a "round," "Event Period," and "Corporate Contribution," would not apply to pro rata settlement charges.[21]

---

[20] Current Section 8 of Rule 4 provides for a cap that is equal to the greater of (a) the amount of its Aggregate Required Deposit and Investment, as fixed immediately prior to the time of the first pro rata charge, plus 100% of the amount thereof, or (b) the amount of all prior pro rata charges attributable to the same loss or liability with respect to which the Participant has not timely exercised its right to limit its obligation as provided above. Supra note 1. The alternative limit in clause (b) would be eliminated in proposed Section 8(a) in favor of a single defined standard.

[21] Proposed Sections 3, 4 and 5 of Rule 4 together relate, in whole or in part, to what may happen when there is a Participant Default. Proposed Section 3 is the basic provision of remedies if a Participant fails to satisfy an obligation to DTC. Proposed Section 4 is a specific remedy for a failure to settle by a Defaulting Participant, i.e., a specific type of Participant Default. Proposed Section 5 is also a remedial provision for a Participant Default when, additionally, DTC ceases to act for the Participant and there are remaining losses or liabilities. If a Participant Default occurs, the application of proposed Section 3 would be required, the application of proposed Section 4 would be at the discretion of DTC. Whether or not proposed Section 4 has been applied, once there is a loss due to a Participant Default and DTC ceases to act for the Participant, proposed Section 5 would apply. See supra note 6.

A principal type of Participant Default is a failure to settle. A Participant's obligation to pay any amount due in settlement is secured by Collateral of the Participant. When the Defaulting Participant fails to pay its settlement obligation, under Rule 9(B), Section 2, DTC has the right to Pledge or sell such Collateral to satisfy the obligation. Supra note 1. (It is more likely that DTC would borrow against the Collateral to complete settlement on the Business Day, because it is unlikely to be able to liquidate Collateral for same day funds in time to settle on that Business Day.) If DTC Pledges the Collateral to secure a loan to fund settlement (e.g., under the End-of-Day Credit Facility), the Collateral would have to be sold to obtain funds to repay the loan. In any such sale of the Collateral, there is a risk, heightened in times of market stress, that the proceeds of the sale would be insufficient to repay the loan. That deficiency would be a liability or loss to which proposed Section 5 of Rule 4 would apply, i.e., a Default Loss Event.

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

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

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

(1) Mandatory Corporate Contribution.

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

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

The proposed "Corporate Contribution" would be defined to be an amount equal to fifty percent (50%) of DTC's General Business Risk Capital Requirement.[22] DTC's General Business Risk Capital Requirement, as defined in DTC's Clearing Agency Policy on Capital Requirements,[23] is, at a minimum, equal to the regulatory capital that DTC is required to maintain in compliance with Rule 17Ad-22(e)(15) under the Securities Exchange Act of 1934, as amended (the "Act").[24] The proposed Corporate Contribution would be held in addition to DTC's General Business Risk Capital Requirement.

---

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

23 See Securities Exchange Act Release No. 81105 (July 7, 2017), 82 FR 32399 (July 13, 2017) (SR-DTC-2017-003).

24 17 CFR 240.17Ad-22(e)(15).

The proposed Corporate Contribution would apply to losses arising from Default Loss Events and Declared Non-Default Loss Events, and would be a mandatory contribution of DTC prior to any allocation among Participants.[25] As proposed, if the proposed Corporate Contribution is fully or partially used against a loss or liability relating to an Event Period, the Corporate Contribution would be reduced to the remaining unused amount, if any, during the following two hundred fifty (250) Business Days in order to permit DTC to replenish the Corporate Contribution.[26] To ensure transparency, Participants would receive notice of any such reduction to the Corporate Contribution.

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

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

The proposed rule changes relating to the calculation and mandatory application of the Corporate Contribution are set forth in proposed Section 5 of Rule 4.

(2) Introducing an Event Period.

The proposed rule change would clearly define the obligations of DTC and its Participants regarding the allocation of losses or liabilities relating to or arising out of a Default Loss Event or a Declared Non-Default Loss Event. The proposed rule change would define "Default Loss Event" as the determination by DTC to cease to act for a Participant pursuant to Rule 10, Rule 11, or Rule 12 (such Participant, a "CTA Participant"). "Declared Non-Default Loss Event" would be defined as the determination by the Board of Directors that a loss or liability incident to the clearance and settlement business of DTC may be a significant and substantial loss or liability that may materially impair the ability of DTC to provide clearance

---

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

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

and settlement services in an orderly manner and will potentially generate losses to be mutualized among Participants in order to ensure that DTC may continue to offer clearance and settlement services in an orderly manner. In order to balance the need to manage the risk of sequential loss events against Participants' need for certainty concerning maximum loss allocation exposures, DTC is proposing to introduce the concept of an "Event Period" to address the losses and liabilities that may arise from or relate to multiple Default Loss Events and/or Declared Non-Default Loss Events that arise in quick succession. Specifically, the proposal would group Default Loss Events and Declared Non-Default Loss Events occurring in a period of ten (10) Business Days ("Event Period") for purposes of allocating losses to Participants in one or more rounds, subject to the limits of loss allocation set forth in the proposed rule change and as explained below.[27] In the case of a loss or liability arising from or relating to a Default Loss Event, an Event Period would begin on the day on which DTC notifies Participants that it has ceased to act for a Participant (or the next Business Day, if such day is not a Business Day). In the case of a Declared Non-Default Loss Event, the Event Period would begin on the day that DTC notifies Participants of the Declared Non-Default Loss Event (or the next Business Day, if such day is not a Business Day). If a subsequent Default Loss Event or Declared Non-Default Loss Event occurs within the Event Period, any losses or liabilities arising out of or relating to any such subsequent event would be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period. An Event Period may include both Default Loss Events and Declared Non-Default Loss Events, and there would not be separate Event Periods for Default Loss Events or Declared Non-Default Loss Events occurring within overlapping ten (10) Business Day periods.

The amount of losses that may be allocated by DTC, subject to the required Corporate Contribution, and to which a Loss Allocation Cap would apply for any Participant that elects to terminate its business with DTC in respect of a loss allocation round, would include any and all losses from any Default Loss Events and any Declared Non-Default Loss Events during the Event Period, regardless of the amount of time, during or after the Event Period, required for such losses to be crystallized and allocated.[28]

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

---

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

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

(3) Introducing the concept of "rounds" and Loss Allocation Notice.

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

Each loss allocation would be communicated to Participants by the issuance of a notice that advises each Participant of the amount being allocated to it (each, a "Loss Allocation Notice"). The calculation of each Participant's pro rata allocation charge would be similar to the current Section 4 calculation of a pro rata charge except that, for greater simplicity, it would not include the current distinction for common members of another clearing agency pursuant to a Clearing Agency Agreement.[29] In addition, for enhanced clarity as to the date of determination of the ratio, it would be based on the Required Participants Fund Deposits as fixed on the first day of the Event Period, as opposed to the current language "at the time the loss or liability was discovered."[30]

Each Loss Allocation Notice would specify the relevant Event Period and the round to which it relates. Participants would receive two (2) Business Days' notice of a loss allocation,[31] and Participants would be required to pay the requisite amount no later than the second Business Day following the issuance of such notice.[32] Multiple Loss Allocation Notices may be issued with respect to each round, up to the round cap.

---

29 See supra note 16.

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

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

32 Current Section 4 of Rule 4 provides that if the Participants Fund is applied to a loss or liability, DTC must notify each Participant of the charge and the reasons therefor. Proposed Section 5 would modify this process to (i) require DTC to give *prior* notice; and (ii) require Participants to pay loss allocation charges, rather than directly charging their Required Participants Fund Deposits. DTC believes that shifting from the two-step methodology of applying the Participants Fund and then requiring Participants to immediately replenish it to requiring direct payment would increase efficiency, while

The first Loss Allocation Notice in any first, second, or subsequent round would expressly state that such Loss Allocation Notice reflects the beginning of the first, second, or subsequent round, as the case may be, and that each Participant in that round has five (5) Business Days[33] from the issuance[34] of such first Loss Allocation Notice for the round (such period, a "Loss Allocation Termination Notification Period") to notify DTC of its election to terminate its business with DTC (such notification, whether with respect to a Settlement Charge Notice or Loss Allocation Notice, a "Termination Notice") pursuant to proposed Section 8(b) of Rule 4 and thereby benefit from its Loss Allocation Cap.

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

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

---

preserving the right to charge the Settlement Account of the Participant in the event the Participant doesn't timely pay. Such a failure to pay would be, self-evidently, a Participant Default, triggering recourse to the Actual Participants Fund Deposit of the Participant under proposed Section 3 of Rule 4. In addition, this change would provide greater stability for DTC in times of stress by allowing DTC to retain the Participants Fund, its critical pre-funded resource, while charging loss allocations. DTC believes doing so would allow DTC to retain the Participants Fund as a liquidity resource which may be applied to fund settlement among non-defaulting Participants, if a Defaulting Participant fails to settle. By being able to manage its liquidity resources throughout the loss allocation process, DTC would be able to continue to provide its critical operations and services during what would be expected to be a stressful period.

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

34 See supra note 19.

Notice for the second round. The issuance of the Loss Allocation Notice for the $1 billion would begin the second round.

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

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

(4) Capping terminating Participants' loss allocation exposure and related changes.

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

As proposed, if a Participant timely provides notice of its election to terminate its business with DTC as provided in proposed Section 8(b) of Rule 4, its maximum payment obligation with respect to any loss allocation round would be the amount of its Aggregate Required Deposit and Investment, as fixed on the first day of the Event Period, plus 100% of the amount thereof ("Loss Allocation Cap"),[35] provided that the Participant complies with the requirements of the termination process in proposed Section 6(b) of Rule 4. DTC may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap. If a Participant's Loss Allocation Cap exceeds the Participant's then-current Required Participants Fund Deposit, it must still pay the excess amount.

As proposed, Participants would have five (5) Business Days from the issuance of the first Loss Allocation Notice in any round to decide whether to terminate its business with DTC, and thereby benefit from its Loss Allocation Cap. The start of each round[36] would allow a Participant the opportunity to notify DTC of its election to terminate its business with DTC after satisfaction of the losses allocated in such round.

Specifically, the first round and each subsequent round of loss allocation would allocate losses up to a round cap of the aggregate of all Loss Allocation Caps of those Participants included in the round. If a Participant provides notice of its election to terminate its business with DTC, it would be subject to loss allocation in that round, up to its Loss Allocation Cap. If

---

[35] The alternative limit in clause (b) would be eliminated in proposed Section 8(b) in favor of a single defined standard. See supra note 20.

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

the first round of loss allocation does not fully cover DTC's losses, a second round will be noticed to those Participants that did not elect to terminate in the previous round. As noted above, the amount of any second or subsequent round cap may differ from the first or preceding round cap because there may be fewer Participants in a second or subsequent round if Participants elect to terminate their business with DTC as provided in proposed Section 8(b) of Rule 4 following the first Loss Allocation Notice in any round.

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

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

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

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

The proposed rule changes are intended to make the provisions in the Rules governing loss allocation more transparent and accessible to Participants. In particular, DTC is proposing the following change relating to loss allocation to provide clarity around the governance for the allocation of losses arising from a non-default event.[37]

Currently, DTC can use the Participants Fund to satisfy losses and liabilities arising from a Participant Default or arising from an event that is not due to a Participant Default (i.e., a non-default loss), provided that such loss or liability is incident to the business of DTC.[38]

---

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

38 See supra note 7.

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

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

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

D. Loss Allocation Waterfall Comparison

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

Assumptions:

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

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

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

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

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

Current Loss Allocation:

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

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

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

Proposed Loss Allocation:

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

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

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

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

E. Clarifying Changes Regarding Voluntary Retirement

Section 1 of Rule 2 provides that a Participant may terminate its business with DTC by notifying DTC in the appropriate manner.[39] To provide additional transparency to Participants with respect to the voluntary retirement of a Participant, and to align, where appropriate, with the proposed rule changes of NSCC and FICC with respect to voluntary termination, DTC is proposing to add proposed Section 6(a) to Rule 4, which would be titled, "Upon Any Voluntary Retirement." Proposed Section 6(a) of Rule 4 would (i) clarify the requirements[40] for a Participant that wants to voluntarily terminate its business with DTC, and (ii) address the situation where a Participant submits a Voluntary Retirement Notice (defined below) and subsequently receives a Settlement Charge Notice or the first Loss Allocation Notice in a round on or prior to the Voluntary Retirement Date (defined below).

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

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

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

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

---

39 Section 1 of Rule 2 provides, in relevant part, that "[a] Participant may terminate its business with the Corporation by notifying the Corporation as provided in Sections 7 or 8 of Rule 4 or, if for a reason other than those specified in said Sections 7 and 8, by notifying the Corporation thereof; the Participant shall, upon receipt of such notice by the Corporation, cease to be a Participant. In the event that a Participant shall cease to be a Participant, the Corporation shall thereupon cease to make sits services available to the Participant, except that the Corporation may perform services on behalf of the Participant or its successor in interest necessary to terminate the business of the Participant or its successor with the Corporation, and the Participant or its successor shall pay to the Corporation the fees and charges provided by these Rules with respect to services performed by the Corporation subsequent to the time when the Participant ceases to be a Participant." Supra note 1. DTC is proposing to modify the provision to clarify that the termination would be subject to proposed Section 6 of Rule 4.

40 The requirements would reflect current practice.

(4) ensure that all activities and use of DTC services by the Participant cease on or prior to the Voluntary Retirement Date.[41]

Proposed Section 6(a) of Rule 4 would provide that if the Participant fails to comply with the requirements of proposed Section 6(a), its Voluntary Retirement Notice would be deemed void.[42]

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

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

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

---

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

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

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

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

(ii) Proposed Rule Changes

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

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

Section 3

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

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

take with respect to the Participants Fund deposits and Participants Investment of a Participant that has failed to satisfy its obligations to DTC.

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

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

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

Section 4 and Section 5

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

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

Proposed Section 4

Pursuant to the proposed rule change, current Section 4 would be replaced in its entirety by proposed Section 4, and titled "Application of Participants Fund Deposits of Non-Defaulting Participants." First, for clarity, proposed Section 4 would expressly state that "[t]he Participants Fund shall constitute a liquidity resource which may be applied by the Corporation in such

amounts as the Corporation shall determine, in its sole discretion, to fund settlement if there is a Defaulting Participant and the amount charged to the Actual Participants Fund Deposit of the Defaulting Participant pursuant to Section 3 of this Rule is not sufficient to complete settlement. In that case, the Corporation may apply the Actual Participants Fund Deposits of Participants other than the Defaulting Participant (each, a "non-defaulting Participant") as provided in this Section and/or apply such other liquidity resources as may be available to the Corporation from time to time, including the End-of-Day Credit Facility."

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

Proposed Section 4 would retain the current calculation of pro rata charges by providing that each non-defaulting Participant's pro rata share[43] of any such application of the Participants Fund, defined as a "pro rata settlement charge," would be equal to (i) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the Business Day of such application[44] less its Additional Participants Fund Deposit, if any, on that day, divided by (ii) the sum of the Required Participants Fund Deposits of all non-defaulting Participants, as such Required Participants Fund Deposits were fixed on that day, less the sum of the Additional Participants Fund Deposits, if any, of such non-defaulting Participants on that day.

Proposed Section 4 would also provide a period of time within which a Participant could notify DTC of its election to terminate its business with DTC and thereby cap its liability, by providing that a Participant would have a period of five (5) Business Days following the issuance of a Settlement Charge Notice ("Settlement Charge Termination Notification Period") to notify DTC of its election to terminate its business with DTC pursuant to proposed Section 8(a), and thereby benefit from its Settlement Charge Cap, as set forth in proposed Section 8(a).[45] Proposed Section 4 would also require that any Participant that gives DTC notice of its election to terminate its business with DTC must comply with proposed Section 6(b) of Rule 4,[46] and if it does not, its election to terminate would be deemed void.

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

---

43 See supra note 16.

44 See supra note 17.

45 See supra note 18.

46 Proposed Section 6(b) is discussed below.

Current Section 5 of Rule 4 provides that "[e]xcept as provided in Section 8 of this Rule, if a pro rata charge is made pursuant to Section 4 of the current Rule against the Required Participants Fund Deposit of a Participant, and, as a consequence, the Actual Participants Fund Deposit of such Participant is less than its Required Participants Fund Deposit, the Participant shall, upon the demand of the Corporation, within such time as the Corporation shall require, Deposit to the Participants Fund the amount in cash needed to eliminate any resulting deficiency in its Required Participants Fund Deposit. If the Participant shall fail to make such deposit to the Participants Fund, the Corporation may take disciplinary action against the Participant pursuant to these Rules. Any disciplinary action which the Corporation takes pursuant to these Rules, or the voluntary or involuntary cessation of participation by the Participant, shall not affect the obligations of the Participant to the Corporation or any remedy to which the Corporation may be entitled under applicable law."

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

Proposed Section 5

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

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

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

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

Contribution thereto and charge the remaining amount of such loss or liability as provided in proposed Section 5.

Under proposed Section 5, the loss allocation waterfall would begin with a new mandatory Corporate Contribution from DTC. Rule 4 currently provides that the use of any retained earnings and undivided profits by DTC is a voluntary contribution of a discretionary amount of its retained earnings. Proposed Section 5 of Rule 4 would, instead, require a defined corporate contribution to losses and liabilities that are incurred by DTC with respect to an Event Period. As proposed, the Corporate Contribution to losses or liabilities that are incurred by DTC with respect to an Event Period would be defined as an amount that is equal to fifty percent (50%) of the amount calculated by DTC in respect of its General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the Event Period.[47] DTC's General Business Risk Capital Requirement, as defined in DTC's Clearing Agency Policy on Capital Requirements,[48] is, at a minimum, equal to the regulatory capital that DTC is required to maintain in compliance with Rule 17Ad-22(e)(15) under the Act.[49]

If DTC applies the Corporate Contribution to a loss or liability arising out of or relating to one or more Default Loss Events or Declared Non-Default Loss Events relating to an Event Period, then for any subsequent Event Periods that occur during the next two hundred fifty (250) Business Days, the Corporate Contribution would be reduced to the remaining unused portion of the Corporate Contribution amount that was applied for the first Event Period.[50] Proposed Section 5 would require DTC to notify Participants of any such reduction to the Corporate Contribution.

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

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

Proposed Section 5 of Rule 4 would state that each Participant that is a Participant on the first day of an Event Period would be obligated to pay its pro rata share of losses and liabilities

---

47 See supra note 22.

48 See supra note 23.

49 17 CFR 240.17Ad-22(e)(15).

50 See supra note 26.

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

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

Each Loss Allocation Notice would specify the relevant Event Period and the round to which it relates. The first Loss Allocation Notice in any first, second, or subsequent round would expressly state that such Loss Allocation Notice reflects the beginning of the first, second, or subsequent round, as the case may be, and that each Participant in that round has five (5) Business Days from the issuance of such first Loss Allocation Notice for the round[51] to notify DTC of its election to terminate its business with DTC pursuant to proposed Section 8(b) of Rule 4, and thereby benefit from its Loss Allocation Cap.[52]

Loss allocation obligations would continue to be calculated based upon a Participant's pro rata share of the loss.[53] As proposed, each Participant's pro rata share of losses and liabilities to be allocated in any round would be equal to (i) (A) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the first day of the Event Period,[54] less (B) its Additional Participants Fund Deposit, if any, on such day, divided by (ii) (A) the sum of the Required Participants Fund Deposits of all Participants subject to loss

---

51 i.e., the Loss Allocation Termination Notification Period for that round.

52 See supra note 33.

53 See supra note 16.

54 See supra note 17.

allocation in such round, as such Required Participants Fund Deposits were fixed on such day, less (B) the sum of any Additional Participants Fund Deposits, if any, of all Participants subject to loss allocation in such round on such day.[55]

As proposed, Participants would have two (2) Business Days after DTC issues a first round Loss Allocation Notice to pay the amount specified in any such notice. In contrast to the current Section 4, under which DTC may apply the Actual Participants Fund Deposits of Participants directly to the satisfaction of loss allocation amounts, under proposed Section 5, DTC would require Participants to pay their loss allocation amounts (leaving their Actual Participants Fund Deposits intact).[56] On a subsequent round (i.e., if the first round did not cover the entire loss of the Event Period because DTC was only able to allocate up to the sum of the Loss Allocation Caps of those Participants included in the round), Participants would also have two (2) Business Days after notice by DTC to pay their loss allocation amounts (again subject to their Loss Allocation Caps), unless a Participant timely notified (or will timely notify) DTC of its election to terminate its business with DTC with respect to a prior loss allocation round.

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

Section 6

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

---

55 See supra note 10.

56 See supra note 32.

discharge any liability of the Participant to DTC resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant.

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

DTC is proposing to add Proposed Section 6(b), titled "Upon Termination Following Settlement Charge or Loss Allocation." Proposed Section 6(b) would state that if a Participant timely notifies DTC of its election to terminate its business with DTC in respect of a pro rata settlement charge as set forth in proposed Section 4 of Rule 4 or a loss allocation as set forth in proposed Section 5 of Rule 4, defined as a "Termination Notice", the Participant would be required to: (1) specify in the Termination Notice a Participant Termination Date, which date shall be no later than ten Business Days following the last day of the applicable Settlement Charge Termination Notification Period or Loss Allocation Termination Notification Period; (2) cease all activities and use of the Corporation's services other than activities and services necessary to terminate the business of the Participant with DTC; and (3) ensure that all activities and use of DTC services by such Participant cease on or prior to the Participant Termination Date.

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

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

For clarity, DTC is proposing to consolidate the requirements from current Section 6 of Rule 4 into proposed Section 6(c) of Rule 4, titled "After Any Termination," and modify them to conform to other proposed rule changes. In particular, DTC is proposing to clarify that a Participant that ceases to be such would continue to be subject to proposed Section 5 of Rule 4 for any Event Period for which it was a Participant on the first day of the Event Period.

Proposed Section 6(c) of Rule 4 would state that whenever a Participant ceases to be such, it would continue to be obligated (i) to satisfy any deficiency in the amounts of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including any deficiency the Participant is required to satisfy pursuant to proposed Sections 3 or 4 of Rule 4, (ii) subject to proposed Section 8, to satisfy any loss allocation pursuant to proposed Section 5 of Rule 4, and (iii) to discharge any liability of the Participant to DTC resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant.

Section 8

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

Pursuant to proposed Section 8(a), if a Participant, within five (5) Business Days after issuance of a Settlement Charge Notice pursuant to proposed Section 4 of Rule 4**,** gives notice to DTC of its election to terminate its business with DTC, the Participant would remain obligated for (i) its pro rata settlement charge that was the subject of such Settlement Charge Notice and (ii) all other pro rata settlement charges made by DTC until the Participant Termination Date. Subject to proposed Section 8(c), the terminating Participant's obligation would be limited to the amount of its Aggregate Required Deposit and Investment, as fixed on the day of the pro rata settlement charge that was the subject of the Settlement Charge Notice, plus 100% of the amount thereof, which is substantively the same limitation as provided for pro rata charges in current Section 8 of Rule 4.[57]

Pursuant to proposed Section 8(b), if a Participant, within five (5) Business Days after the issuance of a first Loss Allocation Notice for any round pursuant to proposed Section 5 of Rule 4 gives notice to DTC of its election to terminate its business with DTC, the Participant would remain liable for (i) the loss allocation that was the subject of such notice and (ii) all other loss allocations made by DTC with respect to the same Event Period. Subject to proposed Section 8(c), the obligation of a Participant which elects to terminate its business with DTC would be limited to the amount of its Aggregate Required Deposit and Investment, as fixed on the first day of the Event Period, plus 100% of the amount thereof, which is substantively the same limitation as provided for pro rata charges in current Section 8 of Rule 4.[58]

Proposed Section 8(c) would provide that under no circumstances would the aggregate obligation of a Participant under proposed Section 8(a) and proposed Section 8(b) exceed the amount of its Aggregate Required Deposit and Investment, as fixed on the earlier of the (i) day of the pro rata settlement charge that was the subject of the Settlement Charge Notice giving rise to a Termination Notice, and (ii) first day of the Event Period that was the subject of the first

---

57 See supra note 20.

58 See supra note 35.

Loss Allocation Notice in a round giving rise to a Termination Notice, plus 100% of the amount thereof. The purpose of proposed Section 8(c) is to address a situation where a Participant could otherwise be subject to both a Settlement Charge Cap and Loss Allocation Cap.

Proposed Section 8(d) would retain the last paragraph in current Section 8 of Rule 4, replacing "pro rata charge" with "pro rata settlement charge" and" loss allocation."[59] Proposed Section 8(d) would provide that if the amount of the Actual Participants Fund Deposit of a Participant is insufficient to satisfy a pro rata settlement charge pursuant to proposed Section 4 and proposed Section 8(a) or a loss allocation pursuant to proposed Section 5 and proposed Section 8(b), the Participant would be obligated to Deposit the amount of any such deficiency to the Participants Fund notwithstanding the fact that the Participant subsequently ceases to be a Participant.

Section 9

Pursuant to the proposed rule change, proposed Section 9 of Rule 4 would provide that the recovery and repayment provisions in current Rule 4 apply to both pro rata settlement charges and loss allocations.[60] Specifically, proposed Section 9 would provide that if an amount is charged ratably pursuant to proposed Section 4 or allocated ratably pursuant to proposed Section 5 and such amount is recovered by DTC, in whole or in part, the net amount of the recovery shall be repaid ratably (on the same basis that it was originally charged or allocated) to the Persons against which the amount was originally charged or allocated by (i) crediting the appropriate amounts to the Actual Participants Fund Deposits of Persons which are still Participants and (ii) paying the appropriate amounts in cash to Persons which are not still Participants. In addition, proposed Section 9 would clarify that no loss allocation under proposed Rule 4 would constitute a waiver of any claim DTC may have against a Participant for any losses or liabilities to which the Participant is subject under DTC Rules and Procedures, including, without limitation, any loss or liability to which it may be subject under proposed Rule 4.

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

---

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

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

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

Section 1

Section 1(a) and Section 1(b). Section 1(a) addresses, among other things, the formula for determining the Required Participants Fund Deposits of Participants. DTC is proposing to insert the words "or wind-down" to make it clear that the formulas for determining the Required Participants Fund Deposits of Participants and the amount of the minimum Required Participants Fund Deposit would be fixed by DTC so as to assure that the aggregate amount of Required Participants Fund Deposits of Participants will be increased to provide for the costs and expenses incurred by it incidental to the wind-down of DTC, in addition to the voluntary liquidation of DTC.[61] Further, DTC proposes to delete the extraneous phrase "if any." For increased clarity and readability, DTC is proposing to consolidate Section 1(b) into Section 1(a), and to relocate the sentences "The Corporation may require a Participant to Deposit an additional amount to the Participants Fund pursuant to Section 2 of Rule 9(A). Any such additional amount shall be part of the Required Participants Fund Deposit of such Participant." from Section 1(a) to a new proposed Section 1(b). In addition to the relocation, DTC would add a defined term for such additional amount, as "Additional Participants Fund Deposit," for drafting convenience and transparency throughout proposed Rule 4. Further, DTC proposes to add the headings "Required Participants Fund Deposits" and "Additional Participants Fund Deposits" to Section 1(a) and proposed Section 1(b), respectively.

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

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

Section 1(e). For enhanced clarity, DTC is proposing to add the language "among Account Families" to clarify the scope of the allocation described in Section 1(e). In addition,

---

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

DTC proposes to add the heading "Allocation of Participants Fund Deposits Among Account Families" to Section 1(e) of Rule 4.

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

Section 1(g) (consolidated into proposed Section 1(f)). Pursuant to the proposed rule change, DTC would consolidate current Section 1(g) into proposed Section 1(f), and modify language to make it clear that DTC may invest cash in the Participants Fund in accordance with the Clearing Agency Investment Policy adopted by DTC.[62] Further, language would be streamlined by replacing "securities, repurchase agreements or deposits" with "financial assets," and "securities and repurchase agreements in which such cash is invested" with "its investment of such cash."

---

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

Section 1(h) (proposed Section 1(g)).

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

Section 2

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

Section 2(a)-2(d) (Proposed Section 2(a)). For clarity, DTC is proposing to consolidate Sections 2(b)-2(d) into proposed Section 2(a) and would add the heading "Required Preferred Stock Investments" to proposed Section 2(a). In addition, DTC proposes to modify certain language to update references and cross-references to specific subsections to reflect the proposed changes to the numbering of the subsections in proposed Section 2 of Rule 4.

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

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

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

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

C. Proposed Changes to Rule 1

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

D. Proposed Changes to Rule 2

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

Participant Outreach

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

Implementation Timeframe

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

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

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

DTC believes that the proposed rule change to enhance the resiliency of DTC's loss allocation process and to shorten the time within which DTC is required to return the Actual

Participants Fund Deposit of a former Participant would reduce the risk of uncertainty to DTC, its Participants and the market overall.

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

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

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

By reducing the time within which DTC is required to return the Actual Participants Fund Deposit of a former Participant, DTC would enable firms that have exited DTC to have access to their funds sooner than under current Rule 4 while maintaining the protection of DTC and its provision of clearance and settlement services. DTC would continue to be protected under the proposed rule change, which will maintain the provision that DTC may offset the return of funds

against the amount of any loss or liability of DTC arising out of or relating to the obligations of the former Participant to DTC, and would provide that DTC could retain the funds for up to two (2) years. As such, DTC would maintain a necessary level of coverage for possible claims arising in connection with the DTC activities of a former Participant.

Management of Identified Risks

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

Consistency with the Clearing Supervision Act

The proposed rule change would be consistent with Section 805(b) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act").[63] The objectives and principles of Section 805(b) of the Clearing Supervision Act are to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.[64]

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

The proposed rule change would enhance the resiliency of DTC's loss allocation process by (1) requiring a defined contribution of DTC corporate funds to a loss, (2) introducing an Event Period, and (3) introducing the concept of "rounds" (and accompanying Loss Allocation Notices) and applying this concept to the timing of loss allocation payments and the Participant termination process in connection with the loss allocation process. Together, these proposed rule

---

63 12 U.S.C. 5464(b).

64 Id.

changes would (i) create greater certainty for Participants regarding DTC's obligation towards a loss, (ii) more clearly specify DTC's and Participants' obligations toward a loss and balance the need to manage the risk of sequential defaults and other potential loss events against Participants' need for certainty concerning their maximum exposures, and (iii) provide Participants the opportunity to limit their exposure to DTC by capping their exposure to loss allocation. Reducing the risk of uncertainty to DTC, its Participants and the market overall would promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system. Therefore, DTC believes that the proposed rule change to enhance the resiliency of DTC's loss allocation process is consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

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

The proposed rule change is also consistent with Rules 17Ad-22(e)(7)(i), 17Ad-22(e)(13), and 17Ad-22 (e)(23)(i), promulgated under the Act.[65]

Rule 17Ad-22(e)(7)(i) under the Act requires, in part, that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by DTC, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity, by maintaining sufficient liquid resources to effect same-day settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios.[66] By clarifying the remedies available to DTC with respect to a Participant Default, including the application of the Participants Fund as a liquidity resource, and by clarifying and providing the related processes, the proposed rule change is designed so that DTC may manage its settlement and funding flows on a timely basis and apply the Participants Fund as a liquid resource in order to effect same day settlement of payment obligations with a high degree of confidence. Therefore, DTC believes that the proposed rule changes with respect to the application of the Actual Participants Fund Deposits of non-defaulting Participants to complete settlement are consistent with Rule 17Ad-22(e)(7)(i) under the Act.

---

65 17 CFR 240.17Ad-22(e)(7)(i), (e)(13) and (e)(23)(i).

66 Id. at 240.17Ad-22(e)(7)(i).

Rule 17Ad-22(e)(13) under the Act requires, in part, that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure DTC has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations.[67] The proposed rule changes to (1) require a defined Corporate Contribution to a loss, (2) introduce an Event Period, (3) introduce the concept of "rounds" (and accompanying Loss Allocation Notices) and apply this concept to the timing of loss allocation payments and the Participant termination process in connection with the loss allocation process, taken together, are designed to enhance the resiliency of DTC's loss allocation process. Having a resilient loss allocation process would help ensure that DTC can effectively and timely address losses relating to or arising out of Default Loss Events and/or Declared Non-Default Loss Events, which in turn would help DTC contain losses and continue to conduct its clearance and settlement business. In addition, by providing clarity as to the application of the Participants Fund to fund settlement in the event of a Participant Default, the proposed rule change is designed to clarify that DTC is authorized to use the Participants Fund to fund settlement. Therefore, DTC believes that the proposed rule changes to enhance the resiliency of DTC's loss allocation process, and to provide clarity as to the application of the Participants Fund to fund settlement, are consistent with Rule 17Ad-22(e)(13) under the Act.

Rule 17Ad-22(e)(23)(i) under the Act requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures, including key aspects of DTC's default rules and procedures.[68] The proposed rule changes to (i) separate the provisions for the use of the Participants Fund for settlement and for loss allocation, (ii) make clarifying changes to the provisions regarding the application of the Participants Fund to complete settlement and for the allocation of losses, (iii) further align the loss allocation rules of the DTCC Clearing Agencies, (iv) improve the overall transparency and accessibility of the provisions in the Rules governing loss allocation, and (v) make technical and conforming changes, would not only ensure that DTC's loss allocation rules are, to the extent practicable and appropriate, consistent with the loss allocation rules of the other DTCC Clearing Agencies, but also would help to ensure that DTC's loss allocation rules are transparent and clear to Participants. Aligning the loss allocation rules of the DTCC Clearing Agencies would provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies. Having transparent and clear loss allocation rules would enable Participants to better understand the key aspects of DTC's Rules and Procedures relating to Participant Default, as well as non-default events, and provide Participants with increased predictability and certainty regarding their exposures and obligations. As such, DTC believes that the proposed rule changes with respect to pro rata settlement charges, and to align the loss allocation rules across the DTCC Clearing Agencies and to improve the overall transparency and accessibility of DTC's loss allocation rules are consistent with Rule 17Ad-22(e)(23)(i) under the Act.

The proposed rule changes to clarify the Voluntary Retirement of a Participant would improve the clarity of the Rules and help to ensure that DTC's Voluntary Retirement process is

---

67 Id. at 240.17Ad-22(e)(13).

68 Id. at 240.17Ad-22(e)(23)(i).

transparent and clear to Participants. Having clear Voluntary Retirement provisions would enable Participants to better understand the Voluntary Retirement process and provide Participants with increased predictability and certainty regarding their rights and obligations with respect to such process. As such, DTC believes that the proposed rule changes with respect to Voluntary Retirement are also consistent with Rule 17Ad-22(e)(23)(i) under the Act.

11. Exhibits

Exhibit 1 Not applicable.

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

Exhibit 2 Not applicable.

Exhibit 3 Not applicable.

Exhibit 4 Changes to the Rules proposed by this Amendment.

Exhibit 5 Proposed changes to the Rules.

SR-DTC-2017-804 Amendment No. 1
EXHIBIT 1A

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-[_____]; File No. SR-DTC-2017-804)

[DATE]

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

On December 18, 2017, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") an advance notice SR-DTC-2017-804 ("Advance Notice") pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 ("Clearing Supervision Act")[1] and Rule 19b-4(n)(1)(i) under the Securities Exchange Act of 1934 ("Act").[2] The Advance Notice was published in the Federal Register on January 30, 2018.[3] Notice is hereby given that on June 28, 2018, DTC filed with the Commission Amendment No. 1 to the Advance Notice, as described in Items I, II and III below, which Items have been prepared by the clearing agency.[4] Amendment No. 1 supersedes and replaces the Advance Notice in its

---

1 12 U.S.C. 5465(e)(1).

2 17 CFR 240.19b-4(n)(1)(i).

3 See Securities Exchange Act Release No. 82582 (January 24, 2018), 83 FR 4297 (January 30, 2018) (SR-DTC-2017-804).

4 On December 18, 2017, DTC filed the Advance Notice as a proposed rule change (SR-DTC-2017-022) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b-4 thereunder, 17 CFR 240.19b-4. The proposed rule change was published in the Federal Register on January 8, 2018. See Securities Exchange Act Release No. 82426 (January 2, 2018), 83 FR 913 (January 8, 2018) (SR-DTC-2017-022). On June 28, 2018, DTC filed with the Commission Amendment No. 1 to the proposed rule change, which supersedes

entirety. The Commission is publishing this notice to solicit comments on Amendment No. 1 to the Advance Notice from interested persons.

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

This advance notice is filed by The Depository Trust Company ("DTC") in connection with proposed modifications to the Rules, By-Laws and Organization Certificate of DTC ("Rules").[5] The proposed rule change would revise Rule 4 (Participants Fund and Participants Investment) to (i) provide separate sections for (x) the use of the Participants Fund as a liquidity resource for settlement and (y) loss allocation among Participants of losses and liabilities arising out of Participant defaults or due to non-default events; and (ii) enhance the resiliency of DTC's loss allocation process so that DTC can take timely action to contain multiple loss events that occur in succession during a short period of time. In connection therewith, the proposed rule change would (i) align the loss allocation rules of the three clearing agencies of The Depository Trust & Clearing Corporation ("DTCC"), namely DTC, National Securities Clearing Corporation ("NSCC"), and Fixed Income Clearing Corporation ("FICC") (collectively, the "DTCC Clearing Agencies"), so as to provide consistent treatment, to the extent practicable and appropriate, especially for firms that are participants of two or more DTCC Clearing Agencies, (ii) increase transparency and accessibility of the provisions relating to the use of the Participants Fund as a liquidity resource for settlement and the loss allocation

---

and replaces the proposed rule change in its entirety. A copy of Amendment No. 1 to the proposed rule change is available at http://www.dtcc.com/legal/sec-rule-filings.aspx.

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

provisions, by enhancing their readability and clarity, (iii) require a defined corporate contribution to losses and liabilities that are incurred by DTC prior to any allocation among Participants, whether such losses and liabilities arise out of Participant defaults or due to non-default events, (iv) reduce the time within which DTC is required to return a former Participant's Actual Participants Fund Deposit, and (v) make conforming and technical changes. In addition, the proposed rule change would amend Section 6 of Rule 4 to clarify the requirements for a Participant that wants to voluntarily terminate its business with DTC, and to align, where appropriate, with the proposed voluntary termination provisions of the NSCC and FICC rules. The proposed rule change would also amend Rule 1 (Definitions; Governing Law) to add cross-references to terms that would be defined in proposed Rule 4, and would amend Rule 2 (Participants and Pledgees), in relevant part, to align with proposed Section 6 of Rule 4, as discussed below.

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

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

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

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

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

Description of Amendment No. 1

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

(i) Clarify that the term "Participant Default," referring to the failure of a Participant to satisfy any obligation to DTC, includes the failure of a Defaulting Participant to satisfy its obligations as provided in Rule 9(B).[7]

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

---

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

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

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

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

(v) Clarify that each CTA Participant would be obligated to DTC for the entire amount of any loss or liability incurred by DTC arising out of or

relating to any Default Loss Event with respect to such CTA Participant. To the extent that such loss or liability is not satisfied pursuant to proposed Section 3 of Rule 4, DTC would apply a Corporate Contribution and charge the remaining amount of such loss or liability as provided in proposed Section 5 of Rule 4.

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

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

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

Nature of the Proposed Change

The proposed rule change would revise Rule 4 (Participants Fund and Participants Investment) to (i) provide separate sections for (x) the use of the Participants Fund as a liquidity resource for settlement and (y) loss allocation among Participants of losses and

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

---

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

rule change would also amend Rule 1 (Definitions; Governing Law) to add cross-references to terms that would be defined in proposed Rule 4, and would amend Rule 2 (Participants and Pledgees), in relevant part, to align with proposed Section 6 of Rule 4, as discussed below.

(i) Background

Current Rule 4 provides a single set of tools and a common process for the use of the Participants Fund for both liquidity purposes to complete settlement among non-defaulting Participants, if one or more Participants fails to settle,[9] and for the satisfaction of losses and liabilities due to Participant defaults[10] or certain other losses or liabilities

---

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

10 The failure of a Participant to satisfy its settlement obligation constitutes a liability to DTC. Insofar as DTC undertakes to complete settlement among Participants other than the Participant that failed to settle, that liability may give rise to losses as well. DTC is designed to provide settlement finality at the end of the day and notwithstanding the failure to settle of a Participant or Affiliated Family of Participants with the largest net settlement obligation, a "cover 1" standard. There are no reversals of deliveries; a Participant that fails to settle will

incident to the business of DTC.[11] The proposed rule change would amend and add provisions to separate use of the Participants Fund as a liquidity resource to complete settlement, reflected in proposed Section 4 of Rule 4, and for loss allocation, reflected in proposed Section 5 of Rule 4. There wouldn't be any substantive change to the rights

---

not receive securities that were intended to be delivered to it, because it has not paid for them. These securities, among others, serve as collateral for DTC to use to secure a borrowing of funds in order, in accordance with its Rules and Procedures, to settle with non-defaulting Participants (including those delivering Participants that delivered to the non-settling Participant). To this end, delivery versus payment transactions ("DVP") will not be processed intraday to a receiving Participant that will incur a related payment obligation unless that Participant satisfies risk management controls. The two risk management controls are the Collateral Monitor and Net Debit Cap. Net Debit Caps limit the potential settlement obligation of any Participant to an amount for which DTC has sufficient liquidity resources to cover this risk. The Collateral Monitor tests whether a Participant has sufficient collateral for DTC to pledge or liquidate if that Participant were to fail to meet its settlement obligation. To process a DVP, the value of the delivery that is debited to the receiving Participant cannot cause the net debit balance of the Participant to exceed its Net Debit Cap, and the amount of the net debit balance after giving effect to the debit must be fully collateralized. Accordingly, DTC may incur a liability or loss whenever it completes settlement despite the failure to settle of a Participant, or Affiliated Family of Participants, because it is either using the Participants Fund deposits of other Participants in the manner specified in existing and proposed Rule 4 and/or borrowing the necessary funds. DTC obligations under the line of credit include the obligation to pay interest on loans outstanding and to repay the loan; the Participants Fund is designed as not only a direct liquidity resource but as a back-up liquidity resource to satisfy these liabilities. As to the Participants Fund itself, DTC undertakes in Section 9 of existing and proposed Rule 4, to restore funds to Participants whose deposits may have been charged if there is ultimately any excess recovery. It should be noted that the Defaulting Participant remains principally obligated for all losses, costs and expenses associated with its Participant Default and, so, a recovery out of the estate of a Defaulting Participant is at least a hypothetical possibility.

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

and obligations of Participants under proposed Sections 4 and 5 of Rule 4.[12] The proposed rule changes reinforce the distinction, conceptual and sequential, between the mechanisms to complete settlement on a Business Day and to mutualize losses that may result from a failure to settle, or other loss-generating events. The change is also proposed so that the loss allocation provisions of proposed Section 5 of Rule 4 more closely align to similar provisions of the NSCC and FICC rules, to the extent appropriate.

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

For loss allocation, the proposed rule change, like current Rule 4, would continue to apply to both default and non-default losses and liabilities, and, to the extent allocated among Participants, would be charged ratably in accordance with their Required Participants Fund Deposits.[14] A new provision would require DTC to contribute to a loss

---

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

13 See Rule 4, Section 5, supra note 5.

14 It may be noted that for NSCC and FICC, the proposed rule changes for loss allocation include a "look-back" period to calculate a member's pro rata share and cap. The concept of a look-back or average is already built into DTC's

or liability, either arising from a Participant default or non-default event, prior to any allocation among Participants. The proposed rule change would also introduce the new concepts of an "Event Period" and a "round" to address the allocation of losses arising from multiple events that occur in succession during a short period of time. These proposed rule changes would be substantially similar in these respects to analogous proposed rule changes for NSCC and FICC.

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

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

Default of a Participant. Under current Section 3 of Rule 4, if a Participant is obligated to DTC and fails to satisfy any obligation, DTC may, in such order and in such amounts as DTC shall determine in its sole discretion: (a) apply some or all of the Actual Participants Fund Deposit of such Participant to such obligation; (b) Pledge some or all of the shares of Preferred Stock of such Participant to its lenders as collateral security for a

---

calculation of Participants Fund requirements, which are based on a rolling sixty (60) day average of a Participant's six highest intraday net debit peaks.

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

loan under the End-of-Day Credit Facility;[16] and/or (c) sell some or all of the shares of Preferred Stock of such Participant to other Participants (who shall be required to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and apply the proceeds of such sale to satisfy such obligation.

Application of the Participants Fund. Current Section 4 of Rule 4 addresses the application of the Participants Fund if DTC incurs a loss or liability, which would include application of the Participants Fund to complete settlement[17] or the allocation of losses once determined, including non-default losses. For both liquidity and loss scenarios, current Section 4 of Rule 4 provides that an application of the Participants Fund would be apportioned among Participants ratably in accordance with their Required Participants Fund Deposits, less any additional amount that a Participant was required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A).[18] It also provides for the optional use of an amount of DTC's retained earnings and undivided profits.

---

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

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

18 Section 2 of Rule 9(A) provides, in part, "At the request of the Corporation, a Participant or Pledgee shall immediately furnish the Corporation with such assurances as the Corporation shall require of the financial ability of the Participant or Pledgee to fulfill its commitments and shall conform to any conditions which the Corporation deems necessary for the protection of the Corporation, other Participants or Pledgees, including deposits to the Participants Fund . . ." Supra note 5. Pursuant to the proposed rule change, the additional

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

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

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

Overview of the Proposed Rule Changes

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

Proposed Section 3 of Rule 4 would retain the concept that when a Participant is obligated to DTC and fails to satisfy such obligation, which would be defined as a

---

amount that a Participant is required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A) would be defined as an "Additional Participants Fund Deposit." This is not a new concept, only the addition of a defined term for greater clarity.

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

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

Proposed Section 4 would expressly state that the Participants Fund shall constitute a liquidity resource which may be applied by DTC, in such amounts as it may determine, in its sole discretion, to fund settlement among non-defaulting Participants in the event of the failure of a Defaulting Participant to satisfy its settlement obligation on

---

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

any Business Day. Such an application of the Participants Fund would be charged ratably to the Actual Participants Fund Deposits of the non-defaulting Participants on that Business Day. The pro rata charge per non-defaulting Participant would be based on the ratio of its Required Participants Fund Deposit to the sum of the Required Participants Fund Deposits of all such Participants on that Business Day (excluding any Additional Participants Fund Deposits in both the numerator and denominator of such ratio). The proposed rule change would identify this as a "pro rata settlement charge," in order to distinguish application of the Participants Fund to fund settlement from pro rata loss allocation charges that would be established in proposed Section 5 of Rule 4.

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

---

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

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

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

The proposed rule change also would retain the concept of providing each non-defaulting Participant an opportunity to elect to terminate its business with DTC and thereby cap its exposure to further pro rata settlement charges. The proposed rule change would shorten the notification period for the election to terminate from ten (10) Business Days to five (5) Business Days,[22] and would also change the beginning date of such notification period from the receipt of the notice to the date of the issuance of the Settlement Charge Notice.[23] A Participant that elects to terminate its business with DTC would, subject to its cap, remain responsible for (i) its pro rata settlement charge that was the subject of the Settlement Charge Notice and (ii) all other pro rata settlement charges until the Participant Termination Date (as defined below and in the proposed rule change). The proposed cap on pro rata settlement charges of a Participant that has timely notified DTC of its election to terminate its business with DTC would be the amount of its Aggregate Required Deposit and Investment, as fixed on the day of the pro rata settlement charge that was the subject of the Settlement Charge Notice, plus 100% of the

---

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

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

amount thereof ("Settlement Charge Cap"). The proposed Settlement Charge Cap would be no greater than the current cap.[24]

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

---

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

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

A principal type of Participant Default is a failure to settle. A Participant's obligation to pay any amount due in settlement is secured by Collateral of the Participant. When the Defaulting Participant fails to pay its settlement obligation, under Rule 9(B), Section 2, DTC has the right to Pledge or sell such Collateral to satisfy the obligation. Supra note 5. (It is more likely that DTC would borrow

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

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

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

(1) Mandatory Corporate Contribution.

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

---

against the Collateral to complete settlement on the Business Day, because it is unlikely to be able to liquidate Collateral for same day funds in time to settle on that Business Day.) If DTC Pledges the Collateral to secure a loan to fund settlement (e.g., under the End-of-Day Credit Facility), the Collateral would have to be sold to obtain funds to repay the loan. In any such sale of the Collateral, there is a risk, heightened in times of market stress, that the proceeds of the sale would be insufficient to repay the loan. That deficiency would be a liability or loss to which proposed Section 5 of Rule 4 would apply, i.e., a Default Loss Event.

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

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

The proposed Corporate Contribution would apply to losses arising from Default Loss Events and Declared Non-Default Loss Events, and would be a mandatory

---

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

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

28 17 CFR 240.17Ad-22(e)(15).

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

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

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

---

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

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

The proposed rule changes relating to the calculation and mandatory application of the Corporate Contribution are set forth in proposed Section 5 of Rule 4.

(2) Introducing an Event Period.

The proposed rule change would clearly define the obligations of DTC and its Participants regarding the allocation of losses or liabilities relating to or arising out of a Default Loss Event or a Declared Non-Default Loss Event. The proposed rule change would define "Default Loss Event" as the determination by DTC to cease to act for a Participant pursuant to Rule 10, Rule 11, or Rule 12 (such Participant, a "CTA Participant"). "Declared Non-Default Loss Event" would be defined as the determination by the Board of Directors that a loss or liability incident to the clearance and settlement business of DTC may be a significant and substantial loss or liability that may materially impair the ability of DTC to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among Participants in order to ensure that DTC may continue to offer clearance and settlement services in an orderly manner. In order to balance the need to manage the risk of sequential loss events against Participants' need for certainty concerning maximum loss allocation exposures, DTC is proposing to introduce the concept of an "Event Period" to address the losses and liabilities that may arise from or relate to multiple Default Loss Events and/or Declared Non-Default Loss Events that arise in quick succession. Specifically, the proposal would group Default Loss Events and Declared Non-Default Loss Events occurring in a period of ten (10) Business Days ("Event Period") for purposes of allocating losses to Participants in one or more rounds, subject to the limits of loss allocation set forth in the

proposed rule change and as explained below.[31] In the case of a loss or liability arising from or relating to a Default Loss Event, an Event Period would begin on the day on which DTC notifies Participants that it has ceased to act for a Participant (or the next Business Day, if such day is not a Business Day). In the case of a Declared Non-Default Loss Event, the Event Period would begin on the day that DTC notifies Participants of the Declared Non-Default Loss Event (or the next Business Day, if such day is not a Business Day). If a subsequent Default Loss Event or Declared Non-Default Loss Event occurs within the Event Period, any losses or liabilities arising out of or relating to any such subsequent event would be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period. An Event Period may include both Default Loss Events and Declared Non-Default Loss Events, and there would not be separate Event Periods for Default Loss Events or Declared Non-Default Loss Events occurring within overlapping ten (10) Business Day periods.

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

---

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

during or after the Event Period, required for such losses to be crystallized and allocated.[32]

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

(3) Introducing the concept of "rounds" and Loss Allocation Notice.

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

Each loss allocation would be communicated to Participants by the issuance of a notice that advises each Participant of the amount being allocated to it (each, a "Loss Allocation Notice"). The calculation of each Participant's pro rata allocation charge would be similar to the current Section 4 calculation of a pro rata charge except that, for greater simplicity, it would not include the current distinction for common members of

---

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

another clearing agency pursuant to a Clearing Agency Agreement.[33] In addition, for enhanced clarity as to the date of determination of the ratio, it would be based on the Required Participants Fund Deposits as fixed on the first day of the Event Period, as opposed to the current language "at the time the loss or liability was discovered."[34]

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

---

33 See supra note 20.

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

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

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

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

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

For example, for illustrative purposes only, after the required Corporate Contribution, if DTC has a $4 billion loss determined with respect to an Event Period and

---

continue to provide its critical operations and services during what would be expected to be a stressful period.

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

38 See supra note 23.

the sum of Loss Allocation Caps for all Participants subject to the loss allocation is $3 billion, the first round would begin when DTC issues the first Loss Allocation Notice for that Event Period. DTC could issue one or more Loss Allocation Notices for the first round until the sum of losses allocated equals $3 billion. Once the $3 billion is allocated, the first round would end and DTC would need a second round in order to allocate the remaining $1 billion of loss. DTC would then issue a Loss Allocation Notice for the $1 billion and this notice would be the first Loss Allocation Notice for the second round. The issuance of the Loss Allocation Notice for the $1 billion would begin the second round.

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

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

(4) Capping terminating Participants' loss allocation exposure and related changes.

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

As proposed, if a Participant timely provides notice of its election to terminate its business with DTC as provided in proposed Section 8(b) of Rule 4, its maximum

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

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

Specifically, the first round and each subsequent round of loss allocation would allocate losses up to a round cap of the aggregate of all Loss Allocation Caps of those Participants included in the round. If a Participant provides notice of its election to terminate its business with DTC, it would be subject to loss allocation in that round, up to its Loss Allocation Cap. If the first round of loss allocation does not fully cover DTC's losses, a second round will be noticed to those Participants that did not elect to terminate in the previous round. As noted above, the amount of any second or subsequent round

---

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

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

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

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

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

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

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

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

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

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

---

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

42 See supra note 11.

determination, which is referred to in the proposed rule as a Declared Non-Default Loss Event, as discussed above.

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

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

D. Loss Allocation Waterfall Comparison

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

Assumptions:

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

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

(iii) Participant B defaults seven Business Days after DTC ceases to act for Participant A (Day 8). On the same day, DTC ceases to act for

Participant B, and notifies Participants of the cease to act. After applying Participant B's Participants Fund and liquidating Participant B's Collateral, DTC has a loss of $350 million.

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

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

Current Loss Allocation:

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

With respect to the losses arising out of Participant B's default, DTC will contribute $68 million (($364 million - $91 million) * 25%) from the balance of its retained earnings and undivided profits, and then allocate the remaining loss of $282 million ($350 million - $68 million) to Participants. Because Participant X voluntarily

retired before DTC ceased to act for Participant B, Participant X is not subject to loss allocation with respect to losses arising out of Participant B's default.

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

Proposed Loss Allocation:

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

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

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

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

E. Clarifying Changes Regarding Voluntary Retirement

Section 1 of Rule 2 provides that a Participant may terminate its business with DTC by notifying DTC in the appropriate manner.[43] To provide additional transparency to Participants with respect to the voluntary retirement of a Participant, and to align, where appropriate, with the proposed rule changes of NSCC and FICC with respect to voluntary termination, DTC is proposing to add proposed Section 6(a) to Rule 4, which would be titled, "Upon Any Voluntary Retirement." Proposed Section 6(a) of Rule 4 would (i) clarify the requirements[44] for a Participant that wants to voluntarily terminate

---

43 Section 1 of Rule 2 provides, in relevant part, that "[a] Participant may terminate its business with the Corporation by notifying the Corporation as provided in Sections 7 or 8 of Rule 4 or, if for a reason other than those specified in said Sections 7 and 8, by notifying the Corporation thereof; the Participant shall, upon receipt of such notice by the Corporation, cease to be a Participant. In the event that a Participant shall cease to be a Participant, the Corporation shall thereupon cease to make sits services available to the Participant, except that the Corporation may perform services on behalf of the Participant or its successor in interest necessary to terminate the business of the Participant or its successor with the Corporation, and the Participant or its successor shall pay to the Corporation the fees and charges provided by these Rules with respect to services performed by the Corporation subsequent to the time when the Participant ceases to be a Participant." Supra note 5. DTC is proposing to modify the provision to clarify that the termination would be subject to proposed Section 6 of Rule 4.

44 The requirements would reflect current practice.

its business with DTC, and (ii) address the situation where a Participant submits a Voluntary Retirement Notice (defined below) and subsequently receives a Settlement Charge Notice or the first Loss Allocation Notice in a round on or prior to the Voluntary Retirement Date (defined below).

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

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

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

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

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

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

---

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

46 The purpose of this proposed provision is to clarify that a failure of a Participant to comply with proposed Section 6(a) of Rule 4 would mean that the Participant would continue to be a Participant, as if the Voluntary Retirement Notice had not been received by DTC. For example, Participant A submits a Voluntary Retirement Notice to DTC on April 1st and indicates a Voluntary Retirement Date of April 15th, but fails to comply with the requirements of proposed Section 6(a) of Rule 4 by the Voluntary Retirement Date. The Participant would continue to

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

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

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

---

be a Participant after the Voluntary Retirement Date. If an Event Period subsequently occurs before the Participant submits a new Voluntary Retirement Notice and voluntarily retires in compliance with proposed Section 6(a), such Participant would be obligated to pay its pro rata shares of losses and liabilities arising from that Event Period.

loss or liability to DTC arising out of or related to the obligations of the former Participant to DTC.

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

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

(ii) Proposed Rule Changes

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

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

Section 3

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

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

the Participants Fund deposits and Participants Investment of a Participant that has failed to satisfy its obligations to DTC.

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

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

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

Section 4 and Section 5

As noted above, current Section 4 of Rule 4 provides that if DTC incurs a loss or liability which is not satisfied by charging the Participant responsible for the loss pursuant to Section 3 of Rule 4, then DTC may, in any order and in any amount as DTC may determine, in its sole discretion, to the extent necessary to satisfy such loss or liability, ratably apply some or all of the Actual Participants Fund Deposits of all other Participants to such loss or liability and/or charge the existing retained earnings and undivided profits of DTC. This provision relates to losses and liabilities that may be due

to the failure of a Participant to satisfy obligations to DTC, if the Actual Participants Fund Deposit of that Participant does not fully satisfy the obligation, or to losses and liabilities for which no single Participant is obligated, i.e., a "non-default loss."

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

Proposed Section 4

Pursuant to the proposed rule change, current Section 4 would be replaced in its entirety by proposed Section 4, and titled "Application of Participants Fund Deposits of Non-Defaulting Participants." First, for clarity, proposed Section 4 would expressly state that "[t]he Participants Fund shall constitute a liquidity resource which may be applied by the Corporation in such amounts as the Corporation shall determine, in its sole discretion, to fund settlement if there is a Defaulting Participant and the amount charged to the Actual Participants Fund Deposit of the Defaulting Participant pursuant to Section 3 of this Rule is not sufficient to complete settlement. In that case, the Corporation may apply the Actual Participants Fund Deposits of Participants other than the Defaulting

Participant (each, a "non-defaulting Participant") as provided in this Section and/or apply such other liquidity resources as may be available to the Corporation from time to time, including the End-of-Day Credit Facility."

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

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

Proposed Section 4 would also provide a period of time within which a Participant could notify DTC of its election to terminate its business with DTC and thereby cap its liability, by providing that a Participant would have a period of five (5)

---

47 See supra note 20.

48 See supra note 21.

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

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

Current Section 5 of Rule 4 provides that "[e]xcept as provided in Section 8 of this Rule, if a pro rata charge is made pursuant to Section 4 of the current Rule against the Required Participants Fund Deposit of a Participant, and, as a consequence, the Actual Participants Fund Deposit of such Participant is less than its Required Participants Fund Deposit, the Participant shall, upon the demand of the Corporation, within such time as the Corporation shall require, Deposit to the Participants Fund the amount in cash needed to eliminate any resulting deficiency in its Required Participants Fund Deposit. If the Participant shall fail to make such deposit to the Participants Fund, the Corporation may take disciplinary action against the Participant pursuant to these Rules. Any disciplinary action which the Corporation takes pursuant to these Rules, or the voluntary

---

49 See supra note 22.

50 Proposed Section 6(b) is discussed below.

or involuntary cessation of participation by the Participant, shall not affect the obligations of the Participant to the Corporation or any remedy to which the Corporation may be entitled under applicable law."

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

Proposed Section 5

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

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

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

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

Under proposed Section 5, the loss allocation waterfall would begin with a new mandatory Corporate Contribution from DTC. Rule 4 currently provides that the use of any retained earnings and undivided profits by DTC is a voluntary contribution of a discretionary amount of its retained earnings. Proposed Section 5 of Rule 4 would, instead, require a defined corporate contribution to losses and liabilities that are incurred by DTC with respect to an Event Period. As proposed, the Corporate Contribution to losses or liabilities that are incurred by DTC with respect to an Event Period would be

defined as an amount that is equal to fifty percent (50%) of the amount calculated by DTC in respect of its General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the Event Period.[51] DTC's General Business Risk Capital Requirement, as defined in DTC's Clearing Agency Policy on Capital Requirements,[52] is, at a minimum, equal to the regulatory capital that DTC is required to maintain in compliance with Rule 17Ad-22(e)(15) under the Act.[53]

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

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

Proposed Section 5 of Rule 4 would provide that DTC shall apply the Corporate Contribution to losses and liabilities that arise out of or relate to one or more Default Loss

---

51 See supra note 26.

52 See supra note 27.

53 17 CFR 240.17Ad-22(e)(15).

54 See supra note 30.

Events and/or Declared Non-Default Loss Events that occur within an Event Period. The proposed rule change also provides that if losses and liabilities with respect to such Event Period remain unsatisfied following application of the Corporate Contribution, DTC would allocate such losses and liabilities to Participants, as described below.

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

Pursuant to the proposed rule change, DTC would notify Participants subject to loss allocation of the amounts being allocated to them by a Loss Allocation Notice in successive rounds of loss allocations. Proposed Section 5 would state that a loss allocation "round" would mean a series of loss allocations relating to an Event Period, the

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

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

Loss allocation obligations would continue to be calculated based upon a Participant's pro rata share of the loss.[57] As proposed, each Participant's pro rata share of losses and liabilities to be allocated in any round would be equal to (i) (A) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the

---

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

56 See supra note 37.

57 See supra note 20.

first day of the Event Period,[58] less (B) its Additional Participants Fund Deposit, if any, on such day, divided by (ii) (A) the sum of the Required Participants Fund Deposits of all Participants subject to loss allocation in such round, as such Required Participants Fund Deposits were fixed on such day, less (B) the sum of any Additional Participants Fund Deposits, if any, of all Participants subject to loss allocation in such round on such day.[59]

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

Under the proposal, if a Participant fails to make its required payment in respect of a Loss Allocation Notice by the time such payment is due, DTC would have the right

---

58 See supra note 21.

59 See supra note 16.

60 See supra note 36.

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

Section 6

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

deficiency in its Required Participants Fund Deposit) of Rule 4 and (b) to discharge any liability of the Participant to DTC resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant.

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

DTC is proposing to add Proposed Section 6(b), titled "Upon Termination Following Settlement Charge or Loss Allocation." Proposed Section 6(b) would state that if a Participant timely notifies DTC of its election to terminate its business with DTC in respect of a pro rata settlement charge as set forth in proposed Section 4 of Rule 4 or a loss allocation as set forth in proposed Section 5 of Rule 4, defined as a "Termination Notice", the Participant would be required to: (1) specify in the Termination Notice a

Participant Termination Date, which date shall be no later than ten Business Days following the last day of the applicable Settlement Charge Termination Notification Period or Loss Allocation Termination Notification Period; (2) cease all activities and use of the Corporation's services other than activities and services necessary to terminate the business of the Participant with DTC; and (3) ensure that all activities and use of DTC services by such Participant cease on or prior to the Participant Termination Date.

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

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

For clarity, DTC is proposing to consolidate the requirements from current Section 6 of Rule 4 into proposed Section 6(c) of Rule 4, titled "After Any Termination," and modify them to conform to other proposed rule changes. In particular, DTC is proposing to clarify that a Participant that ceases to be such would continue to be subject to proposed Section 5 of Rule 4 for any Event Period for which it was a Participant on the first day of the Event Period. Proposed Section 6(c) of Rule 4 would state that whenever

a Participant ceases to be such, it would continue to be obligated (i) to satisfy any deficiency in the amounts of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including any deficiency the Participant is required to satisfy pursuant to proposed Sections 3 or 4 of Rule 4, (ii) subject to proposed Section 8, to satisfy any loss allocation pursuant to proposed Section 5 of Rule 4, and (iii) to discharge any liability of the Participant to DTC resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant.

Section 8

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

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

substantively the same limitation as provided for pro rata charges in current Section 8 of Rule 4.[61]

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

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

---

61 See supra note 24.

62 See supra note 39.

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

Section 9

Pursuant to the proposed rule change, proposed Section 9 of Rule 4 would provide that the recovery and repayment provisions in current Rule 4 apply to both pro rata settlement charges and loss allocations.[64] Specifically, proposed Section 9 would provide that if an amount is charged ratably pursuant to proposed Section 4 or allocated ratably pursuant to proposed Section 5 and such amount is recovered by DTC, in whole or in part, the net amount of the recovery shall be repaid ratably (on the same basis that it was originally charged or allocated) to the Persons against which the amount was originally charged or allocated by (i) crediting the appropriate amounts to the Actual Participants Fund Deposits of Persons which are still Participants and (ii) paying the appropriate amounts in cash to Persons which are not still Participants. In addition, proposed Section

---

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

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

9 would clarify that no loss allocation under proposed Rule 4 would constitute a waiver of any claim DTC may have against a Participant for any losses or liabilities to which the Participant is subject under DTC Rules and Procedures, including, without limitation, any loss or liability to which it may be subject under proposed Rule 4.

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

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

Section 1

Section 1(a) and Section 1(b). Section 1(a) addresses, among other things, the formula for determining the Required Participants Fund Deposits of Participants. DTC is proposing to insert the words "or wind-down" to make it clear that the formulas for determining the Required Participants Fund Deposits of Participants and the amount of the minimum Required Participants Fund Deposit would be fixed by DTC so as to assure that the aggregate amount of Required Participants Fund Deposits of Participants will be increased to provide for the costs and expenses incurred by it incidental to the wind-down of DTC, in addition to the voluntary liquidation of DTC.[65] Further, DTC proposes to delete the extraneous phrase "if any." For increased clarity and readability, DTC is proposing to consolidate Section 1(b) into Section 1(a), and to relocate the sentences

---

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

"The Corporation may require a Participant to Deposit an additional amount to the Participants Fund pursuant to Section 2 of Rule 9(A). Any such additional amount shall be part of the Required Participants Fund Deposit of such Participant." from Section 1(a) to a new proposed Section 1(b). In addition to the relocation, DTC would add a defined term for such additional amount, as "Additional Participants Fund Deposit," for drafting convenience and transparency throughout proposed Rule 4. Further, DTC proposes to add the headings "Required Participants Fund Deposits" and "Additional Participants Fund Deposits" to Section 1(a) and proposed Section 1(b), respectively.

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

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

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

Section 1(f). Section 1(f) addresses, among other things, the permitted use of the Participants Fund. For consistency with the balance of Section 1(f), the first paragraph

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

Section 1(g) (consolidated into proposed Section 1(f)). Pursuant to the proposed rule change, DTC would consolidate current Section 1(g) into proposed Section 1(f), and modify language to make it clear that DTC may invest cash in the Participants Fund in accordance with the Clearing Agency Investment Policy adopted by DTC.[66] Further,

---

66 See Securities Exchange Act Release No. 79528 (December 12, 2016), 81 FR 91232 (December 16, 2016) (SR-DTC-2016-007). The Clearing Agency Investment Policy (the "Policy") governs the management, custody, and

language would be streamlined by replacing "securities, repurchase agreements or deposits" with "financial assets," and "securities and repurchase agreements in which such cash is invested" with "its investment of such cash."

Section 1(h) (proposed Section 1(g)).

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

Section 2

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

Section 2(a)-2(d) (Proposed Section 2(a)). For clarity, DTC is proposing to consolidate Sections 2(b)-2(d) into proposed Section 2(a) and would add the heading "Required Preferred Stock Investments" to proposed Section 2(a). In addition, DTC

---

investment of cash deposited to the Participants Fund, the proprietary liquid net assets (cash and cash equivalents) of DTC and other funds held by DTC. The Policy sets forth guiding principles for the investment of those funds, which include adherence to a conservative investment philosophy that places the highest priority on maximizing liquidity and avoiding risk, as well as mandating the segregation and separation of funds. The Policy also addresses the process for evaluating credit ratings of counterparties and identifies permitted investments within specified parameters. In general, assets are required to be held by regulated and creditworthy financial institution counterparties and invested in financial instruments that, with respect to the Participants Fund, may include deposits with banks, including the Federal Reserve Bank of New York, collateralized reverse-repurchase agreements, direct obligations of the U.S. government and money-market mutual funds.

proposes to modify certain language to update references and cross-references to specific subsections to reflect the proposed changes to the numbering of the subsections in proposed Section 2 of Rule 4.

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

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

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

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

C. Proposed Changes to Rule 1

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

D. Proposed Changes to Rule 2

Section 1. The proposed rule change would modify Section 1 of Rule 2 by adding "subject to Section 6 of Rule 4" to the end of the following provision: "A Participant may terminate its business with the Corporation by notifying the Corporation as provided in Sections 7 or 8 of Rule 4 or, if for a reason other than those specified in said Sections 7

and 8, by notifying the Corporation thereof; the Participant shall, upon receipt of such notice by the Corporation, cease to be a Participant." DTC is proposing to add this language in order to clarify that the termination would be subject to the requirements in proposed Section 6 of Rule 4.

Participant Outreach

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

Implementation Timeframe

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

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

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

DTC believes that the proposed rule change to enhance the resiliency of DTC's loss allocation process and to shorten the time within which DTC is required to return the

Actual Participants Fund Deposit of a former Participant would reduce the risk of uncertainty to DTC, its Participants and the market overall.

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

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

arise from multiple Default Loss Events and/or Declared Non-Default Loss Events that arise in quick succession. Moreover, the proposed Event Period structure would provide certainty for Participants concerning their maximum exposure to mutualized loss allocation with respect to such events.

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

By reducing the time within which DTC is required to return the Actual Participants Fund Deposit of a former Participant, DTC would enable firms that have exited DTC to have access to their funds sooner than under current Rule 4 while maintaining the protection of DTC and its provision of clearance and settlement services.

DTC would continue to be protected under the proposed rule change, which will maintain the provision that DTC may offset the return of funds against the amount of any loss or liability of DTC arising out of or relating to the obligations of the former Participant to DTC, and would provide that DTC could retain the funds for up to two (2) years. As such, DTC would maintain a necessary level of coverage for possible claims arising in connection with the DTC activities of a former Participant.

Management of Identified Risks

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

Consistency with the Clearing Supervision Act

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

The proposed rule change would provide clarity and certainty around the use of the Participants Fund in connection with a Participant Default by expressly providing for

---

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

68 Id.

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

The proposed rule change would enhance the resiliency of DTC's loss allocation process by (1) requiring a defined contribution of DTC corporate funds to a loss, (2) introducing an Event Period, and (3) introducing the concept of "rounds" (and accompanying Loss Allocation Notices) and applying this concept to the timing of loss allocation payments and the Participant termination process in connection with the loss allocation process. Together, these proposed rule changes would (i) create greater certainty for Participants regarding DTC's obligation towards a loss, (ii) more clearly specify DTC's and Participants' obligations toward a loss and balance the need to manage the risk of sequential defaults and other potential loss events against Participants' need for certainty concerning their maximum exposures, and (iii) provide Participants the

opportunity to limit their exposure to DTC by capping their exposure to loss allocation. Reducing the risk of uncertainty to DTC, its Participants and the market overall would promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system. Therefore, DTC believes that the proposed rule change to enhance the resiliency of DTC's loss allocation process is consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act cited above.

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

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

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

Rule 17Ad-22(e)(13) under the Act requires, in part, that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure DTC has the authority and operational capacity to take timely action to contain

---

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

70 Id. at 240.17Ad-22(e)(7)(i).

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

Rule 17Ad-22(e)(23)(i) under the Act requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures, including key aspects of DTC's default rules and procedures.[72] The proposed rule changes to (i) separate the provisions for the use of the Participants Fund for settlement and for loss allocation, (ii) make

---

71 Id. at 240.17Ad-22(e)(13).

72 Id. at 240.17Ad-22(e)(23)(i).

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

The proposed rule changes to clarify the Voluntary Retirement of a Participant would improve the clarity of the Rules and help to ensure that DTC's Voluntary Retirement process is transparent and clear to Participants. Having clear Voluntary Retirement provisions would enable Participants to better understand the Voluntary Retirement process and provide Participants with increased predictability and certainty

regarding their rights and obligations with respect to such process. As such, DTC believes that the proposed rule changes with respect to Voluntary Retirement are also consistent with Rule 17Ad-22(e)(23)(i) under the Act.

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

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

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

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

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

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2017-804 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-DTC-2017-804. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the Advance Notice that are filed with the Commission, and all written communications relating to the Advance Notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC

20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (http://dtcc.com/legal/sec-rule-filings.aspx). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2017-804 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

By the Commission.

Secretary

SR-DTC-2017-804 Amendment No. 1

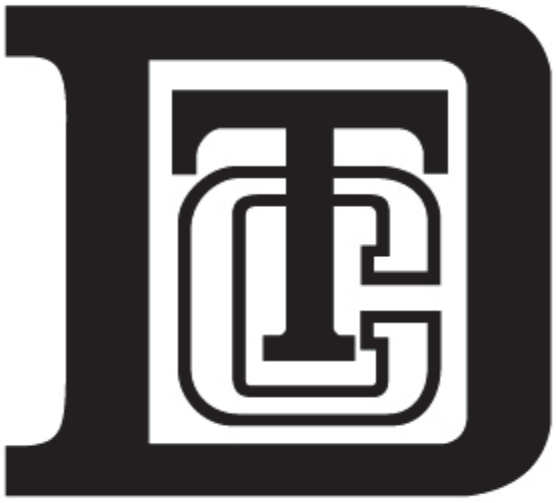
EXHIBIT 4

Bolded, underlined text indicates added language.

~~**Bolded, strikethrough text**~~ indicates deleted language.

Bold, wave double underlined and italicized text indicates additional language proposed by this Amendment No. 1

~~**Bold, strikethrough and dotted underlined text**~~ indicates deleted language proposed by this Amendment No. 1



RULES

BY-LAWS

ORGANIZATION CERTIFICATE

THE DEPOSITORY TRUST COMPANY

RULE 1
DEFINITIONS; GOVERNING LAW

****

Section 2. Set forth below are certain other terms defined in these Rules, and the place in these Rules where such other terms are defined and used:

Defined Term	Rule	Section
Additional Participants Fund Deposit	**Rule 4**	**Section 1**
Cash	Rule 4(A)	Section 1
Contra Party	Rule 9(B)	Section 1
Corporate Contribution	**Rule 4**	**Section 5**
Custodian	Rule 2	Section 1
CTA Participant	***Rule 4***	***Section 5***
Declared Non-Default Loss Event	**Rule 4**	**Section 5**
Deemed Net Additions	Rule 9(B)	Section 2
Defaulting Participant	Rule 9(B)	Section 2
Default Loss Event	**Rule 4**	**Section 5**
End-of-Day Credit Facility	Rule 4	Section 2
Event Period	**Rule 4**	**Section 5**
FATCA	Rule 2	Section 9
FATCA Certification	Rule 2	Section 9
FATCA Compliance Date	Rule 2	Section 9
FATCA Compliant	Rule 2	Section 9
FFI Participant	Rule 2	Section 9
Interested Person	Rule 22	Section 1
Loss Allocation Cap	**Rule 4**	**Section 5**
Loss Allocation Notice	**Rule 4**	**Section 5**
Loss Allocation Termination Notification Period	**Rule 4**	**Section 5**
MMI Funding Acknowledgment	Rule 9(C)	Section 1
MMI Optimization	Rule 9(C)	Section 1
Net-Net Credit Balance	Rule 9(D)	
Net-Net Debit Balance	Rule 9(D)	
Panel	Rule 22	Section 3
Participant Default	**Rule 4**	**Section 3**
Participant Representative	Rule 7	Section 1
Participant Termination Date	**Rule 4**	**Section 6**
P&I Cash Advance	Rule 4(A)	Section 3
P&I Credit Facility	Rule 4(A)	Section 3
P&I Finance Cost	Rule 4(A)	Section 3
P&I Finance Period	Rule 4(A)	Section 3
P&I Payment Date	Rule 4(A)	Section 3
P&I Receipt Date	Rule 4(A)	Section 3

P&I Reversal Date	Rule 4(A)	Section 3
P&I Scheduled Payment	Rule 4(A)	Section 3
P&I Security Interest	Rule 4(A)	Section 3
Pool	Rule 22	Section 3
Preferred Stock Security Interest	Rule 4	Section 2
~~**Section 8 Pro Rata Charge**~~	~~**Rule 4**~~	~~**Section 6**~~
Settlement Charge Cap	**Rule 4**	**Section 4**
Settlement Charge Notice	**Rule 4**	**Section 4**
Settlement Charge Termination Notification Period	**Rule 4**	**Section 4**
Settling Bank Refusal	Rule 9(D)	
Short Charge	Rule 9(B)	Section 2
Special Representative	Rule 6	
Termination Notice	**Rule 4**	**Section 6**
Time of Insolvency	Rule 12	Section 4
Transaction	Rule 6	
Voluntary Retirement	***Rule 4***	***Section 6***
Voluntary Retirement Date	***Rule 4***	***Section 6***
Voluntary Retirement Notice	***Rule 4***	***Section 6***
Voting Rights	Rule 6	

****

RULE 2

PARTICIPANTS AND PLEDGEES

Section 1. The Corporation shall make its services, or certain of its services, available to partnerships, corporations or other organizations or entities which (i) apply to the Corporation for the use of such services, (ii) meet the qualifications specified in Rule 3, (iii) are approved by the Corporation and (iv) if required, make a Required Participants Fund Deposit pursuant to Section 1 of Rule 4 and Required Preferred Stock Investment pursuant to Section 2 of Rule 4. The Corporation shall approve applications only upon a determination by the Corporation that the applicant meets the standards of financial condition, operational capability and character defined below:

(a) the applicant has demonstrated that it has sufficient financial ability to make any Required Participants Fund Deposit and Required Preferred Stock Investment and meet all of its anticipated obligations to the Corporation;

(b) the applicant has demonstrated that it has adequate personnel capable of handling transactions with the Corporation and adequate physical facilities, books and records and procedures to fulfill its anticipated commitments to, and to meet the operational requirements of, the Corporation, other Participants and Pledgees with necessary promptness and accuracy and to conform to any condition and requirement which the Corporation reasonably deems necessary for its protection;

(c) the Corporation has received no substantial information which would reasonably and adversely reflect on the applicant or its Controlling Management to such extent that access of the applicant to the Corporation should be denied; and any such applicant may be deemed not to meet the qualifications set forth in this paragraph if:

(i) the Corporation shall have reasonable grounds to believe that the applicant or its Controlling Management to be responsible for (A) making a misstatement of a material fact or omitting to state a material fact to the Corporation in connection with its application to become a Participant or thereafter or (B) fraudulent acts or the violation of the Securities Act, the Exchange Act, the Investment Company Act, the Investment Advisers Act or any rule or regulation thereunder;

(ii) the applicant or its Controlling Management has been convicted within the ten years preceding the filing of its application to become a Participant or at any time thereafter of any crime, felony or misdemeanor which involves the purchase, sale or transfer of any security or the breach of fiduciary duty, or arose out of conduct of the business of a broker, dealer, investment company, investment adviser, underwriter, bank, trust company, fiduciary, insurance company or other financial institution; or involves robbery, larceny, embezzlement, fraudulent conversion, forgery or misappropriation of funds, securities or other property; or involves any violation of Section 1341, 1342 or 1343 of Title 18 of the United States Code;

(iii) the applicant or its Controlling Management is permanently or temporarily enjoined by order, judgment or decree of any court or other governmental authority of competent jurisdiction from acting as a broker, dealer, investment company, investment adviser, underwriter, bank, trust company, fiduciary, insurance company or other financial institution or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase, sale or Delivery of any security, and the enforcement of such injunction or prohibition has not been stayed;

(iv) the applicant or its Controlling Management has been expelled or suspended, or had its participation terminated from a national securities association or exchange registered under the Exchange Act, a self-regulatory organization as defined in Section 3(a)(26) of the Exchange Act, or a corporation which engages in clearance and settlement activities or a securities depository or has been barred or suspended from being associated with any member of such an exchange, association, corporation or securities depository;

(v) the applicant is subject to statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934, or an order of similar effect issued by a Federal or State banking authority, or other examining authority or regulator, including a non-U.S. examining authority or regulator.

(d) the applicant meets the requirements set forth in the Policy Statement on the Admission of Participants set forth in these Rules

(e) with regard to any applicant that shall be an FFI Participant, such applicant must be FATCA Compliant.

In addition to items (a) through (c) above, the Corporation shall retain the right to deny membership to an applicant if the Corporation becomes aware of any factor or circumstance about the applicant or its Controlling Management which may impact the suitability of that particular applicant as a Participant of the Corporation. Further, applicants are required to inform the Corporation as to any member of its Controlling Management that is or becomes subject to statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act).

The Corporation may approve the application of any applicant, either unconditionally or on an appropriate temporary or other conditional basis, if the Corporation determines that any standard specified in this Section, as applied to such applicant or its Controlling Management**,** is unduly or disproportionately severe or that the conduct of such applicant or its Controlling Management has been such as not to make it against the interest of the Corporation, other Participants or Pledgees or the public to approve such application.

Notwithstanding the foregoing, the Corporation may decline to accept the application of any applicant upon a determination by the Corporation that the Corporation does not have adequate personnel, space, data processing capacity or other operational capability at that time to perform its services for additional Participants without impairing the ability of the Corporation to provide services for its existing Participants, to assure the prompt, accurate and orderly processing and settlement of Securities transactions, to safeguard the funds and Securities held by or for the Corporation for Participants or Pledgees or otherwise to carry out its functions; provided, however, that applicants whose applications are denied pursuant to this paragraph shall be approved as promptly as the capabilities of the Corporation permit in the order in which their applications were filed with the Corporation.

The Corporation may, from time to time, determine those Participants that shall be required to fulfill, within the time frames established by the Corporation, certain operational testing requirements (the scope of such testing to be determined by the Corporation in its sole discretion) and related reporting requirements (such as reporting the test results to the Corporation in a manner specified by the Corporation) that may be imposed by the Corporation to test and monitor the continuing operational capability of the Participant. Such Participants shall, as so required, comply with the subject operational testing requirement within specified time frames. The Corporation may assess a fine on any Participant that fails to comply with operational testing and related reporting requirements within the specified time frame.

The Corporation has established standards for designating those Participants who shall be required to participate in annual business continuity and disaster recovery testing that the Corporation reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event that business continuity and disaster recovery plans are required to be activated. The standards shall take into account factors such as:

(1) activity-based thresholds; (2) significant operational issues of the Participant during the twelve months prior to the designation; and (3) past performance of the Participant with respect to operational testing. The specific standards adopted by the Corporation and any updates or modifications thereto shall be published to Participants and applied on a prospective basis.

Upon notification that the Participant has been designated to participate in the annual business continuity and disaster recovery testing, as described above, Participants shall be required to fulfill, within the timeframes established by the Corporation, certain testing requirements (the scope of such testing to be determined by the Corporation in its sole discretion) and related reporting requirements (such as reporting the test results to the Corporation in a manner specified by the Corporation) that may be imposed by the Corporation.

The Corporation shall apply the foregoing requirements on a nondiscriminatory basis. Any applicant aggrieved by action taken by the Corporation in applying such qualifications shall be entitled to a right of appeal in accordance with Rule 22.

The entities which have made a Required Participants Fund Deposit pursuant to Section 1 of Rule 4 and Required Preferred Stock Investment pursuant to Section 2 of Rule 4 and to which the Corporation makes all of its services available shall be known as Participants. The entities which, if required, have made a Required Participants Fund Deposit pursuant to Section 1 of Rule 4 and Required Preferred Stock Investment pursuant to Section 2 of Rule 4 and to which the Corporation makes only certain of its services available shall be known as Limited Participants. For purposes of these Rules, the term "Participant" shall include the term "Limited Participant" unless the (i) context otherwise requires or (ii) the Procedures otherwise provide.

The Corporation may at any time cease either temporarily or definitively to make its services available to a Participant in accordance with these Rules and the Participant shall, upon receipt of notice thereof given by the Corporation as provided in these Rules cease to be a Participant; provided, however, that if the Corporation notifies a Participant that it has ceased to act for it only with respect to a particular transaction or transactions, the Participant shall continue to be a Participant. A Participant may terminate its business with the Corporation by notifying the Corporation as provided in Sections 7 or 8 of Rule 4 or, if for a reason other than those specified in said Sections 7 and 8, by notifying the Corporation thereof; the Participant shall, upon receipt of such notice by the Corporation, cease to be a Participant***, subject to Section 6 of Rule 4***. In the event that a Participant shall cease to be a Participant, the Corporation shall thereupon cease to make its services available to the Participant, except that the Corporation may perform services on behalf of the Participant or its successor in interest necessary to terminate the business of the Participant or its successor with the Corporation, and the Participant or its successor shall pay to the Corporation the fees and charges provided by these Rules with respect to services performed by the Corporation subsequent to the time when the Participant ceases to be a Participant. The Corporation shall immediately notify the SEC if it temporarily or definitively ceases to make its services available to a Participant in accordance with these Rules.

****

RULE 4

PARTICIPANTS FUND AND PARTICIPANTS INVESTMENT

Section 1. **Participants Fund**

The Participants Fund shall comprise the Actual Participants Fund Deposits of all Participants, as provided in these Rules and as specified in the Procedures.

(a) **Required Participants Fund Deposits**

Each Participant shall be required to make a Required Participants Fund Deposit in accordance with one or more formulas based upon the Participant's use of the facilities of the Corporation; provided, however, that (i) each Participant other than a Limited Participant shall be required to make at least a minimum Required Participants Fund Deposit and (ii) depending upon the services it utilizes, a Limited Participant may or may not be required to make a Required Participants Fund Deposit. The formulas for determining the Required Participants Fund Deposits of Participants and the amount of the minimum Required Participants Fund Deposit shall be fixed by the Corporation and specified in the Procedures so as to assure that the aggregate amount of Required Participants Fund Deposits of Participants will be increased to provide for costs and expenses incurred by it incidental to the voluntary liquidation **or wind-down** of the Corporation~~**, if any**~~.

The Corporation may from time to time change the formulas for determining the Required Participants Fund Deposits of Participants and the amount of the minimum Required Participants Fund Deposit; provided, however, that notice of such change shall be given to each Participant at least ten Business Days in advance of the effective date thereof. ~~**The Corporation may require a Participant to Deposit an additional amount to the Participants Fund pursuant to Section 2 of Rule 9(A). Any such additional amount shall be part of the Required Participants Fund Deposit of such Participant.**~~

~~**(b)**~~ The Corporation shall determine on a daily basis for each Participant the amount of its Required Participants Fund Deposit, and the Corporation shall notify each Participant of any change in the amount of its Required Participants Fund Deposit. If the Actual Participants Fund Deposit of a Participant is less than the amount of its Required Participants Fund Deposit, the Participant shall Deposit to the Participants Fund, in the manner specified in the Procedures, the amount needed to eliminate the deficiency. If the Actual Participants Fund Deposit of a Participant is more than the amount of its Required Participants Fund Deposit, the Corporation shall pay to the Participant from the Participants Fund, in the manner specified in the Procedures, the amount of the excess, or such lesser amount as the Participant may request; provided, however, that the Corporation may determine, in its sole discretion, not to return such excess deposit (i) if the Collateral Monitor with respect to any Account Family of the Participant is negative or will be negative as a consequence thereof, (ii) if any Account Family of the Participant will, immediately after the return of such excess deposit, have a negative balance which exceeds the Net Debit Cap for that Account Family, (iii) until any amount which is

required to be charged or levied against the Participant or its Required Participants Fund Deposit is paid by the Participant to the Corporation, (iv) if the Corporation determines that the recent use of any service of the Corporation by the Participant is materially different from its prior use of such service and that a higher Required Participants Fund Deposit is thereby justified and (v) until after the amounts, if any, to be charged or levied against the Participant or its Required Participants Fund Deposit on account of transactions which occurred previously have been satisfied. Notwithstanding the foregoing, the Corporation may withhold all or part of any excess deposit of a Participant if the Corporation determines, in its sole discretion, that such action is necessary for the protection of the Corporation, other Participants or Pledgees.

(b) Additional Participants Fund Deposits

The Corporation may require a Participant to Deposit, on demand, an additional amount to the Participants Fund pursuant to Section 2 of Rule 9(A) (an "Additional Participants Fund Deposit"). Any such Additional Participants Fund Deposit shall be part of the Required Participants Fund Deposit of such Participant.

(c) **Voluntary Participants Fund Deposits**

A Participant may make a Voluntary Participants Fund Deposit to the Participants Fund, ~~as~~**in the manner** specified in the Procedures. A Voluntary Participants Fund Deposit shall not be part of the Required Participants Fund Deposit of the Participant but shall be part of its Actual Participants Fund Deposit.

(d) **Cash Participants Fund**

The Required Participants Fund Deposit~~,~~ ***(including*** **any Additional Participants Fund Deposit*)*** and any Voluntary Participants Fund Deposit of a Participant shall be in cash. All amounts due to or from a Participant in connection with increases and decreases in its Required Participants Fund Deposit~~, *(including* pursuant to this Section or Section 2 of Rule 9(A)) and~~**any Additional Participants Fund Deposit*),*** any Voluntary Participants Fund Deposit**, and any charge pursuant to Section 5 of this Rule,** may be credited to or debited from its Settlement Account.

(e) **Allocation of Participants Fund Deposits Among Account Families**

A Participant with more than one Account Family may, in the manner specified in the Procedures, designate the portion of its Actual Participants Fund Deposit to be allocated to each Account Family at the opening of business each Business Day. The Corporation shall not be obligated to make any allocations in accordance with such instructions if the Corporation determines, in its sole discretion, that such action might result in financial loss to the Corporation, other Participants or Pledgees. The Corporation may allocate **among Account Families**, in the manner specified in the Procedures, any portion of the Actual Participants Fund Deposit of a Participant which is not allocated by the Participant.

(f) **Maintenance, Permitted Use and Investment of Participants Fund**

The Actual Participants Fund Deposits of Participants to the Participants Fund shall be held by the Corporation and ~~shall~~**may** be ~~applied~~**used or invested** as provided in these Rules and as specified in the Procedures.

The **Actual** Participants Fund ~~shall be limited to the satisfaction of losses or~~ **Deposits of Participants may be used (i) to satisfy the obligations of Participants to the Corporation, as provided in Section 3 of this Rule, (ii) to fund settlement among non-defaulting Participants, as provided in Section 4 of this Rule and (iii) to satisfy losses and** liabilities of the Corporation incident to the business of the Corporation**, as provided in Section 5 of this Rule**. For purposes of this ~~Section~~**Rule**, the term "business" with respect to the Corporation shall mean the doing of all things in connection with or relating to the Corporation's performance of the services specified in the first and second paragraphs of Rule 6 or the cessation of such services. Notwithstanding anything to the contrary in this Rule, the Participants Fund may be used as provided in any Clearing Agency Agreement.

~~(g)~~ The cash in the Participants Fund may be partially or wholly invested by the Corporation~~, in its sole discretion, for its account in securities issued or guaranteed as to principal and interest by the United States or agencies or instrumentalities of the United States or repurchase agreements relating to securities issued or guaranteed as to principal and interest by the United States or agencies or instrumentalities of the United States and to the extent not so invested shall be deposited by the Corporation in its name in a depository or depositories selected by the Corporation. Any securities, repurchase agreements or deposits~~ **in accordance with the Clearing Agency Investment Policy adopted by the Corporation. Any financial assets** in which cash in the Participants Fund is invested may be sold by the Corporation or Pledged as security for loans made to the Corporation, as provided in Rule 4(A). The Corporation shall pay interest to a Participant on the cash such Participant has Deposited to the Participants Fund at the rate the Corporation earns on ~~securities and repurchase agreement in which~~**its investment of** such cash ~~is invested~~ or as specified in the Procedures.

(g) Return of Participants Fund Deposits to Participants

~~(h)~~ After three months from when a Person has ceased to be a Participant, the Corporation shall return to such Person (or its successor in interest or legal representative) the amount of the Actual Participants Fund Deposit of the former Participant plus accrued and unpaid interest to the date of such payment (including any amount added to the Actual Participants Fund Deposit of the former Participant pursuant to Section 2(~~h~~**e**) of this Rule), provided that the Corporation receives such indemnities and guarantees as the Corporation deems satisfactory with respect to the matured and contingent obligations of the former Participant to the Corporation. Otherwise, within ~~four~~**two** years after a Person has ceased to be a Participant, the Corporation shall return to such Person (or its successor in interest or legal representative) the amount of the Actual Participants Fund Deposit of the former Participant plus accrued and unpaid

interest to the date of such payment, except that the Corporation may offset against such payment the amount of any known loss or liability ~~to~~**of** the Corporation arising out of ~~a~~**or** related to the obligations of the former Participant to the Corporation.

Section 2. **Participants Investment**

The Participants Investment shall comprise the Required Preferred Stock Investments of all Participants, as provided in these Rules and as specified in the Procedures.

(a) **Required Preferred Stock Investments**

Each Participant shall be required to make a Required Preferred Stock Investment in accordance with one or more formulas based upon the Participant's use of the facilities of the Corporation; provided, however, that (i) each Participant other than a Limited Participant shall be required to make at least a minimum Required Preferred Stock Investment and (ii) depending upon the services it utilizes, a Limited Participant may or may not be required to make a Required Preferred Stock Investment. The formulas for determining the Required Preferred Stock Investments of Participants and the amount of the minimum Required Preferred Stock Investment shall be fixed by the Corporation and specified in the Procedures. The Corporation may from time to time change the formulas for determining the Required Preferred Stock Investments of Participants and the amount of the minimum Required Preferred Stock Investment; provided, however, that notice of such change shall be given to each Participant at least ten Business Days in advance of the effective date thereof.

~~**(b)**~~ The Corporation shall determine on a quarterly basis for each Participant the amount of its Required Preferred Stock Investment, and the Corporation shall notify each Participant of any change in the amount of its Required Preferred Stock Investment. If the Actual Preferred Stock Investment of a Participant is less than the amount of its Required Preferred Stock Investment, such Participant shall purchase, in the manner specified in the Procedures, the number of outstanding shares of Preferred Stock needed to eliminate the deficiency. If the Actual Preferred Stock Investment of a Participant is more than the amount of its Required Preferred Stock Investment, such Participant shall sell, in the manner specified in the Procedures, the number of its shares of Preferred Stock needed to eliminate the excess. The Corporation, acting as agent and attorney-in-fact for its Participants, shall effect the foregoing purchases and sales of shares of Preferred Stock on their behalf, so that each Participant shall own the amount of its Required Preferred Stock Investment, as adjusted from time to time in accordance with the provisions of ~~**Paragraph (a) of this Section 2 and**~~ this Paragraph ~~**(b)**~~.

~~**(c)**~~ A Participant may not purchase from the Corporation or any other Participant any shares of Preferred Stock in excess of the amount of its Required Preferred Stock Investment.

~~**(d)**~~ Except as otherwise provided in ~~**this Paragraph or**~~ Paragraph (**if**) of this Section, all purchases and sales of Preferred Stock pursuant to these Rules shall be made in cash at a price equal to the aggregate Preferred Stock Par Value of the shares plus

accrued and unpaid dividends thereon to the date of such purchase or sale; provided, however, that (i) the portion of the price equal to the aggregate Preferred Stock Par Value of the shares shall be paid on the date of such purchase and sale and (ii) the portion of the price equal to the accrued and unpaid dividends thereon shall be paid on the first Preferred Stock Dividend Date following the date of such purchase and sale if dividends are paid on the Preferred Stock on such Preferred Stock Dividend Date.

All amounts due to or from Participants in connection with purchases and sales of Preferred Stock shall be credited to or debited from their Settlement Accounts, except that any amounts due to a Person which has ceased to be a Participant shall be paid to such account as the former Participant shall designate for this purpose. The Corporation, acting as agent and attorney-in-fact for its Participants, shall effect all payments on their behalf, at the times and in the amounts provided in these Rules and as specified in the Procedures, without any further action or consent required on the part of such Participants, and, without limiting the generality of the foregoing, the Corporation may apply all dividends paid on the Preferred Stock to the payments required to be made to all past and present holders of Preferred Stock pursuant to this Section.

Any determination by the Corporation of a number of shares of Preferred Stock to be purchased or sold pursuant to these Rules shall be made by converting any fraction into a decimal rounded to the nearest one-hundred-thousandth and by rounding to the nearest one-hundred-thousandth the product of any such decimal and any number of shares of Preferred Stock. In order to make the products of all such determinations by the Corporation pursuant to any one provision of these Rules consistent with the total number of shares of Preferred Stock being purchased and sold, the Corporation shall randomly assign to ~~a~~**or** deduct from the number of shares of Preferred Stock being purchased from or sold to any Participant the difference between such total number of shares of Preferred Stock and the sum of such products.

(b) Allocation of Preferred Stock Investments Among Account Families

~~(e)~~ A Participant with more than one Account Family may, in the manner specified in the Procedures, designate the portion of its Actual Preferred Stock Investment to be allocated to each Account Family at the opening of business each Business Day. The Corporation shall not be obligated to make any allocations in accordance with such instructions if the Corporation determines, in its sole discretion, that such action might result in financial loss to the Corporation, other Participants or Pledgees. The Corporation may allocate **among Account Families**, in the manner specified in the Procedures, any portion of the Actual Preferred Stock Investment of a Participant which is not allocated by the Participant.

(c) Security Interest in Preferred Stock Investments of Participants

~~(f)~~ To secure the obligations of Participants to the Corporation, the Corporation, acting as agent and attorney-in-fact for its Participants, may (i) Pledge the entire right, title and interest of any Participant in and to some or all of its shares of Preferred Stock, together with all distributions thereon, proceeds thereof and

replacements or substitutions therefor (a "Preferred Stock Security Interest"), as collateral security for the obligations of the Corporation to its Lenders under any credit facility maintained by the Corporation for the purpose of funding the end-of-day settlement of transactions processed through the facilities of the Corporation (an "End-of-Day Credit Facility") or (ii) sell some or all of the shares of Preferred Stock of any Participant to other Participants (who shall be obligated to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and apply the proceeds of such sale to the obligations of such Participant to the Corporation. Any such Pledge of a Preferred Stock Security Interest pursuant to this Paragraph ~~(f)~~, shall be made by appropriate entries on the books of the Corporation (and such entries**, together with these Rules,** shall be deemed to be a security agreement for purposes of the NYUCC) or by any other means provided in the NYUCC, and each Participant hereby grants to the Corporation an irrevocable power of attorney (coupled with an interest) to execute and deliver, in the name and on behalf of such Participant, any and all additional documents, instruments, agreements and financing statements necessary or desirable as determined by the Corporation, in its sole discretion, to create and perfect the Pledge of the Preferred Stock Security Interest by the Corporation to its Lenders under the End-of-Day Credit Facility. Any such sale of shares of Preferred Stock pursuant to this Paragraph ~~(f)~~, and **any** application of the proceeds thereof as provided herein, shall be effected by the Corporation without any further action or consent required on the part of the Participant whose shares of Preferred Stock are sold, and the Settlement Account of such Participant shall be credited with the full amount of such proceeds.

(d) Dividends on Preferred Stock Investments of Participants

~~(g)~~ The Corporation shall pay dividends on the Preferred Stock at a rate fixed by the Board of Directors in accordance with the Organization Certificate of the Corporation.

(e) Sale of Preferred Stock Investments of Participants

~~(h)~~ Promptly after a Person has ceased to be a Participant, the Corporation, acting as agent and attorney-in-fact for such Person (or its successor in interest or legal representative), shall sell all of the shares of Preferred Stock of the former Participant to current Participants (who shall be required to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and add the proceeds thereof to the Actual Participants Fund Deposit of the former Participant for disposition in accordance with Section 1(~~h~~**g**) of this Rule.

(f) Permitted Transfers of Preferred Stock Investments of Participants

~~(i)~~ Shares of Preferred Stock may be transferred from a Participant to another Person, subject to the provisions of **this** Paragraph ~~**(f) of this Section 2**~~:

(1) ~~(A)~~ if (~~1~~**A**) such Participant gives the Corporation at least twenty Business Days prior written notice of the proposed transfer and (~~2~~**B**) such transfer is effected in the course of or pursuant to

(~~x~~**i**) a merger or consolidation of such Participant into or with such Person or (~~y~~**ii**) a sale of all or substantially all of the business and assets of such Participant to such Person and (~~3~~**C**) such Person is also a Participant; or

(2) ~~(B)~~ if (~~1~~**A**) such Participant (~~x~~**i**) gives the Corporation and all other Participants at least twenty Business Days prior written notice of the proposed transfer and (~~y~~**ii**) offers to sell the shares to such other Participants (pro rata their Required Preferred Stock Investments at the time of such offer) at the lower of (~~1~~**x**) the aggregate purchase price that such Person has agreed to pay for the shares or (~~H~~**y**) the aggregate Preferred Stock Par Value of the shares and (~~2~~**B**) the Corporation, acting as agent and attorney-in-fact for such other Participants, declines on their behalf to purchase the shares on such terms.

No shares of Preferred Stock may be purchased, sold or transferred except in accordance with this Paragraph ~~(i)~~ or in connection with the quarterly reallocation of shares of Preferred Stock pursuant to Paragraph (~~b~~**a**) of this Section.

Section 3. **Application of Participants Fund Deposits and Preferred Stock Investments to Participant Default**

If a Participant is ***a Participant that is a Defaulting Participant pursuant to Rule 9(B) or is otherwise*** obligated to the Corporation**~~, other than for a pro rata charge~~** pursuant to **~~Section 5 of this Rule~~these Rules and the Procedures~~,~~** and fails to satisfy ***any*** such obligation **(a "Participant Default")**, including**,** without limitation**,** the obligation of the Participant to reimburse the Corporation for the amount of any payment with respect to such Participant paid by or owing from the Corporation to any other clearing agency pursuant to a Clearing Agency Agreement, the Corporation shall**, to the extent necessary to eliminate such obligation, apply some or all of the Actual Participants Fund Deposit of such Participant to such obligation to satisfy the Participant Default.**

If any such application of the Actual Participants Fund Deposit of a Participant is insufficient to satisfy such obligation, the Corporation may, in such order and ~~in~~ such amounts as the Corporation shall determine, in its sole discretion, to the extent necessary to ~~eliminate~~**satisfy** such obligation:

~~**(a) apply some or all of the Actual Participants Fund Deposit of such Participant to such obligation;**~~

(~~b~~**a**) Pledge some or all of the shares of Preferred Stock of such Participant to its Lenders as collateral security for a loan under the End-of-Day **Credit** Facility**, and apply the proceeds of such loan to satisfy such obligation**; and/or

(~~c~~**b**) sell some or all of the shares of Preferred Stock of such Participant to other Participants (who shall be required to purchase such shares pro rata their Required

Preferred Stock Investments at the time of such purchase), and apply the proceeds of such sale to such obligation.

If the Corporation takes any of the foregoing actions, the Participant shall, upon the demand of the Corporation, within such time as the Corporation shall require:

(a) Deposit to the Participants Fund the amount in cash needed to eliminate any resulting deficiency in its Required Participants Fund Deposit;

(b) wire to the Corporation an amount in cash sufficient to discharge any loan secured by its shares of Preferred Stock; and/or

(c) repurchase any of its shares of Preferred Stock sold to other Participants.

If the Participant shall fail to take any action demanded by the Corporation, the Corporation may take disciplinary action against the Participant pursuant to these Rules. Any disciplinary action which the Corporation takes pursuant to these Rules, or the voluntary or involuntary cessation of participation by the Participant, shall not affect the obligation of the Participant to the Corporation or any remedy to which the Corporation may be entitled under applicable law.

Section 4. **Application of Participants Fund Deposits of Non-Defaulting Participants**

~~**If the Corporation incurs a loss or liability which is not satisfied by charging the Participant or Participants responsible for causing the loss or liability pursuant to Section 3 of this Rule, the Corporation shall, in such order and in such amounts as the Corporation shall determine, in its sole discretion, to the extent necessary to satisfy such loss or liability:**~~

~~**(a) apply some or all of the Actual Participants Fund Deposits of all other Participants to such loss or liability, in which case:**~~

~~**(1) with respect to any loss or liability incurred by the Corporation in connection with any payment required to be made by the Corporation to any other clearing agency pursuant to a Clearing Agency Agreement, the Actual Participants Fund Deposit of each Participant that is concurrently a member of such other clearing agency, excluding the Participant or Participants responsible for causing the loss or liability, shall be applied pro rata (A) its Required Participants Fund Deposit (as such Required Participants Fund Deposit was fixed at the time the loss or liability was discovered) less (B) any portion of such Required Participants Fund Deposit attributable to any additional amount that such Participant was required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A); or**~~

~~**(2) with respect to any other loss or liability incurred by the Corporation, the Actual Participants Fund Deposit of each**~~

~~Participant, excluding the Participant or Participants responsible for causing the loss or liability, shall be applied pro rata (A) its Required Participants Fund Deposit (as such Required Participants Fund Deposit was fixed at the time the loss or liability was discovered) less (B) any portion of such Required Participants Fund Deposit attributable to any additional amount that such Participant was required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A); and/or~~

~~(b) charge the existing retained earnings and undivided profits of the Corporation.~~

The Participants Fund shall constitute a liquidity resource which may be applied by the Corporation in such amounts as the Corporation shall determine, in its sole discretion, to fund settlement ~~among non-defaulting Participants in the event of the failure of a~~*if there is a Defaulting* Participant ~~to satisfy its settlement obligation on any Business Day. If~~*and* the amount charged to the Actual Participants Fund Deposit of ~~a~~*the Defaulting* Participant pursuant to Section 3 of this Rule is not sufficient to complete settlement, ~~among non-defaulting Participants on that Business Day.~~ *In that case,* the Corporation may apply the Actual Participants Fund Deposits of ~~non-defaulting~~ Participants *other than the Defaulting Participant (each, a "non-defaulting Participant")* as provided in this Section and/or apply such other liquidity resources as may be available to the Corporation from time to time, including the End-of-Day Credit Facility.

If the Participants Fund is applied to ~~**a loss or liability**~~**complete settlement**, the Corporation shall promptly after the event notify each Participant and the SEC of the amount applied and the reasons therefor **("Settlement Charge Notice")**.

Each non-defaulting Participant's pro rata share of such application of the Participants Fund *(each, a "pro rata settlement charge")* shall be equal to (i) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the Business Day of such application less its Additional Participants Fund Deposit, if any, on that day, divided by (ii) the sum of the Required Participants Fund Deposits of all non-defaulting Participants, as such Required Participants Fund Deposits were fixed on that day, less the sum of the Additional Participants Fund Deposits, if any, of such non-defaulting Participants on that day.

~~**A Participant's maximum obligation with respect to its pro rata share of such application of the Participants Fund (each a "pro rata settlement charge") shall be equal to the amount set forth in Section 8(a) of this Rule ("Settlement Charge Cap").**~~ **A Participant shall have a period of five Business Days following issuance of a Settlement Charge Notice (such period, a "Settlement Charge Termination Notification Period") to notify the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(a) of this Rule~~~~and thereby benefit from its Settlement Charge Cap~~.**

If a Participant notifies the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(a) of this Rule, it shall comply with the provisions of Section 6*(b)* of this Rule. *If a Participant so complies, its maximum obligation with respect to its pro rata settlement charges shall be equal to the amount set forth in Section 8(a) of this Rule ("Settlement Charge Cap").* If, after notifying the Corporation of its election to terminate its business with the Corporation pursuant to Section ~~6~~*8(a)* of this Rule, the Participant fails to comply with the provisions of Section 6*(b)* of this Rule, its election to terminate its business with the Corporation shall be deemed void and it will remain subject to further pro rata settlement charges as may be charged against it as if it had not given such notice.

~~**Notwithstanding Section 1(a) of this Rule, t**~~**The Corporation may retain the entire amount of the Actual Participants Fund Deposit of a Participant subject to a pro rata settlement charge, up to the amount of the Participant's Settlement Charge Cap ~~in accordance with Section 8(a) of this Rule~~.**

~~***Section 5.*** **Except as provided in**~~ **Subject to** Section 8 of this Rule, if ~~**a pro rata charge is made pursuant to Section 4 of this Rule against the Required**~~**the Actual** Participants Fund Deposit of a Participant~~**,**~~ **is applied as provided in this Section** and, as a consequence, the Actual Participants Fund Deposit of such Participant is less than its Required Participants Fund Deposit, the Participant shall, upon the demand of the Corporation, within such time as the Corporation shall require, Deposit to the Participants Fund the amount in cash needed to eliminate any resulting deficiency in its Required Participants Fund Deposit. If the Participant shall fail to make such ~~**d**~~**D**eposit to the Participants Fund, the Corporation may take disciplinary action against the Participant pursuant to these Rules. Any disciplinary action which the Corporation takes pursuant to these Rules, or the voluntary or involuntary cessation of participation by the Participant, shall not affect the obligations of the Participant to the Corporation or any remedy to which the Corporation may be entitled under applicable law.

***Section 5*. Loss Allocation Waterfall**

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

"CTA Participant" shall mean a Participant for which the Corporation has ceased to act pursuant to Rule 10, Rule 11 or Rule 12.

"Default Loss Event" shall mean the determination by the Corporation to cease to act for a Participant pursuant to Rule 10, Rule 11, or Rule 12.

"Declared Non-Default Loss Event" shall mean the determination by the Board of Directors that a loss or liability incident to the clearance and settlement business of the Corporation may be a significant and substantial loss or liability that may materially impair the ability of the Corporation to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among Participants in order to ensure that the Corporation may continue to offer clearance and settlement services in an orderly manner.

If the Corporation incurs a loss or liability ~~(i)~~ relating to or arising out of a ~~Participant Default which is not satisfied pursuant to Section 3 of this Rule and the Corporation has ceased to act for such Participant (a "~~Default Loss Event~~") or~~ *a* ~~(ii)~~otherwise incident to the business of the Corporation, as determined below (a "~~Declared Non-Default Loss Event~~"), the Corporation shall address the loss or liability as follows:

Default Loss Events and/or Declared Non-Default Loss Events that occur within a period of ten Business Days (an "Event Period") shall be grouped together for purposes of applying the limits on loss allocations set forth in ~~Section 8 of~~ this Rule. In the case of a Default Loss Event, an Event Period begins on the day that the Corporation notifies Participants that it has ceased to act for a Participant (or the next Business Day, if such day is not a Business Day).

In the case of a Declared Non-Default Loss Event, an Event Period begins on the day that the Corporation notifies Participants of the ~~determination by the Board of Directors that the applicable loss or liability incident to the business of the Corporation may be a significant and substantial loss or liability that may materially impair the ability of the Corporation to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among Participants in order to ensure that the Corporation may continue to offer clearance and settlement services in an orderly manner~~ ***Declared Non-Default Loss Event (or the next Business Day, if such day is not a Business Day)*****, which notification shall be issued promptly following any such determination.**

If a subsequent Default Loss Event or Declared Non-Default Loss Event occurs during an Event Period, any losses or liabilities relating to or arising out of any such subsequent event shall be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period.

Each CTA Participant shall be obligated to the Corporation for the entire amount of any loss or liability incurred by the Corporation arising out of or relating to any Default Loss Event with respect to such CTA Participant. To the extent that such loss or liability is not satisfied pursuant to Section 3 of this Rule, the Corporation shall apply a Corporate Contribution thereto and charge the remaining amount of such liability or loss ratably to other Participants, as further provided below.

The Corporation shall apply the Corporate Contribution to losses and liabilities that arise out of or relate to one or more Default Loss Events and/or Declared Non-Default Loss Events that occur within an Event Period. If losses and liabilities with respect to such Event Period remain unsatisfied following application of the Corporate Contribution, the Corporation shall allocate such losses and liabilities to Participants, subject to the requirements and limitations below.

Each Participant that is a Participant on the first day of an Event Period shall be obligated to pay its pro rata share of losses and liabilities arising out of or relating to each Default Loss Event (other than a Default Loss Event with respect to which it is the CTA Participant) and each Declared Non-Default Loss Event occurring during the Event Period. Any Participant for which the Corporation ceases to act on a non-Business Day, triggering an

Event Period that commences on the next Business Day, shall be deemed to be a Participant on the first day of that Event Period. ~~In the case of losses and liabilities relating to or arising out of a Declared Non-Default Loss Event, all Participants shall be subject to loss allocation. In the case of losses and liabilities relating to or arising out of a Default Loss Event, only non-defaulting Participants shall be subject to loss allocation. After a first round of loss allocations with respect to an Event Period, only Participants that have not submitted a Termination Notice (as defined below) in accordance with Section 6(b) of this Rule shall be subject to further loss allocation with respect to that Event Period. The Corporation shall notify Participants subject to loss allocation of the amounts being allocated to them ("Loss Allocation Notice") in successive rounds of loss allocations. Notwithstanding Section 1(a) of this Rule, the Corporation may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap (as defined below) in accordance with Section 8(b) of this Rule.~~ A loss allocation "round" means a series of loss allocations relating to an Event Period, the aggregate amount of which is limited by the sum of the Loss Allocation Caps of affected Participants (a "round cap"). When the aggregate amount of losses allocated in a round equals the round cap, any additional losses relating to the applicable Event Period shall be allocated in one or more subsequent rounds, in each case subject to a round cap for that round. The Corporation may continue the loss allocation process in successive rounds until all losses from the Event Period are allocated among Participants that have not submitted a Termination Notice in accordance with Section 6(b) of this Rule.

Each loss allocation shall be communicated to Participants by the issuance of a *notice that advises each Participant of the amount being allocated to it* (*each, a* "Loss Allocation Notice"). ~~Each Loss Allocation Notice shall specify the relevant Event Period and the round to which it relates. The first Loss Allocation Notice in any first, second, or subsequent round shall expressly state that such Loss Allocation Notice reflects the beginning of the first, second, or subsequent round, as the case may be, and that each Participant in such round has five Business Days from the issuance of such first Loss Allocation Notice for the round (such period, a "Loss Allocation Termination Notification Period") to notify the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(b) of this Rule, and thereby benefit from its Loss Allocation Cap. Participants shall pay to the Corporation the amount specified in any first round Loss Allocation Notice on the second Business Day after the Corporation issues any such notice. Participants shall pay to the Corporation the amount specified in any subsequent round Loss Allocation Notice on the second Business Day after the Corporation issues such notice, unless the Participant has timely notified (or will timely notify) the Corporation of its election to terminate its business with the Corporation with respect to a prior loss allocation round pursuant to Section 8(b) of this Rule. Each Participant's maximum payment obligation with respect to any loss allocation round shall be equal to the amount set forth in Section 8(b) of this Rule ("Loss Allocation Cap"), subject to Section 8(c) of this Rule.~~Each Participant's pro rata share of losses and liabilities to be allocated in any round shall be equal to (i) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the first day of the applicable Event Period, less its Additional Participants Fund Deposit, if any, on such day, divided by (ii) the sum of the Required Participants Fund Deposits of all Participants subject to loss allocation in such round, as such Required Participants Fund Deposits were fixed on such day, less the sum of

any Additional Participants Fund Deposits, if any, of all Participants subject to loss allocation in such round on such day.

Each Loss Allocation Notice shall specify the relevant Event Period and the round to which it relates. The first Loss Allocation Notice in any first, second, or subsequent round shall expressly state that such Loss Allocation Notice reflects the beginning of the first, second, or subsequent round, as the case may be, and that each Participant in such round has five Business Days from the issuance of such first Loss Allocation Notice for the round (such period, a "Loss Allocation Termination Notification Period") to notify the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(b) of this Rule, and thereby benefit from its Loss Allocation Cap. If a Participant so complies, its maximum obligation with respect to its loss allocation charges shall be equal to the amount set forth in Section 8(b) of this Rule ("Loss Allocation Cap").

Participants shall pay to the Corporation the amount specified in any first round Loss Allocation Notice on the second Business Day after the Corporation issues any such notice. Participants shall pay to the Corporation the amount specified in any subsequent round Loss Allocation Notice on the second Business Day after the Corporation issues such notice, unless the Participant has timely notified (or will timely notify) the Corporation of its election to terminate its business with the Corporation with respect to a prior loss allocation round pursuant to Section 8(b) of this Rule.

The Corporation may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap in accordance with Section 8(b) of this Rule.

If a Participant fails to make payment to the Corporation in respect of a Loss Allocation Notice by the time such payment is due, the Corporation shall have the right to proceed against such Participant as a Participant that has failed to satisfy an obligation in accordance with Section 3 of this Rule.

All amounts due from a Participant pursuant to this Section may be debited from its Settlement Account when due.

If a Participant notifies the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(b) of this Rule, the Participant shall comply with the provisions of Section 6*(b)* of this Rule. If, after notifying the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(b) of this Rule, the Participant fails to comply with the provisions of Section 6(b) of this Rule, its election to terminate its business with the Corporation shall be deemed void and any further losses resulting from the applicable Event Period may be allocated against it as if it had not given such notice.

For any loss allocation pursuant to this Section 5, whether arising out of or relating to a Default Loss Event or a Declared Non-Default Loss Event, the Corporation's corporate contribution to losses or liabilities that are incurred by the Corporation with respect to an Event Period ("Corporate Contribution") shall be an amount that is equal to fifty percent

(50%) of the amount calculated by the Corporation in respect of its General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the Event Period. The Corporation's General Business Risk Capital Requirement, as defined in its Clearing Agency Policy on Capital Requirements, is, at a minimum, equal to the regulatory capital that the Corporation is required to maintain in compliance with Rule 17Ad-22(e)(15) under the Exchange Act. If the Corporate Contribution is applied by the Corporation against a loss or liability relating to an Event Period, the Corporate Contribution for any subsequent Event Periods occurring during the two hundred fifty (250) Business Days thereafter shall be reduced to the remaining unused portion of the Corporate Contribution amount that applied for the first Event Period. The Corporation shall notify Participants of any such reduction to the Corporate Contribution.

Nothing in these Rules shall prevent the Corporation from voluntarily applying amounts greater than the Corporate Contribution against any loss or liability of the Corporation, whether a Default Loss Event or a Declared Non-Default Loss Event, if the Board of Directors, in its sole discretion, believes such to be appropriate under the factual situation existing at the time.

Section 6. **Obligations of Participant Upon Termination**

~~**Whenever a Participant ceases to be such, it shall continue to be obligated (a) to satisfy any deficiency in the amount of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including (i) any deficiency resulting from a pro rata charge with respect to which the Participant has given notice to the Corporation of its election to terminate its business with the Corporation pursuant to Section 8 of this Rule (a "Section 8 Pro Rata Charge") and (ii) any deficiency the Participant is required to satisfy pursuant to Section 3 or 5 of this Rule (other than any deficiency referred to in the preceding clause (i) or, subject to Section 8 of this Rule, any pro rata charge under Section 5 of this Rule arising after the Section 8 Pro Rata Charge) and (b) to discharge any liability of the Participant to the Corporation resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant; provided, however, that, subject to Section 8 of this Rule, the aggregate liability of the Participant for any Section 8 Pro Rata Charge shall not exceed the amount of its Aggregate Required Deposit and Investment, as fixed immediately prior to the time of such charge, plus 100% of the amount thereof.**~~

(a) Upon Any ~~Termination~~*Voluntary Retirement*

~~Subject to Section 8 of this Rule, whenever a Participant ceases to be such, it shall continue to be obligated (i) to satisfy any deficiency in the amounts of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including any deficiency the Participant is required to satisfy pursuant to Sections 3 or 4 of this Rule, and (ii) to discharge any liability of the Participant to the Corporation resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant.~~

If a Participant elects to terminate its business with the Corporation pursuant to Section 1 of Rule 2 for reasons other than those specified in Section 8 of this Rule (a "Voluntary Retirement"), the Participant shall:

(1) provide a written notice of such termination to the Corporation ("Voluntary Retirement Notice"), as provided for in Section 1 of Rule 2;

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

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

(4) ensure that all activities and use of Corporation's services by the Participant cease on or prior to the Voluntary Retirement Date.

If the Participant fails to comply with the requirements of this Paragraph (a), its Voluntary Retirement Notice shall be deemed void.

If a Participant submits a Voluntary Retirement Notice and subsequently receives a Settlement Charge Notice or the first Loss Allocation Notice in a round on or prior to the Voluntary Retirement Date, such Participant must timely submit a Termination Notice in order to benefit from its Settlement Charge Cap or Loss Allocation Cap, respectively. In such a case, the Termination Notice shall supersede and void the pending Voluntary Retirement Notice submitted by the Participant.

(b) Upon Termination Following Settlement Charge or Loss Allocation

If a Participant timely notifies the Corporation of its election to terminate its business with the Corporation in respect of a settlement charge as set forth in Section 4 of this Rule or a loss allocation as set forth in Section 5 of this Rule ("Termination Notice"), the Participant shall:

(1) specify in the Termination Notice an effective date of termination ("Participant Termination Date"), which date shall be no later than ten Business Days following the last day of the applicable Settlement Charge Termination Notification Period or Loss Allocation Termination Notification Period;

(2) cease all *activities and use of the Corporation's services other than activities and services necessary to terminate the business of the Participant with the Corporation*~~activity that would result in transactions being submitted to the Corporation for clearance and settlement after the Participant Termination Date~~; and

(3) ensure that all activities and use of Corporation*'s* services ~~for which~~*by* such Participant ~~may have any obligation to the~~

~~Corporation~~ cease *on or* prior to the Participant Termination Date.

A Participant that terminates its business with the Corporation in compliance with this Paragraph (b) shall nevertheless remain obligated for its pro rata share of losses and liabilities with respect to any Event Period for which it is otherwise obligated hereunder; however, its aggregate obligation shall be limited to the amount of its Loss Allocation Cap (as fixed in the round for which it withdrew).

If the Participant fails to comply with the requirements of this Paragraph (b), its Termination Notice will be deemed void, and the Participant will remain subject to further pro rata settlement charges pursuant to Section 4 of this Rule or loss allocations pursuant to Section 5 of this Rule as if it had not given such Termination Notice.

(c) After Any Termination

Whenever a Participant ceases to be such, it shall continue to be obligated (i) to satisfy any deficiency in the amounts of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including any deficiency the Participant is required to satisfy pursuant to Sections 3 or 4 of this Rule, (ii) subject to Section 8 of this Rule, to satisfy any loss allocation pursuant to Section 5 of this Rule, and (iii) to discharge any liability of the Participant to the Corporation resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant.

Section 7. **Increased Participants Fund Deposits and Preferred Stock Investments**

Except for any **~~increase in the amount of the Required~~Additional** Participants Fund Deposit**~~s of a Participant pursuant to Section 2~~, which shall be Deposited on demand as provided in Section 1(b)** of **this** Rule **~~9(A)~~**, the Corporation shall give a Participant at least ten Business Days prior notice of any proposed increase in its Required Participants Fund Deposit or Required Preferred Stock Investment.

(a) **Required Participants Fund Deposits**

If a Participant does not, within the time allowed, give the Corporation notice (in the manner specified in Section 4 of Rule 2) of its election to terminate its business with the Corporation, the Participant shall be required to Deposit the amount needed to satisfy any such increase in its Required Participants Fund Deposit, and the obligation of the Participant to make such deposit shall not be affected by any subsequent voluntary or involuntary cessation of participation of the Participant. From and after the time such increase becomes effective, the obligations of the Participant to the Corporation shall be determined in accordance with such increased Required Participants Fund Deposit of the Participant whether or not the appropriate amount has been Deposited in the Participants Fund. For purposes of this Section, an increase in the Required Participants Fund Deposit of a Participant shall include an increase resulting from the application of the

formulas provided for in Section 1**(a)** of this Rule and shall also include an increase resulting from a change in such formulas.

(b) **Required Preferred Stock Investments**

If a Participant does not, within the time allowed, give the Corporation notice (in the manner specified in Section 4 of Rule 2) of its election to terminate its business with the Corporation, the Participant shall be required to purchase the number of shares of Preferred Stock needed to satisfy any such increase in its Required Preferred Stock Investment, and the obligation of the Participant to make such purchase shall not be affected by any subsequent voluntary or involuntary cessation of participation of the Participant. From and after the time such increase becomes effective, the obligations of the Participant to the Corporation shall be determined in accordance with such increased Required Preferred Stock Investment of the Participant whether or not the appropriate number of shares of Preferred Stock have been purchased. For purposes of this Section, an increase in the Required Preferred Stock Investment of a Participant shall include an increase resulting from the application of the formulas provided for in Section 2**(a)** of this Rule and shall also include any increase resulting from a change in such formulas.

Section 8. **Termination; Obligation for Pro Rata Settlement Charges and Loss Allocations**

(a) Settlement Charges

If a Participant, within **~~ten~~five** Business Days after **~~receipt~~the issuance** of **~~notice of a pro rata charge for a loss or liability incurred by the Corporation~~a Settlement Charge Notice** pursuant to Section 4 of this Rule**~~,~~** gives notice to the Corporation of its election to terminate its business with the Corporation, the Participant shall nevertheless remain obligated for **~~such pro rata charge. The Corporation may also make additional pro rata charges~~(i) its pro rata settlement charge related to such Settlement Charge Notice and (ii) all other pro rata settlement charges ~~until~~through the Participant Termination Date. ~~attributable to the same loss or liability. In that event, notwithstanding the limitation set forth in Section 6 of this Rule, t~~*Subject to Section 8(c), t*~~T~~**he obligation of a Participant which elects to terminate its business with the Corporation pursuant to this **~~Section~~Paragraph** shall be limited to the **~~greater of (a) the~~** amount of its Aggregate Required Deposit and Investment, as fixed **~~immediately prior to~~on** the **~~time~~day** of the **~~first~~** pro rata **settlement** charge **that was the subject of the Settlement Charge Notice**, plus 100% of the amount thereof**~~, or (b) the amount of all prior pro rata charges attributable to the same loss or liability with respect to which the Participant has not timely exercised its right to limit its obligation as provided above~~**.

(b) Loss Allocations

If a Participant, within five Business Days after the issuance of a first Loss Allocation Notice for any round pursuant to Section 5 of this Rule gives notice to the Corporation of its election to terminate its business with the Corporation, the

Participant shall nevertheless remain liable for (i) the loss allocation that was the subject of such Loss Allocation Notice and (ii) all other loss allocations made by the Corporation with respect to the same Event Period. ***Subject to 8(c),*** ***t*~~T~~**he obligation of a Participant which elects to terminate its business with the Corporation pursuant to this Paragraph shall be limited to the amount of its Aggregate Required Deposit and Investment, as fixed on the first day of the Event Period, plus 100% of the amount thereof.**

(c) Maximum Obligation

Notwithstanding anything to the contrary, under no circumstances shall the aggregate obligation of a Participant to the Corporation pursuant to both Paragraph (a) and Paragraph (b) of this Section 8 exceed the amount of its Aggregate Required Deposit and Investment, as fixed on the earlier of the day specified in the last sentence of Paragraph (a) or the day specified in the last sentence of Paragraph (b), plus 100% of the amount thereof.

(d) Obligation to Replenish Deposit

If the amount of the Actual Participants Fund Deposit of a Participant is insufficient to satisfy a pro rata **settlement** charge~~, as limited by~~ **pursuant to** Section ~~6~~**4** of this Rule and **Paragraph (a) of this Section or a loss allocation pursuant to Section 5 of this Rule and Paragraph (b) of** this Section, the Participant shall be obligated to Deposit the amount of any such deficiency to the Participants Fund notwithstanding the fact that the Participant subsequently ceases to be a Participant.

Section 9. ***No Waiver;*** **Recovery and Repayment**

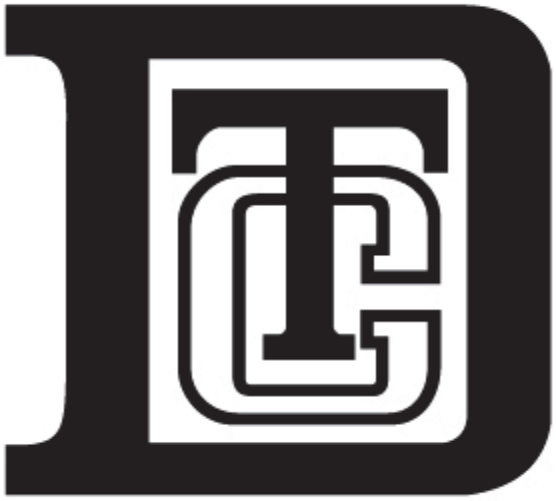
No loss allocation under this Rule shall constitute a waiver of any claim the Corporation may have against a Participant for any losses or liabilities to which the Participant is subject under these Rules and Procedures, including, without limitation, any loss or liability to which it may be subject under this Rule. If ~~a loss~~**any amount is** charged ~~pro rata~~**pursuant to Section 4 of this Rule or pursuant to Section 5 of this Rule and such amount** is afterward recovered by the Corporation, in whole or in part, the net amount of the recovery shall be ~~credited~~**repaid ratably (on the same basis that it was originally charged or allocated)** to the Persons against ~~whom~~**which** the ~~loss~~**amount** was **originally** charged ~~in proportion to the amounts charged against them~~ by (a) crediting the appropriate amount~~s~~ to the Actual Participants Fund Deposits of Persons which are still Participants and (b) paying the appropriate amount~~s~~ in cash to Persons which are not still Participants.

****

SR-DTC-2017-804 Amendment No. 1
EXHIBIT 5

Bolded, underlined text indicates added language.

~~**Bolded, strikethrough text**~~ indicates deleted language.



RULES

BY-LAWS

ORGANIZATION CERTIFICATE

THE DEPOSITORY TRUST COMPANY

RULE 1
DEFINITIONS; GOVERNING LAW

****

Section 2. Set forth below are certain other terms defined in these Rules, and the place in these Rules where such other terms are defined and used:

Defined Term	Rule	Section
Additional Participants Fund Deposit	**Rule 4**	**Section 1**
Cash	Rule 4(A)	Section 1
Contra Party	Rule 9(B)	Section 1
Corporate Contribution	**Rule 4**	**Section 5**
Custodian	Rule 2	Section 1
CTA Participant	**Rule 4**	**Section 5**
Declared Non-Default Loss Event	**Rule 4**	**Section 5**
Deemed Net Additions	Rule 9(B)	Section 2
Defaulting Participant	Rule 9(B)	Section 2
Default Loss Event	**Rule 4**	**Section 5**
End-of-Day Credit Facility	Rule 4	Section 2
Event Period	**Rule 4**	**Section 5**
FATCA	Rule 2	Section 9
FATCA Certification	Rule 2	Section 9
FATCA Compliance Date	Rule 2	Section 9
FATCA Compliant	Rule 2	Section 9
FFI Participant	Rule 2	Section 9
Interested Person	Rule 22	Section 1
Loss Allocation Cap	**Rule 4**	**Section 5**
Loss Allocation Notice	**Rule 4**	**Section 5**
Loss Allocation Termination Notification Period	**Rule 4**	**Section 5**
MMI Funding Acknowledgment	Rule 9(C)	Section 1
MMI Optimization	Rule 9(C)	Section 1
Net-Net Credit Balance	Rule 9(D)	
Net-Net Debit Balance	Rule 9(D)	
Panel	Rule 22	Section 3
Participant Default	**Rule 4**	**Section 3**
Participant Representative	Rule 7	Section 1
Participant Termination Date	**Rule 4**	**Section 6**
P&I Cash Advance	Rule 4(A)	Section 3
P&I Credit Facility	Rule 4(A)	Section 3
P&I Finance Cost	Rule 4(A)	Section 3
P&I Finance Period	Rule 4(A)	Section 3
P&I Payment Date	Rule 4(A)	Section 3
P&I Receipt Date	Rule 4(A)	Section 3

P&I Reversal Date	Rule 4(A)	Section 3
P&I Scheduled Payment	Rule 4(A)	Section 3
P&I Security Interest	Rule 4(A)	Section 3
Pool	Rule 22	Section 3
Preferred Stock Security Interest	Rule 4	Section 2
~~**Section 8 Pro Rata Charge**~~	~~**Rule 4**~~	~~**Section 6**~~
Settlement Charge Cap	**Rule 4**	**Section 4**
Settlement Charge Notice	**Rule 4**	**Section 4**
Settlement Charge Termination Notification Period	**Rule 4**	**Section 4**
Settling Bank Refusal	Rule 9(D)	
Short Charge	Rule 9(B)	Section 2
Special Representative	Rule 6	
Termination Notice	**Rule 4**	**Section 6**
Time of Insolvency	Rule 12	Section 4
Transaction	Rule 6	
Voluntary Retirement	**Rule 4**	**Section 6**
Voluntary Retirement Date	**Rule 4**	**Section 6**
Voluntary Retirement Notice	**Rule 4**	**Section 6**
Voting Rights	Rule 6	

****

RULE 2

PARTICIPANTS AND PLEDGEES

Section 1. The Corporation shall make its services, or certain of its services, available to partnerships, corporations or other organizations or entities which (i) apply to the Corporation for the use of such services, (ii) meet the qualifications specified in Rule 3, (iii) are approved by the Corporation and (iv) if required, make a Required Participants Fund Deposit pursuant to Section 1 of Rule 4 and Required Preferred Stock Investment pursuant to Section 2 of Rule 4. The Corporation shall approve applications only upon a determination by the Corporation that the applicant meets the standards of financial condition, operational capability and character defined below:

(a) the applicant has demonstrated that it has sufficient financial ability to make any Required Participants Fund Deposit and Required Preferred Stock Investment and meet all of its anticipated obligations to the Corporation;

(b) the applicant has demonstrated that it has adequate personnel capable of handling transactions with the Corporation and adequate physical facilities, books and records and procedures to fulfill its anticipated commitments to, and to meet the operational requirements of, the Corporation, other Participants and Pledgees with necessary promptness and accuracy and to conform to any condition and requirement which the Corporation reasonably deems necessary for its protection;

(c) the Corporation has received no substantial information which would reasonably and adversely reflect on the applicant or its Controlling Management to such extent that access of the applicant to the Corporation should be denied; and any such applicant may be deemed not to meet the qualifications set forth in this paragraph if:

(i) the Corporation shall have reasonable grounds to believe that the applicant or its Controlling Management to be responsible for (A) making a misstatement of a material fact or omitting to state a material fact to the Corporation in connection with its application to become a Participant or thereafter or (B) fraudulent acts or the violation of the Securities Act, the Exchange Act, the Investment Company Act, the Investment Advisers Act or any rule or regulation thereunder;

(ii) the applicant or its Controlling Management has been convicted within the ten years preceding the filing of its application to become a Participant or at any time thereafter of any crime, felony or misdemeanor which involves the purchase, sale or transfer of any security or the breach of fiduciary duty, or arose out of conduct of the business of a broker, dealer, investment company, investment adviser, underwriter, bank, trust company, fiduciary, insurance company or other financial institution; or involves robbery, larceny, embezzlement, fraudulent conversion, forgery or misappropriation of funds, securities or other property; or involves any violation of Section 1341, 1342 or 1343 of Title 18 of the United States Code;

(iii) the applicant or its Controlling Management is permanently or temporarily enjoined by order, judgment or decree of any court or other governmental authority of competent jurisdiction from acting as a broker, dealer, investment company, investment adviser, underwriter, bank, trust company, fiduciary, insurance company or other financial institution or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase, sale or Delivery of any security, and the enforcement of such injunction or prohibition has not been stayed;

(iv) the applicant or its Controlling Management has been expelled or suspended, or had its participation terminated from a national securities association or exchange registered under the Exchange Act, a self-regulatory organization as defined in Section 3(a)(26) of the Exchange Act, or a corporation which engages in clearance and settlement activities or a securities depository or has been barred or suspended from being associated with any member of such an exchange, association, corporation or securities depository;

(v) the applicant is subject to statutory disqualification as defined in Section 3(a)(39) of the Securities Exchange Act of 1934, or an order of similar effect issued by a Federal or State banking authority, or other examining authority or regulator, including a non-U.S. examining authority or regulator.

(d) the applicant meets the requirements set forth in the Policy Statement on the Admission of Participants set forth in these Rules

(e) with regard to any applicant that shall be an FFI Participant, such applicant must be FATCA Compliant.

In addition to items (a) through (c) above, the Corporation shall retain the right to deny membership to an applicant if the Corporation becomes aware of any factor or circumstance about the applicant or its Controlling Management which may impact the suitability of that particular applicant as a Participant of the Corporation. Further, applicants are required to inform the Corporation as to any member of its Controlling Management that is or becomes subject to statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act).

The Corporation may approve the application of any applicant, either unconditionally or on an appropriate temporary or other conditional basis, if the Corporation determines that any standard specified in this Section, as applied to such applicant or its Controlling Management**,** is unduly or disproportionately severe or that the conduct of such applicant or its Controlling Management has been such as not to make it against the interest of the Corporation, other Participants or Pledgees or the public to approve such application.

Notwithstanding the foregoing, the Corporation may decline to accept the application of any applicant upon a determination by the Corporation that the Corporation does not have adequate personnel, space, data processing capacity or other operational capability at that time to perform its services for additional Participants without impairing the ability of the Corporation to provide services for its existing Participants, to assure the prompt, accurate and orderly processing and settlement of Securities transactions, to safeguard the funds and Securities held by or for the Corporation for Participants or Pledgees or otherwise to carry out its functions; provided, however, that applicants whose applications are denied pursuant to this paragraph shall be approved as promptly as the capabilities of the Corporation permit in the order in which their applications were filed with the Corporation.

The Corporation may, from time to time, determine those Participants that shall be required to fulfill, within the time frames established by the Corporation, certain operational testing requirements (the scope of such testing to be determined by the Corporation in its sole discretion) and related reporting requirements (such as reporting the test results to the Corporation in a manner specified by the Corporation) that may be imposed by the Corporation to test and monitor the continuing operational capability of the Participant. Such Participants shall, as so required, comply with the subject operational testing requirement within specified time frames. The Corporation may assess a fine on any Participant that fails to comply with operational testing and related reporting requirements within the specified time frame.

The Corporation has established standards for designating those Participants who shall be required to participate in annual business continuity and disaster recovery testing that the Corporation reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event that business continuity and disaster recovery plans are required to be activated. The standards shall take into account factors such as:

(1) activity-based thresholds; (2) significant operational issues of the Participant during the twelve months prior to the designation; and (3) past performance of the Participant with respect to operational testing. The specific standards adopted by the Corporation and any updates or modifications thereto shall be published to Participants and applied on a prospective basis.

Upon notification that the Participant has been designated to participate in the annual business continuity and disaster recovery testing, as described above, Participants shall be required to fulfill, within the timeframes established by the Corporation, certain testing requirements (the scope of such testing to be determined by the Corporation in its sole discretion) and related reporting requirements (such as reporting the test results to the Corporation in a manner specified by the Corporation) that may be imposed by the Corporation.

The Corporation shall apply the foregoing requirements on a nondiscriminatory basis. Any applicant aggrieved by action taken by the Corporation in applying such qualifications shall be entitled to a right of appeal in accordance with Rule 22.

The entities which have made a Required Participants Fund Deposit pursuant to Section 1 of Rule 4 and Required Preferred Stock Investment pursuant to Section 2 of Rule 4 and to which the Corporation makes all of its services available shall be known as Participants. The entities which, if required, have made a Required Participants Fund Deposit pursuant to Section 1 of Rule 4 and Required Preferred Stock Investment pursuant to Section 2 of Rule 4 and to which the Corporation makes only certain of its services available shall be known as Limited Participants. For purposes of these Rules, the term "Participant" shall include the term "Limited Participant" unless the (i) context otherwise requires or (ii) the Procedures otherwise provide.

The Corporation may at any time cease either temporarily or definitively to make its services available to a Participant in accordance with these Rules and the Participant shall, upon receipt of notice thereof given by the Corporation as provided in these Rules cease to be a Participant; provided, however, that if the Corporation notifies a Participant that it has ceased to act for it only with respect to a particular transaction or transactions, the Participant shall continue to be a Participant. A Participant may terminate its business with the Corporation by notifying the Corporation as provided in Sections 7 or 8 of Rule 4 or, if for a reason other than those specified in said Sections 7 and 8, by notifying the Corporation thereof; the Participant shall, upon receipt of such notice by the Corporation, cease to be a Participant**, subject to Section 6 of Rule 4**. In the event that a Participant shall cease to be a Participant, the Corporation shall thereupon cease to make its services available to the Participant, except that the Corporation may perform services on behalf of the Participant or its successor in interest necessary to terminate the business of the Participant or its successor with the Corporation, and the Participant or its successor shall pay to the Corporation the fees and charges provided by these Rules with respect to services performed by the Corporation subsequent to the time when the Participant ceases to be a Participant. The Corporation shall immediately notify the SEC if it temporarily or definitively ceases to make its services available to a Participant in accordance with these Rules.

****

RULE 4

PARTICIPANTS FUND AND PARTICIPANTS INVESTMENT

Section 1. **Participants Fund**

The Participants Fund shall comprise the Actual Participants Fund Deposits of all Participants, as provided in these Rules and as specified in the Procedures.

(a) **Required Participants Fund Deposits**

Each Participant shall be required to make a Required Participants Fund Deposit in accordance with one or more formulas based upon the Participant's use of the facilities of the Corporation; provided, however, that (i) each Participant other than a Limited Participant shall be required to make at least a minimum Required Participants Fund Deposit and (ii) depending upon the services it utilizes, a Limited Participant may or may not be required to make a Required Participants Fund Deposit. The formulas for determining the Required Participants Fund Deposits of Participants and the amount of the minimum Required Participants Fund Deposit shall be fixed by the Corporation and specified in the Procedures so as to assure that the aggregate amount of Required Participants Fund Deposits of Participants will be increased to provide for costs and expenses incurred by it incidental to the voluntary liquidation **or wind-down** of the Corporation~~**, if any**~~.

The Corporation may from time to time change the formulas for determining the Required Participants Fund Deposits of Participants and the amount of the minimum Required Participants Fund Deposit; provided, however, that notice of such change shall be given to each Participant at least ten Business Days in advance of the effective date thereof. ~~**The Corporation may require a Participant to Deposit an additional amount to the Participants Fund pursuant to Section 2 of Rule 9(A). Any such additional amount shall be part of the Required Participants Fund Deposit of such Participant.**~~

~~**(b)**~~ The Corporation shall determine on a daily basis for each Participant the amount of its Required Participants Fund Deposit, and the Corporation shall notify each Participant of any change in the amount of its Required Participants Fund Deposit. If the Actual Participants Fund Deposit of a Participant is less than the amount of its Required Participants Fund Deposit, the Participant shall Deposit to the Participants Fund, in the manner specified in the Procedures, the amount needed to eliminate the deficiency. If the Actual Participants Fund Deposit of a Participant is more than the amount of its Required Participants Fund Deposit, the Corporation shall pay to the Participant from the Participants Fund, in the manner specified in the Procedures, the amount of the excess, or such lesser amount as the Participant may request; provided, however, that the Corporation may determine, in its sole discretion, not to return such excess deposit (i) if the Collateral Monitor with respect to any Account Family of the Participant is negative

or will be negative as a consequence thereof, (ii) if any Account Family of the Participant will, immediately after the return of such excess deposit, have a negative balance which exceeds the Net Debit Cap for that Account Family, (iii) until any amount which is required to be charged or levied against the Participant or its Required Participants Fund Deposit is paid by the Participant to the Corporation, (iv) if the Corporation determines that the recent use of any service of the Corporation by the Participant is materially different from its prior use of such service and that a higher Required Participants Fund Deposit is thereby justified and (v) until after the amounts, if any, to be charged or levied against the Participant or its Required Participants Fund Deposit on account of transactions which occurred previously have been satisfied. Notwithstanding the foregoing, the Corporation may withhold all or part of any excess deposit of a Participant if the Corporation determines, in its sole discretion, that such action is necessary for the protection of the Corporation, other Participants or Pledgees.

(b) Additional Participants Fund Deposits

The Corporation may require a Participant to Deposit, on demand, an additional amount to the Participants Fund pursuant to Section 2 of Rule 9(A) (an "Additional Participants Fund Deposit"). Any such Additional Participants Fund Deposit shall be part of the Required Participants Fund Deposit of such Participant.

(c) **Voluntary Participants Fund Deposits**

A Participant may make a Voluntary Participants Fund Deposit to the Participants Fund, ~~as~~**in the manner** specified in the Procedures. A Voluntary Participants Fund Deposit shall not be part of the Required Participants Fund Deposit of the Participant but shall be part of its Actual Participants Fund Deposit.

(d) **Cash Participants Fund**

The Required Participants Fund Deposit~~,~~ **(including any Additional Participants Fund Deposit)** and any Voluntary Participants Fund Deposit of a Participant shall be in cash. All amounts due to or from a Participant in connection with increases and decreases in its Required Participants Fund Deposit (**including ~~pursuant to this Section or Section 2 of Rule 9(A)) and~~any Additional Participants Fund Deposit),** any Voluntary Participants Fund Deposit**, and any charge pursuant to Section 5 of this Rule,** may be credited to or debited from its Settlement Account.

(e) **Allocation of Participants Fund Deposits Among Account Families**

A Participant with more than one Account Family may, in the manner specified in the Procedures, designate the portion of its Actual Participants Fund Deposit to be allocated to each Account Family at the opening of business each Business Day. The Corporation shall not be obligated to make any allocations in accordance with such instructions if the Corporation determines, in its sole discretion, that such action might result in financial loss to the Corporation, other Participants or Pledgees. The Corporation may allocate **among Account Families**, in the manner specified in the

Procedures, any portion of the Actual Participants Fund Deposit of a Participant which is not allocated by the Participant.

(f) **Maintenance, Permitted Use and Investment of Participants Fund**

The Actual Participants Fund Deposits of Participants to the Participants Fund shall be held by the Corporation and ~~shall~~**may** be ~~applied~~**used or invested** as provided in these Rules and as specified in the Procedures.

The **Actual** Participants Fund ~~shall be limited to the satisfaction of losses or~~ **Deposits of Participants may be used (i) to satisfy the obligations of Participants to the Corporation, as provided in Section 3 of this Rule, (ii) to fund settlement among non-defaulting Participants, as provided in Section 4 of this Rule and (iii) to satisfy losses and** liabilities of the Corporation incident to the business of the Corporation**, as provided in Section 5 of this Rule**. For purposes of this ~~Section~~**Rule**, the term "business" with respect to the Corporation shall mean the doing of all things in connection with or relating to the Corporation's performance of the services specified in the first and second paragraphs of Rule 6 or the cessation of such services. Notwithstanding anything to the contrary in this Rule, the Participants Fund may be used as provided in any Clearing Agency Agreement.

~~(g)~~ The cash in the Participants Fund may be partially or wholly invested by the Corporation~~, in its sole discretion, for its account in securities issued or guaranteed as to principal and interest by the United States or agencies or instrumentalities of the United States or repurchase agreements relating to securities issued or guaranteed as to principal and interest by the United States or agencies or instrumentalities of the United States and to the extent not so invested shall be deposited by the Corporation in its name in a depository or depositories selected by the Corporation. Any securities, repurchase agreements or deposits~~ **in accordance with the Clearing Agency Investment Policy adopted by the Corporation. Any financial assets** in which cash in the Participants Fund is invested may be sold by the Corporation or Pledged as security for loans made to the Corporation, as provided in Rule 4(A). The Corporation shall pay interest to a Participant on the cash such Participant has Deposited to the Participants Fund at the rate the Corporation earns on ~~securities and repurchase agreement in which~~**its investment of** such cash ~~is invested~~ or as specified in the Procedures.

(g) Return of Participants Fund Deposits to Participants

~~(h)~~ After three months from when a Person has ceased to be a Participant, the Corporation shall return to such Person (or its successor in interest or legal representative) the amount of the Actual Participants Fund Deposit of the former Participant plus accrued and unpaid interest to the date of such payment (including any amount added to the Actual Participants Fund Deposit of the former Participant pursuant to Section 2(~~h~~**e**) of this Rule), provided that the Corporation receives such indemnities and guarantees as the Corporation deems satisfactory with respect to the matured and contingent obligations of the former Participant to the Corporation. Otherwise, within

~~four~~**two** years after a Person has ceased to be a Participant, the Corporation shall return to such Person (or its successor in interest or legal representative) the amount of the Actual Participants Fund Deposit of the former Participant plus accrued and unpaid interest to the date of such payment, except that the Corporation may offset against such payment the amount of any known loss or liability ~~to~~**of** the Corporation arising out of ~~a~~**or** related to the obligations of the former Participant to the Corporation.

Section 2. **Participants Investment**

The Participants Investment shall comprise the Required Preferred Stock Investments of all Participants, as provided in these Rules and as specified in the Procedures.

(a) **Required Preferred Stock Investments**

Each Participant shall be required to make a Required Preferred Stock Investment in accordance with one or more formulas based upon the Participant's use of the facilities of the Corporation; provided, however, that (i) each Participant other than a Limited Participant shall be required to make at least a minimum Required Preferred Stock Investment and (ii) depending upon the services it utilizes, a Limited Participant may or may not be required to make a Required Preferred Stock Investment. The formulas for determining the Required Preferred Stock Investments of Participants and the amount of the minimum Required Preferred Stock Investment shall be fixed by the Corporation and specified in the Procedures. The Corporation may from time to time change the formulas for determining the Required Preferred Stock Investments of Participants and the amount of the minimum Required Preferred Stock Investment; provided, however, that notice of such change shall be given to each Participant at least ten Business Days in advance of the effective date thereof.

~~**(b)**~~ The Corporation shall determine on a quarterly basis for each Participant the amount of its Required Preferred Stock Investment, and the Corporation shall notify each Participant of any change in the amount of its Required Preferred Stock Investment. If the Actual Preferred Stock Investment of a Participant is less than the amount of its Required Preferred Stock Investment, such Participant shall purchase, in the manner specified in the Procedures, the number of outstanding shares of Preferred Stock needed to eliminate the deficiency. If the Actual Preferred Stock Investment of a Participant is more than the amount of its Required Preferred Stock Investment, such Participant shall sell, in the manner specified in the Procedures, the number of its shares of Preferred Stock needed to eliminate the excess. The Corporation, acting as agent and attorney-in-fact for its Participants, shall effect the foregoing purchases and sales of shares of Preferred Stock on their behalf, so that each Participant shall own the amount of its Required Preferred Stock Investment, as adjusted from time to time in accordance with the provisions of ~~**Paragraph (a) of this Section 2 and**~~ this Paragraph ~~**(b)**~~.

~~**(c)**~~ A Participant may not purchase from the Corporation or any other Participant any shares of Preferred Stock in excess of the amount of its Required Preferred Stock Investment.

~~(d)~~ Except as otherwise provided in ~~this Paragraph or~~ Paragraph (~~i~~**f**) of this Section, all purchases and sales of Preferred Stock pursuant to these Rules shall be made in cash at a price equal to the aggregate Preferred Stock Par Value of the shares plus accrued and unpaid dividends thereon to the date of such purchase or sale; provided, however, that (i) the portion of the price equal to the aggregate Preferred Stock Par Value of the shares shall be paid on the date of such purchase and sale and (ii) the portion of the price equal to the accrued and unpaid dividends thereon shall be paid on the first Preferred Stock Dividend Date following the date of such purchase and sale if dividends are paid on the Preferred Stock on such Preferred Stock Dividend Date.

All amounts due to or from Participants in connection with purchases and sales of Preferred Stock shall be credited to or debited from their Settlement Accounts, except that any amounts due to a Person which has ceased to be a Participant shall be paid to such account as the former Participant shall designate for this purpose. The Corporation, acting as agent and attorney-in-fact for its Participants, shall effect all payments on their behalf, at the times and in the amounts provided in these Rules and as specified in the Procedures, without any further action or consent required on the part of such Participants, and, without limiting the generality of the foregoing, the Corporation may apply all dividends paid on the Preferred Stock to the payments required to be made to all past and present holders of Preferred Stock pursuant to this Section.

Any determination by the Corporation of a number of shares of Preferred Stock to be purchased or sold pursuant to these Rules shall be made by converting any fraction into a decimal rounded to the nearest one-hundred-thousandth and by rounding to the nearest one-hundred-thousandth the product of any such decimal and any number of shares of Preferred Stock. In order to make the products of all such determinations by the Corporation pursuant to any one provision of these Rules consistent with the total number of shares of Preferred Stock being purchased and sold, the Corporation shall randomly assign to ~~a~~**or** deduct from the number of shares of Preferred Stock being purchased from or sold to any Participant the difference between such total number of shares of Preferred Stock and the sum of such products.

(b) Allocation of Preferred Stock Investments Among Account Families

~~(e)~~ A Participant with more than one Account Family may, in the manner specified in the Procedures, designate the portion of its Actual Preferred Stock Investment to be allocated to each Account Family at the opening of business each Business Day. The Corporation shall not be obligated to make any allocations in accordance with such instructions if the Corporation determines, in its sole discretion, that such action might result in financial loss to the Corporation, other Participants or Pledgees. The Corporation may allocate **among Account Families**, in the manner specified in the Procedures, any portion of the Actual Preferred Stock Investment of a Participant which is not allocated by the Participant.

(c) Security Interest in Preferred Stock Investments of Participants

~~(f)~~ To secure the obligations of Participants to the Corporation, the Corporation, acting as agent and attorney-in-fact for its Participants, may (i) Pledge the entire right, title and interest of any Participant in and to some or all of its shares of Preferred Stock, together with all distributions thereon, proceeds thereof and replacements or substitutions therefor (a "Preferred Stock Security Interest"), as collateral security for the obligations of the Corporation to its Lenders under any credit facility maintained by the Corporation for the purpose of funding the end-of-day settlement of transactions processed through the facilities of the Corporation (an "End-of-Day Credit Facility") or (ii) sell some or all of the shares of Preferred Stock of any Participant to other Participants (who shall be obligated to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and apply the proceeds of such sale to the obligations of such Participant to the Corporation. Any such Pledge of a Preferred Stock Security Interest pursuant to this Paragraph ~~(f)~~, shall be made by appropriate entries on the books of the Corporation (and such entries**, together with these Rules,** shall be deemed to be a security agreement for purposes of the NYUCC) or by any other means provided in the NYUCC, and each Participant hereby grants to the Corporation an irrevocable power of attorney (coupled with an interest) to execute and deliver, in the name and on behalf of such Participant, any and all additional documents, instruments, agreements and financing statements necessary or desirable as determined by the Corporation, in its sole discretion, to create and perfect the Pledge of the Preferred Stock Security Interest by the Corporation to its Lenders under the End-of-Day Credit Facility. Any such sale of shares of Preferred Stock pursuant to this Paragraph ~~(f)~~, and **any** application of the proceeds thereof as provided herein, shall be effected by the Corporation without any further action or consent required on the part of the Participant whose shares of Preferred Stock are sold, and the Settlement Account of such Participant shall be credited with the full amount of such proceeds.

(d) Dividends on Preferred Stock Investments of Participants

~~(g)~~ The Corporation shall pay dividends on the Preferred Stock at a rate fixed by the Board of Directors in accordance with the Organization Certificate of the Corporation.

(e) Sale of Preferred Stock Investments of Participants

~~(h)~~ Promptly after a Person has ceased to be a Participant, the Corporation, acting as agent and attorney-in-fact for such Person (or its successor in interest or legal representative), shall sell all of the shares of Preferred Stock of the former Participant to current Participants (who shall be required to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and add the proceeds thereof to the Actual Participants Fund Deposit of the former Participant for disposition in accordance with Section 1(~~h~~**g**) of this Rule.

(f) Permitted Transfers of Preferred Stock Investments of Participants

~~(i)~~ Shares of Preferred Stock may be transferred from a Participant to another Person, subject to the provisions of **this** Paragraph ~~**(f) of this Section 2**~~:

(1) ~~(A)~~ if (~~1~~**A**) such Participant gives the Corporation at least twenty Business Days prior written notice of the proposed transfer and (~~2~~**B**) such transfer is effected in the course of or pursuant to (~~x~~**i**) a merger or consolidation of such Participant into or with such Person or (~~y~~**ii**) a sale of all or substantially all of the business and assets of such Participant to such Person and (~~3~~**C**) such Person is also a Participant; or

(2) ~~(B)~~ if (~~1~~**A**) such Participant (~~x~~**i**) gives the Corporation and all other Participants at least twenty Business Days prior written notice of the proposed transfer and (~~y~~**ii**) offers to sell the shares to such other Participants (pro rata their Required Preferred Stock Investments at the time of such offer) at the lower of (~~1~~**x**) the aggregate purchase price that such Person has agreed to pay for the shares or (~~H~~**y**) the aggregate Preferred Stock Par Value of the shares and (~~2~~**B**) the Corporation, acting as agent and attorney-in-fact for such other Participants, declines on their behalf to purchase the shares on such terms.

No shares of Preferred Stock may be purchased, sold or transferred except in accordance with this Paragraph ~~(i)~~ or in connection with the quarterly reallocation of shares of Preferred Stock pursuant to Paragraph (~~b~~**a**) of this Section.

Section 3. **Application of Participants Fund Deposits and Preferred Stock Investments to Participant Default**

If a Participant is **a Participant that is a Defaulting Participant pursuant to Rule 9(B) or is otherwise** obligated to the Corporation~~, other than for a pro rata charge~~ pursuant to ~~Section 5 of this Rule~~**these Rules and the Procedures**~~,~~ and fails to satisfy **any** such obligation **(a "Participant Default")**, including**,** without limitation**,** the obligation of the Participant to reimburse the Corporation for the amount of any payment with respect to such Participant paid by or owing from the Corporation to any other clearing agency pursuant to a Clearing Agency Agreement, the Corporation shall**, to the extent necessary to eliminate such obligation, apply some or all of the Actual Participants Fund Deposit of such Participant to such obligation to satisfy the Participant Default.**

If any such application of the Actual Participants Fund Deposit of a Participant is insufficient to satisfy such obligation, the Corporation may, in such order and ~~in~~ such amounts as the Corporation shall determine, in its sole discretion, to the extent necessary to ~~eliminate~~**satisfy** such obligation:

~~**(a) apply some or all of the Actual Participants Fund Deposit of such Participant to such obligation;**~~

(~~b~~**a**) Pledge some or all of the shares of Preferred Stock of such Participant to its Lenders as collateral security for a loan under the End-of-Day **Credit** Facility**, and apply the proceeds of such loan to satisfy such obligation**; and/or

(~~c~~**b**) sell some or all of the shares of Preferred Stock of such Participant to other Participants (who shall be required to purchase such shares pro rata their Required Preferred Stock Investments at the time of such purchase), and apply the proceeds of such sale to such obligation.

If the Corporation takes any of the foregoing actions, the Participant shall, upon the demand of the Corporation, within such time as the Corporation shall require:

(a) Deposit to the Participants Fund the amount in cash needed to eliminate any resulting deficiency in its Required Participants Fund Deposit;

(b) wire to the Corporation an amount in cash sufficient to discharge any loan secured by its shares of Preferred Stock; and/or

(c) repurchase any of its shares of Preferred Stock sold to other Participants.

If the Participant shall fail to take any action demanded by the Corporation, the Corporation may take disciplinary action against the Participant pursuant to these Rules. Any disciplinary action which the Corporation takes pursuant to these Rules, or the voluntary or involuntary cessation of participation by the Participant, shall not affect the obligation of the Participant to the Corporation or any remedy to which the Corporation may be entitled under applicable law.

Section 4. **Application of Participants Fund Deposits of Non-Defaulting Participants**

~~**If the Corporation incurs a loss or liability which is not satisfied by charging the Participant or Participants responsible for causing the loss or liability pursuant to Section 3 of this Rule, the Corporation shall, in such order and in such amounts as the Corporation shall determine, in its sole discretion, to the extent necessary to satisfy such loss or liability:**~~

~~**(a) apply some or all of the Actual Participants Fund Deposits of all other Participants to such loss or liability, in which case:**~~

~~**(1) with respect to any loss or liability incurred by the Corporation in connection with any payment required to be made by the Corporation to any other clearing agency pursuant to a Clearing Agency Agreement, the Actual Participants Fund Deposit of each Participant that is concurrently a member of such other clearing agency, excluding the Participant or Participants responsible for causing the loss or liability, shall be applied pro rata (A) its Required Participants Fund Deposit (as such Required Participants Fund Deposit was fixed at the time the loss or liability was discovered) less (B) any portion of such Required Participants Fund Deposit attributable to any additional amount that such Participant was required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A); or**~~

~~(2) with respect to any other loss or liability incurred by the Corporation, the Actual Participants Fund Deposit of each Participant, excluding the Participant or Participants responsible for causing the loss or liability, shall be applied pro rata (A) its Required Participants Fund Deposit (as such Required Participants Fund Deposit was fixed at the time the loss or liability was discovered) less (B) any portion of such Required Participants Fund Deposit attributable to any additional amount that such Participant was required to Deposit to the Participants Fund pursuant to Section 2 of Rule 9(A); and/or~~

~~(b) charge the existing retained earnings and undivided profits of the Corporation.~~

The Participants Fund shall constitute a liquidity resource which may be applied by the Corporation in such amounts as the Corporation shall determine, in its sole discretion, to fund settlement if there is a Defaulting Participant and the amount charged to the Actual Participants Fund Deposit of the Defaulting Participant pursuant to Section 3 of this Rule is not sufficient to complete settlement. In that case, the Corporation may apply the Actual Participants Fund Deposits of Participants other than the Defaulting Participant (each, a "non-defaulting Participant") as provided in this Section and/or apply such other liquidity resources as may be available to the Corporation from time to time, including the End-of-Day Credit Facility.

If the Participants Fund is applied to ~~a loss or liability~~**complete settlement**, the Corporation shall promptly after the event notify each Participant and the SEC of the amount applied and the reasons therefor **("Settlement Charge Notice")**.

Each non-defaulting Participant's pro rata share of such application of the Participants Fund (each, a "pro rata settlement charge") shall be equal to (i) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the Business Day of such application less its Additional Participants Fund Deposit, if any, on that day, divided by (ii) the sum of the Required Participants Fund Deposits of all non-defaulting Participants, as such Required Participants Fund Deposits were fixed on that day, less the sum of the Additional Participants Fund Deposits, if any, of such non-defaulting Participants on that day.

A Participant shall have a period of five Business Days following issuance of a Settlement Charge Notice (such period, a "Settlement Charge Termination Notification Period") to notify the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(a) of this Rule.

If a Participant notifies the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(a) of this Rule, it shall comply with the provisions of Section 6(b) of this Rule. If a Participant so complies, its maximum obligation with respect to its pro rata settlement charges shall be equal to the amount set forth in Section 8(a) of

this Rule ("Settlement Charge Cap"). If, after notifying the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(a) of this Rule, the Participant fails to comply with the provisions of Section 6(b) of this Rule, its election to terminate its business with the Corporation shall be deemed void and it will remain subject to further pro rata settlement charges as may be charged against it as if it had not given such notice.

The Corporation may retain the entire amount of the Actual Participants Fund Deposit of a Participant subject to a pro rata settlement charge, up to the amount of the Participant's Settlement Charge Cap.

~~***Section 5.*** **Except as provided in**~~ **Subject to** Section 8 of this Rule, if ~~**a pro rata charge is made pursuant to Section 4 of this Rule against the Required**~~**the Actual** Participants Fund Deposit of a Participant~~**,**~~ **is applied as provided in this Section** and, as a consequence, the Actual Participants Fund Deposit of such Participant is less than its Required Participants Fund Deposit, the Participant shall, upon the demand of the Corporation, within such time as the Corporation shall require, Deposit to the Participants Fund the amount in cash needed to eliminate any resulting deficiency in its Required Participants Fund Deposit. If the Participant shall fail to make such ~~**d**~~**D**eposit to the Participants Fund, the Corporation may take disciplinary action against the Participant pursuant to these Rules. Any disciplinary action which the Corporation takes pursuant to these Rules, or the voluntary or involuntary cessation of participation by the Participant, shall not affect the obligations of the Participant to the Corporation or any remedy to which the Corporation may be entitled under applicable law.

***Section 5*.** **Loss Allocation Waterfall**

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

"CTA Participant" shall mean a Participant for which the Corporation has ceased to act pursuant to Rule 10, Rule 11 or Rule 12.

"Default Loss Event" shall mean the determination by the Corporation to cease to act for a Participant pursuant to Rule 10, Rule 11, or Rule 12.

"Declared Non-Default Loss Event" shall mean the determination by the Board of Directors that a loss or liability incident to the clearance and settlement business of the Corporation may be a significant and substantial loss or liability that may materially impair the ability of the Corporation to provide clearance and settlement services in an orderly manner and will potentially generate losses to be mutualized among Participants in order to ensure that the Corporation may continue to offer clearance and settlement services in an orderly manner.

If the Corporation incurs a loss or liability relating to or arising out of a Default Loss Event or a Declared Non-Default Loss Event, the Corporation shall address the loss or liability as follows:

Default Loss Events and/or Declared Non-Default Loss Events that occur within a period of ten Business Days (an "Event Period") shall be grouped together for purposes of

applying the limits on loss allocations set forth in this Rule. In the case of a Default Loss Event, an Event Period begins on the day that the Corporation notifies Participants that it has ceased to act for a Participant (or the next Business Day, if such day is not a Business Day).

In the case of a Declared Non-Default Loss Event, an Event Period begins on the day that the Corporation notifies Participants of the Declared Non-Default Loss Event (or the next Business Day, if such day is not a Business Day), which notification shall be issued promptly following any such determination.

If a subsequent Default Loss Event or Declared Non-Default Loss Event occurs during an Event Period, any losses or liabilities relating to or arising out of any such subsequent event shall be resolved as losses or liabilities that are part of the same Event Period, without extending the duration of such Event Period.

Each CTA Participant shall be obligated to the Corporation for the entire amount of any loss or liability incurred by the Corporation arising out of or relating to any Default Loss Event with respect to such CTA Participant. To the extent that such loss or liability is not satisfied pursuant to Section 3 of this Rule, the Corporation shall apply a Corporate Contribution thereto and charge the remaining amount of such liability or loss ratably to other Participants, as further provided below.

The Corporation shall apply the Corporate Contribution to losses and liabilities that arise out of or relate to one or more Default Loss Events and/or Declared Non-Default Loss Events that occur within an Event Period. If losses and liabilities with respect to such Event Period remain unsatisfied following application of the Corporate Contribution, the Corporation shall allocate such losses and liabilities to Participants, subject to the requirements and limitations below.

Each Participant that is a Participant on the first day of an Event Period shall be obligated to pay its pro rata share of losses and liabilities arising out of or relating to each Default Loss Event (other than a Default Loss Event with respect to which it is the CTA Participant) and each Declared Non-Default Loss Event occurring during the Event Period. Any Participant for which the Corporation ceases to act on a non-Business Day, triggering an Event Period that commences on the next Business Day, shall be deemed to be a Participant on the first day of that Event Period. A loss allocation "round" means a series of loss allocations relating to an Event Period, the aggregate amount of which is limited by the sum of the Loss Allocation Caps of affected Participants (a "round cap"). When the aggregate amount of losses allocated in a round equals the round cap, any additional losses relating to the applicable Event Period shall be allocated in one or more subsequent rounds, in each case subject to a round cap for that round. The Corporation may continue the loss allocation process in successive rounds until all losses from the Event Period are allocated among Participants that have not submitted a Termination Notice in accordance with Section 6(b) of this Rule.

Each loss allocation shall be communicated to Participants by the issuance of a notice that advises each Participant of the amount being allocated to it (each, a "Loss

Allocation Notice"). Each Participant's pro rata share of losses and liabilities to be allocated in any round shall be equal to (i) its Required Participants Fund Deposit, as such Required Participants Fund Deposit was fixed on the first day of the applicable Event Period, less its Additional Participants Fund Deposit, if any, on such day, divided by (ii) the sum of the Required Participants Fund Deposits of all Participants subject to loss allocation in such round, as such Required Participants Fund Deposits were fixed on such day, less the sum of any Additional Participants Fund Deposits, if any, of all Participants subject to loss allocation in such round on such day.

Each Loss Allocation Notice shall specify the relevant Event Period and the round to which it relates. The first Loss Allocation Notice in any first, second, or subsequent round shall expressly state that such Loss Allocation Notice reflects the beginning of the first, second, or subsequent round, as the case may be, and that each Participant in such round has five Business Days from the issuance of such first Loss Allocation Notice for the round (such period, a "Loss Allocation Termination Notification Period") to notify the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(b) of this Rule, and thereby benefit from its Loss Allocation Cap. If a Participant so complies, its maximum obligation with respect to its loss allocation charges shall be equal to the amount set forth in Section 8(b) of this Rule ("Loss Allocation Cap").

Participants shall pay to the Corporation the amount specified in any first round Loss Allocation Notice on the second Business Day after the Corporation issues any such notice. Participants shall pay to the Corporation the amount specified in any subsequent round Loss Allocation Notice on the second Business Day after the Corporation issues such notice, unless the Participant has timely notified (or will timely notify) the Corporation of its election to terminate its business with the Corporation with respect to a prior loss allocation round pursuant to Section 8(b) of this Rule.

The Corporation may retain the entire Actual Participants Fund Deposit of a Participant subject to loss allocation, up to the Participant's Loss Allocation Cap in accordance with Section 8(b) of this Rule.

If a Participant fails to make payment to the Corporation in respect of a Loss Allocation Notice by the time such payment is due, the Corporation shall have the right to proceed against such Participant as a Participant that has failed to satisfy an obligation in accordance with Section 3 of this Rule.

All amounts due from a Participant pursuant to this Section may be debited from its Settlement Account when due.

If a Participant notifies the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(b) of this Rule, the Participant shall comply with the provisions of Section 6(b) of this Rule. If, after notifying the Corporation of its election to terminate its business with the Corporation pursuant to Section 8(b) of this Rule, the Participant fails to comply with the provisions of Section 6(b) of this Rule, its election to terminate its business with the Corporation shall be deemed void and any further losses

resulting from the applicable Event Period may be allocated against it as if it had not given such notice.

For any loss allocation pursuant to this Section 5, whether arising out of or relating to a Default Loss Event or a Declared Non-Default Loss Event, the Corporation's corporate contribution to losses or liabilities that are incurred by the Corporation with respect to an Event Period ("Corporate Contribution") shall be an amount that is equal to fifty percent (50%) of the amount calculated by the Corporation in respect of its General Business Risk Capital Requirement as of the end of the calendar quarter immediately preceding the Event Period. The Corporation's General Business Risk Capital Requirement, as defined in its Clearing Agency Policy on Capital Requirements, is, at a minimum, equal to the regulatory capital that the Corporation is required to maintain in compliance with Rule 17Ad-22(e)(15) under the Exchange Act. If the Corporate Contribution is applied by the Corporation against a loss or liability relating to an Event Period, the Corporate Contribution for any subsequent Event Periods occurring during the two hundred fifty (250) Business Days thereafter shall be reduced to the remaining unused portion of the Corporate Contribution amount that applied for the first Event Period. The Corporation shall notify Participants of any such reduction to the Corporate Contribution.

Nothing in these Rules shall prevent the Corporation from voluntarily applying amounts greater than the Corporate Contribution against any loss or liability of the Corporation, whether a Default Loss Event or a Declared Non-Default Loss Event, if the Board of Directors, in its sole discretion, believes such to be appropriate under the factual situation existing at the time.

Section 6. **Obligations of Participant Upon Termination**

~~**Whenever a Participant ceases to be such, it shall continue to be obligated (a) to satisfy any deficiency in the amount of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including (i) any deficiency resulting from a pro rata charge with respect to which the Participant has given notice to the Corporation of its election to terminate its business with the Corporation pursuant to Section 8 of this Rule (a "Section 8 Pro Rata Charge") and (ii) any deficiency the Participant is required to satisfy pursuant to Section 3 or 5 of this Rule (other than any deficiency referred to in the preceding clause (i) or, subject to Section 8 of this Rule, any pro rata charge under Section 5 of this Rule arising after the Section 8 Pro Rata Charge) and (b) to discharge any liability of the Participant to the Corporation resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant; provided, however, that, subject to Section 8 of this Rule, the aggregate liability of the Participant for any Section 8 Pro Rata Charge shall not exceed the amount of its Aggregate Required Deposit and Investment, as fixed immediately prior to the time of such charge, plus 100% of the amount thereof.**~~

(a) Upon Any Voluntary Retirement

If a Participant elects to terminate its business with the Corporation pursuant to Section 1 of Rule 2 for reasons other than those specified in Section 8 of this Rule (a "Voluntary Retirement"), the Participant shall:

(1) provide a written notice of such termination to the Corporation ("Voluntary Retirement Notice"), as provided for in Section 1 of Rule 2;

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

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

(4) ensure that all activities and use of Corporation's services by the Participant cease on or prior to the Voluntary Retirement Date.

If the Participant fails to comply with the requirements of this Paragraph (a), its Voluntary Retirement Notice shall be deemed void.

If a Participant submits a Voluntary Retirement Notice and subsequently receives a Settlement Charge Notice or the first Loss Allocation Notice in a round on or prior to the Voluntary Retirement Date, such Participant must timely submit a Termination Notice in order to benefit from its Settlement Charge Cap or Loss Allocation Cap, respectively. In such a case, the Termination Notice shall supersede and void the pending Voluntary Retirement Notice submitted by the Participant.

(b) Upon Termination Following Settlement Charge or Loss Allocation

If a Participant timely notifies the Corporation of its election to terminate its business with the Corporation in respect of a settlement charge as set forth in Section 4 of this Rule or a loss allocation as set forth in Section 5 of this Rule ("Termination Notice"), the Participant shall:

(1) specify in the Termination Notice an effective date of termination ("Participant Termination Date"), which date shall be no later than ten Business Days following the last day of the applicable Settlement Charge Termination Notification Period or Loss Allocation Termination Notification Period;

(2) cease all activities and use of the Corporation's services other than activities and services necessary to terminate the business of the Participant with the Corporation; and

(3) ensure that all activities and use of Corporation's services by such Participant cease on or prior to the Participant Termination Date.

A Participant that terminates its business with the Corporation in compliance with this Paragraph (b) shall nevertheless remain obligated for its pro rata share of losses and liabilities with respect to any Event Period for which it is otherwise obligated hereunder; however, its aggregate obligation shall be limited to the amount of its Loss Allocation Cap (as fixed in the round for which it withdrew).

If the Participant fails to comply with the requirements of this Paragraph (b), its Termination Notice will be deemed void, and the Participant will remain subject to further pro rata settlement charges pursuant to Section 4 of this Rule or loss allocations pursuant to Section 5 of this Rule as if it had not given such Termination Notice.

(c) After Any Termination

Whenever a Participant ceases to be such, it shall continue to be obligated (i) to satisfy any deficiency in the amounts of its Required Participants Fund Deposit and/or Required Preferred Stock Investment that it did not satisfy prior to such time, including any deficiency the Participant is required to satisfy pursuant to Sections 3 or 4 of this Rule, (ii) subject to Section 8 of this Rule, to satisfy any loss allocation pursuant to Section 5 of this Rule, and (iii) to discharge any liability of the Participant to the Corporation resulting from the transactions of the Participant open at the time it ceases to be a Participant or on account of transactions occurring while it was a Participant.

Section 7. **Increased Participants Fund Deposits and Preferred Stock Investments**

Except for any ~~**increase in the amount of the Required**~~**Additional** Participants Fund Deposit~~**s of a Participant pursuant to Section 2, which shall be Deposited on demand as provided in Section 1(b)**~~ of **this** Rule ~~**9(A)**~~, the Corporation shall give a Participant at least ten Business Days prior notice of any proposed increase in its Required Participants Fund Deposit or Required Preferred Stock Investment.

(a) **Required Participants Fund Deposits**

If a Participant does not, within the time allowed, give the Corporation notice (in the manner specified in Section 4 of Rule 2) of its election to terminate its business with the Corporation, the Participant shall be required to Deposit the amount needed to satisfy any such increase in its Required Participants Fund Deposit, and the obligation of the Participant to make such deposit shall not be affected by any subsequent voluntary or involuntary cessation of participation of the Participant. From and after the time such increase becomes effective, the obligations of the Participant to the Corporation shall be determined in accordance with such increased Required Participants Fund Deposit of the Participant whether or not the appropriate amount has been Deposited in the Participants Fund. For purposes of this Section, an increase in the Required Participants Fund Deposit of a Participant shall include an increase resulting from the application of the formulas provided for in Section 1**(a)** of this Rule and shall also include an increase resulting from a change in such formulas.

(b) **Required Preferred Stock Investments**

If a Participant does not, within the time allowed, give the Corporation notice (in the manner specified in Section 4 of Rule 2) of its election to terminate its business with the Corporation, the Participant shall be required to purchase the number of shares of Preferred Stock needed to satisfy any such increase in its Required Preferred Stock Investment, and the obligation of the Participant to make such purchase shall not be affected by any subsequent voluntary or involuntary cessation of participation of the Participant. From and after the time such increase becomes effective, the obligations of the Participant to the Corporation shall be determined in accordance with such increased Required Preferred Stock Investment of the Participant whether or not the appropriate number of shares of Preferred Stock have been purchased. For purposes of this Section, an increase in the Required Preferred Stock Investment of a Participant shall include an increase resulting from the application of the formulas provided for in Section 2**(a)** of this Rule and shall also include any increase resulting from a change in such formulas.

Section 8. **Termination; Obligation for Pro Rata Settlement Charges and Loss Allocations**

(a) Settlement Charges

If a Participant, within ~~**ten**~~**five** Business Days after ~~**receipt**~~**the issuance** of ~~**notice of a pro rata charge for a loss or liability incurred by the Corporation**~~**a Settlement Charge Notice** pursuant to Section 4 of this Rule~~,~~ gives notice to the Corporation of its election to terminate its business with the Corporation, the Participant shall nevertheless remain obligated for ~~**such pro rata charge. The Corporation may also make additional pro rata charges**~~**(i) its pro rata settlement charge related to such Settlement Charge Notice and (ii) all other pro rata settlement charges through the Participant Termination Date.** ~~**attributable to the same loss or liability. In that event, notwithstanding the limitation set forth in Section 6 of this Rule, t**~~**Subject to Section 8(c), t**he obligation of a Participant which elects to terminate its business with the Corporation pursuant to this ~~**Section**~~**Paragraph** shall be limited to the ~~**greater of (a) the**~~ amount of its Aggregate Required Deposit and Investment, as fixed ~~**immediately prior to**~~**on** the ~~**time**~~**day** of the ~~**first**~~ pro rata **settlement** charge **that was the subject of the Settlement Charge Notice**, plus 100% of the amount thereof~~**, or (b) the amount of all prior pro rata charges attributable to the same loss or liability with respect to which the Participant has not timely exercised its right to limit its obligation as provided above**~~.

(b) Loss Allocations

If a Participant, within five Business Days after the issuance of a first Loss Allocation Notice for any round pursuant to Section 5 of this Rule gives notice to the Corporation of its election to terminate its business with the Corporation, the Participant shall nevertheless remain liable for (i) the loss allocation that was the subject of such Loss Allocation Notice and (ii) all other loss allocations made by the Corporation with respect to the same Event Period. Subject to 8(c), the obligation

of a Participant which elects to terminate its business with the Corporation pursuant to this Paragraph shall be limited to the amount of its Aggregate Required Deposit and Investment, as fixed on the first day of the Event Period, plus 100% of the amount thereof.

(c) Maximum Obligation

Notwithstanding anything to the contrary, under no circumstances shall the aggregate obligation of a Participant to the Corporation pursuant to both Paragraph (a) and Paragraph (b) of this Section 8 exceed the amount of its Aggregate Required Deposit and Investment, as fixed on the earlier of the day specified in the last sentence of Paragraph (a) or the day specified in the last sentence of Paragraph (b), plus 100% of the amount thereof.

(d) Obligation to Replenish Deposit

If the amount of the Actual Participants Fund Deposit of a Participant is insufficient to satisfy a pro rata **settlement** charge~~, as limited by~~**pursuant to** Section ~~6~~**4** of this Rule and **Paragraph (a) of this Section or a loss allocation pursuant to Section 5 of this Rule and Paragraph (b) of** this Section, the Participant shall be obligated to Deposit the amount of any such deficiency to the Participants Fund notwithstanding the fact that the Participant subsequently ceases to be a Participant.

Section 9. **No Waiver; Recovery and Repayment**

No loss allocation under this Rule shall constitute a waiver of any claim the Corporation may have against a Participant for any losses or liabilities to which the Participant is subject under these Rules and Procedures, including, without limitation, any loss or liability to which it may be subject under this Rule. If ~~a loss~~**any amount is** charged ~~pro rata~~**pursuant to Section 4 of this Rule or pursuant to Section 5 of this Rule and such amount** is afterward recovered by the Corporation, in whole or in part, the net amount of the recovery shall be ~~credited~~**repaid ratably (on the same basis that it was originally charged or allocated)** to the Persons against ~~whom~~**which** the ~~loss~~**amount** was **originally** charged ~~in proportion to the amounts charged against them~~ by (a) crediting the appropriate amount~~s~~ to the Actual Participants Fund Deposits of Persons which are still Participants and (b) paying the appropriate amount~~s~~ in cash to Persons which are not still Participants.

****