

SECURITIES AND EXCHANGE COMMISSION
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July 7, 2021

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Confidential Information, Market Disruption Events, and Other Changes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 25, 2021, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change consists of modifications to DTC’s Rules, Bylaws and Organization Certificate (the “Rules”)³ to (i) revise certain provisions in the Rules relating to the confidentiality of information furnished by Participants⁴ to DTC, (ii) require that each Participant maintain confidential information furnished by DTC or its affiliates in confidence, and restrict use and disclosure of such information, (iii) add certain officers who are allowed to determine that there is a Market Disruption Event

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms not defined herein are defined in the Rules, available at <https://www.dtcc.com/legal/rules-and-procedures>.

⁴ As provided in the Rules, the term “Participant” includes the term “Limited Participant” unless (i) the context otherwise requires or (ii) the Procedures otherwise provide. Section 1 of Rule 2, id.

pursuant to Rule 38 and (iv) add a new Rule 38(A) to address situations in which it is necessary to disconnect a Participant, or third party service provider, or service bureau due to an imminent threat of harm to DTC, Participants and/or other market participants. Each of the proposed changes is described in greater detail 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

The proposed rule change consists of modifications to (i) revise certain provisions in the Rules relating to the confidentiality of information furnished by Participants to DTC, (ii) require that each Participant maintain confidential information furnished by DTC or its affiliates in confidence and restrict use and disclosure of such information, (iii) add certain officers who are allowed to determine that there is a Market Disruption Event pursuant to Rule 38 and (iv) add a new Rule 38(A) to address situations in which it is necessary to disconnect a Participant, or third party service provider, or service bureau due to an imminent threat of harm to DTC, Participants and/or other market participants. Each of the proposed changes is described in greater detail below.

(i) ***DTC Confidentiality Requirements***

Section 1 of Rule 2⁵ contains provisions relating to confidentiality of information furnished by Participants to DTC (collectively, the “DTC Confidentiality Requirements”). Each of the DTC Confidentiality Requirements provides that the rights of DTC to inspect books and records, or to be furnished with information, is subject to any applicable laws or rules, or regulations of regulatory bodies having jurisdiction over the Participant, that relate to confidentiality of records. DTC is proposing to update the DTC Confidentiality Requirements because such provisions (i) may result in unequal treatment of Participants due to differing laws or regulations of regulatory bodies, (ii) may result in a potential conflict of laws where rules or regulations governing a regulatory body of a Participant differ from the laws applicable to DTC, or a Participant has multiple regulatory bodies whose rules conflict, (iii) are burdensome as they require DTC to track the rules and regulations of each regulatory body of its Participants to determine what applicable laws or rules or regulations of regulatory bodies that relate to confidentiality of records affect its rights to receive information and (iv) are unnecessary as DTC has sufficient protections in place relating to protection and confidentiality of Participant data.

The regulatory bodies that have jurisdiction over Participants differ by Participant depending on certain criteria of each Participant, including the type of entity of the Participant, where the Participant was organized, the types of businesses in which the Participant engages and where the Participant is doing business. In addition, many Participants are regulated by more than one regulatory body. As a result, a requirement

⁵ Rule 2 relates to initial and ongoing requirements to become and continue to be a Participant and/or Pledgee, including information that DTC may require applicants or Participants to provide to DTC. Id.

to maintain confidentiality standards for information provided by a Participant or the right to receive information based on the regulatory body or bodies that regulate such Participant result in varying standards of confidentiality for Participants that are regulated by different regulatory bodies. Such varying standards may result in unequal treatment of Participants due to differing laws or regulations of the regulatory body or bodies governing such Participants. In addition, such varying standards may result in a potential conflict of laws where rules or regulations governing a regulatory body of a Participant differ from the laws applicable to DTC or an entity that has multiple regulatory bodies whose rules conflict.

DTC believes that it is unnecessarily burdensome to determine the rules and regulations of each of the regulatory bodies that regulate its Participants. Such regulatory bodies include numerous U.S. federal and state regulators as well as foreign national, state and local regulators. DTC proposes revising the language in the DTC Confidentiality Requirements to maintain one confidentiality standard for all Participants rather than maintaining potentially different confidentiality standards for Participants based on the various, unrelated regulatory bodies regulating such Participants. DTC is proposing to replace the existing language in the DTC Confidentiality Requirements with language that would provide that DTC will hold non-public information furnished pursuant to those Rules in confidence as may be required under the law or the rules and regulations applicable to DTC that relate to the confidentiality of records. Such laws, rules and regulations would include national, state and foreign laws governing confidentiality of data that are applicable to DTC in connection with its collection and disclosure of data.

DTC believes that the rules and regulations applicable to DTC governing the use and disclosure of confidential information provide standards that are representative of those of the various regulatory bodies governing its Participants. As a result, DTC does not believe that the proposed rule change relating to the DTC Confidentiality Requirements would result in any change to DTC's practices relating to data protection and confidentiality of information provided by Participants.

(ii) *Participant Confidentiality Requirements*

Historically, DTC has generally not provided, nor been requested to provide, information that contains confidential or proprietary information of DTC or its affiliates to its Participants except for information necessary for Participants and their service providers and service bureaus to connect to DTC and to participate in the services that DTC offers to its Participants. While certain information is protected by intellectual property rights of DTC and its affiliates under applicable intellectual property laws, such as copyright laws and trademark laws, the Rules do not include any express obligations for Participants to protect confidential information received by them from DTC or its affiliates.

In connection with the development of cyber and information security programs pursuant to applicable regulatory requirements by Participants, DTC and its parent company, The Depository Trust & Clearing Corporation ("DTCC"), have received an increasing number of requests from Participants for confidential and proprietary information of DTC and DTCC.⁶ This includes, for example, information regarding

⁶ DTCC provides a set of core business processes for DTC and DTCC's other subsidiaries, including the technology systems and networks that provide connectivity between DTC and its participants and that provide the ability of DTC

DTCC's network operations and data security practices, legal settlements, and other information. Additionally, in the event there is a cyber incident relating to a Participant, DTC or DTCC may be requested to disclose confidential information regarding its cyber threat indicators, sources of cyber threat information, or other information and actions taken related to a cyber event.

In order to provide for contractual protections for such confidential information of DTCC, DTC and DTCC's other subsidiaries, DTC is proposing to add provisions to the Rules that would require Participants to maintain confidential information of DTC and its affiliates that DTC provides to such Participants in confidence and not to disclose such confidential information except as necessary to perform such Participant's obligations under DTC's Rules or as otherwise required by applicable law ("Participant Confidentiality Requirements"). The Participant Confidentiality Requirements would provide that in the event of a breach of the Participant Confidentiality Requirements, DTC or DTCC would be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages under the Rules. In addition, as with any failure to comply with its Rules, DTC would have the ability to impose other disciplinary proceedings or restrictions on access to services as provided in the Rules for failure to comply with the Participant Confidentiality Requirements.

(iii) Market Disruption Events

to provide the services as required under its Rules. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides relevant services to DTC and DTCC's other subsidiaries.

Rule 38 (Market Disruption and Force Majeure)⁷ (the “Force Majeure Rule”) contains provisions that identify the events or circumstances that would be considered a Market Disruption Event, including, for example, events that lead to the suspension or limitation of trading or banking in the markets in which DTC operates, or the unavailability or failure of any material payment, bank transfer, wire or securities settlement systems.⁸ Under the Force Majeure Rule, during the pendency of a Market Disruption Event, DTC would be entitled to (i) suspend the provision of any or all services and (ii) take, or refrain from taking, or require Members to take, or refrain from taking, any actions DTC considers appropriate to address, alleviate, or mitigate the event and facilitate the continuation of DTC’s services as may be practicable.⁹

Section 2 of the Force Majeure Rule provides that the Board of Directors may determine the existence of a Market Disruption Event and the actions to be taken in response thereto.¹⁰ However, if the Board of Directors is unable to convene, the Force Majeure Rule provides that certain officers may make such determination, on an interim basis, which determination is then ratified, modified or rescinded as soon as practicable by the Board of Directors. The officers that may make such determination are all senior executive officers of DTC: Chief Executive Officer, Chief Financial Officer, Group Chief Risk Officer and General Counsel.

⁷ Rule 38, supra note 3.

⁸ Id.

⁹ Id.

¹⁰ Section 2 of Rule 38, id.

The proposed rule change would add two senior executive officers of DTC, the Chief Information Officer and the Head of Clearing Agency Services, to the list of officers that could make such determination if the Board of Directors is unable to convene. These two officers, like the other senior executive officers currently listed in the Rules, maintain senior executive level positions at DTC, oversee divisions of DTC, and hold positions at DTC that would provide them a necessary global view into DTC's operations and systems to enable them to determine the existence of a Market Disruption Event in the event that the Board of Directors is unable to convene. Adding these two additional officers would facilitate DTC's ability to implement its emergency procedures in the event of a Market Disruption Event.

(iv) Systems Disconnect: Threat of Significant Impact to DTC's Systems

The proposed rule change would add a new Rule 38(A) (Systems Disconnect: Threat of Significant Impact to the Corporation's Systems) ("Systems Disconnect Rule") that would address situations in which DTC determines it is necessary for DTC to disconnect a single or limited number of Participants, or third party service providers, or service bureaus used by Participants to connect to DTC¹¹ (collectively, "DTCC Systems Participants") from DTC's systems or network due to an imminent threat of harm to DTC's or DTCC's systems. The imminent threat could be the result of a system disruption or cyber incident applicable to the DTCC Systems Participants. This would

¹¹ Some Participants use third parties to connect to DTC's systems and/or to send data to DTC and receive data from DTC on the Participant's behalf. Such third parties are referred to as "service providers" or "service bureaus" herein.

allow DTCC to work with the affected Participants while protecting DTC, its systems and its other Participants.

The proposed Systems Disconnect Rule would be structured similarly to the Force Majeure Rule. The Systems Disconnect Rule would address DTC's authority to take certain actions upon the occurrence, and during the pendency, of a Major Event. A "Major Event" would be defined as the happening of one or more Systems Disruption(s) (as defined below) that is reasonably likely to have a significant impact on DTC's operations, including the DTCC Systems (as defined below), that affect the business, operations, safeguarding of securities or funds, or physical functions of DTC, Participants and/or other market participants. "Systems Disruption" would be defined as the unavailability, failure, malfunction, overload, or restriction (whether partial or total) of a DTCC Systems Participant's systems that disrupts or degrades the normal operation of such DTCC Systems Participant's systems; or anything that impacts or alters the normal communication, or the files that are received, or information transmitted, to or from the DTCC Systems. "DTCC Systems" would be defined as the systems, equipment and technology networks of DTCC, DTC and/or their Affiliates,¹² whether owned, leased, or licensed, software, devices, IP addresses or other addresses or accounts used in connection with providing the services set forth in the Rules, or used to transact business or to manage the connection with DTC.

¹² "Affiliate" would be defined as a Person that controls or is controlled by or is under common control with another Person. Control of a Person means the direct or indirect ownership, or power to vote more than 50% of any class of the voting securities or other voting interests of such Person.

The proposed Systems Disconnect Rule would allow DTC to mitigate the effect of such events by facilitating the continuity of services (or, if deemed necessary, the temporary suspension of services). To that end, under the proposed Systems Disconnect Rule, DTC would be entitled, during the pendency of a Major Event, to (1) disconnect a DTCC Systems Participant's systems from the DTCC Systems, (2) suspend the receipt and/or transmission of files or communications to or from the DTCC Systems Participant to the DTCC Systems and/or (3) take, or refrain from taking, or require a DTCC Systems Participant to take or refrain from taking, any actions that DTC considers appropriate to prevent, address, correct, mitigate or alleviate the Major Event and facilitate the continuation of services as may be practicable and, in that context, issue instructions to the DTCC Systems Participant.

The proposed Systems Disconnect Rule would define the governance procedures for how DTC would determine whether, and how, to implement the provisions of the rule. A determination that a Major Event has occurred could be made by the same officers with delegated authority under the Force Majeure Rule as discussed above (an "Officer Major Event Action"). Following this determination, any management committee on which all of the foregoing officers serve would convene, and DTC would convene a Board of Directors meeting as soon as practicable thereafter, and in any event within five Business Days following such determination, in each case, to ratify, modify, or rescind the Officer Major Event Action. The proposed Systems Disconnect Rule would require Participants to notify DTC immediately upon becoming aware of a Major Event, and, likewise, would require DTC to promptly notify the DTCC Systems

Participant(s) of any action DTC takes or intends to take with respect to such DTCC Systems Participant(s) pursuant to the proposed rule.

Finally, the Systems Disconnect Rule would address certain miscellaneous matters including: (i) a limitation of liability for any failure or delay in performance, in whole or in part of DTC's obligations under the Rules, arising out of or related to a Major Event, (ii) a statement that the power of DTC to take any action pursuant to the Systems Disconnect Rule also includes the power to repeal, rescind, revoke, amend or vary such action, (iii) a statement that the powers of DTC pursuant to the Systems Disconnect Rule shall be in addition to, and not in derogation of, authority granted elsewhere in the Rules to take action as specified therein, (iv) a requirement that Participants shall keep any DTCC Confidential Information (as defined below) provided to them by DTC and/or in connection with a Major Event confidential and (v) a statement that in the event of any conflict between the provisions of the Systems Disconnect Rule and any other Rules or Procedures, the provisions of the Systems Disconnect Rule would prevail.

(v) *Proposed Rule Changes*

The proposed rule change would amend the Rules to make the following changes to implement the changes discussed above:

DTC Confidentiality Requirements Changes

The proposed rule change would amend the DTC Confidentiality Requirements in two paragraphs in Section 1 of Rule 2,¹³ to state as follows:

. . . any non-public information furnished to the Corporation pursuant to this Rule shall be held in confidence as may be required under the laws, rules

¹³ Section 1 of Rule 2, supra note 3.

and regulations applicable to the Corporation that relate to the confidentiality of records.

As discussed above, the proposed language is intended to provide one standard that DTC would apply uniformly to all Participants, which assures Participants that such information would be held in confidence with appropriate controls. DTC would add “non-public” when describing the information that is subject to the DTC Confidentiality Requirements to make it clear that such requirements would only apply to information that is not public.

Certain Rules relating to DTC Confidentiality Requirements would also include language relating to Participant Confidentiality Requirements as described below.

Participant Confidentiality Requirements

In order to provide for Participant Confidentiality Requirements, DTC would add a provision at the end of Section 1 of Rule 2¹⁴ to state that each applicant and Participant shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform its obligations under the Rules or as otherwise required by applicable law. DTC would add a new definition of DTCC Confidential Information in Section 1 of Rule 1¹⁵ to provide that “DTCC Confidential Information” would mean all non-public information provided by DTCC and/or DTC that (i) is marked or otherwise identified in writing prior

¹⁴ Section 1 of Rule 2, supra note 3.

¹⁵ Section 1 of Rule 1, supra note 3.

to disclosure to the recipient as confidential, (ii) is designated by DTCC or DTC as confidential, or (iii) the recipient knows or, under the circumstances surrounding disclosure, ought to reasonably know is confidential. DTC would also add a definition of DTCC in Section 1 of Rule 1 and remove a corresponding definition in Rule 32(A)¹⁶ since it would be defined in Section 1 of Rule 1.

DTC would also add a statement in the provision relating to Participant Confidentiality Requirements that each applicant and Participant acknowledges that a breach of its confidentiality obligations under the Rules may result in serious and irreparable harm to DTC and/or DTCC for which there is no adequate remedy at law. In the event of such a breach by the applicant or Participant, DTC and/or DTCC would be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages.

Force Majeure Rule Officer Additions

The proposed rule change would add the Chief Information Officer and the Head of Clearing Agency Services to the list of officers that could make a determination of a Market Disruption Event if the Board of Directors is unable to convene in Rule 38.¹⁷

Systems Disconnect Rule

The proposed rule change would add a new Rule 38(A) entitled “Systems Disconnect: Threat of Significant Impact to the Corporation’s Systems” that would address situations in which DTC determines it is necessary for DTC to disconnect a DTCC Systems Participant or DTCC Systems Participants from DTC’s systems or

¹⁶ Rule 32(A), supra note 3.

¹⁷ Rule 38, supra note 3.

network due to an imminent threat of harm to DTC's or DTCC's systems consistent with the description above. The proposed Systems Disconnect Rule would include new definitions for "DTCC Systems," "DTCC Systems Participant," "Major Event" and "Systems Disruption" consistent with the descriptions of the Systems Disconnect Rule above.

2. Statutory Basis

DTC believes that the proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. In particular, DTC believes that each of the proposed rule changes is consistent with Section 17A(b)(3)(F) of the Act,¹⁸ and Rules 17Ad-22(e)(1) and (e)(21)¹⁹ promulgated under the Act. In addition, DTC believes that the proposed changes to add the two senior executive officers in the Force Majeure Rule and to add the proposed Systems Disconnect Rule are consistent with Rules 17Ad-22(e)(2) and (e)(17) under the Act.²⁰

Section 17A(b)(3)(F)

Section 17A(b)(3)(F) of the Act²¹ requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible, and to remove impediments to and perfect the

¹⁸ 15 U.S.C. 78q-1(b)(3)(F).

¹⁹ 17 CFR 240.17Ad-22(e)(1) and (e)(21).

²⁰ 17 CFR 240.17Ad-22(e)(2) and (e)(17).

²¹ 15 U.S.C. 78q-1(b)(3)(F).

mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.

DTC believes that the proposed changes revising the DTC Confidentiality Requirements and adding the Participant Confidentiality Requirements are each consistent with this provision of the Act. The proposed revisions to the DTC Confidentiality Requirements are consistent with this provision because the proposed revisions would provide a clear and consistent standard relating to how DTC holds the information furnished by Participants pursuant to Section 1 of Rule 2.²² The confidential information that DTC receives pursuant to this rule is used by DTC to determine whether to admit a Participant, to continue to allow such Participant to be a Participant, or to better understand the risks relating to each Participant. Providing a clear and consistent standard would facilitate this process by allowing Participants to better understand DTC's obligations with respect to such information and providing a uniform obligation for DTC with respect to such information. DTC believes that facilitating the ability of DTC to evaluate Participants would promote the prompt and accurate clearance and settlement of securities transactions by DTC. As such, DTC believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.²³

DTC also believes that the proposed rule change adding the Participant Confidentiality Requirements is consistent with this provision of the Act because the proposed revisions to the Participant Confidentiality Requirements would provide a clear and consistent contractual obligation for applicants and Participants who are requesting

²² Section 1 of Rule 2, supra note 3.

²³ 15 U.S.C. 78q-1(b)(3)(F).

confidential information from DTC. Having clear and consistent Rules would help applicants and Participants to better understand their rights and obligations regarding DTC's clearance and settlement services. The information requested by applicants and Participants that would be subject to the Participant Confidentiality Requirements would be used by applicants and Participants to determine whether to participate in DTC's services, DTC system requirements and DTC system safeguards. DTC believes that when Participants better understand their rights and obligations regarding DTC's clearance and settlement services, they can better act in accordance with the Rules. DTC believes that better enabling Participants to comply with the Rules would promote the prompt and accurate clearance and settlement of securities transactions by DTC. As such, DTC believes the proposed rule changes are consistent with Section 17A(b)(3)(F) of the Act.²⁴

DTC believes that the proposed changes to add the two officers to make a determination of a Market Disruption Event and to add the Systems Disconnect Rule are also consistent with this provision of the Act because those changes would enhance and streamline DTC's ability to take necessary actions in the event of a Market Disruption Event or a Major Event. Improving the ability of DTC to react to a Market Disruption Event or a Major Event would allow DTC to protect its Participants and their ability to promptly and accurately clear and settle securities transactions, and allow DTC to safeguard securities and funds that are in its custody or control. In particular, allowing two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add

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Id.

additional flexibility and tools to DTC while maintaining proper risk controls and improve the ability of DTC to act in the event of a Market Disruption Event. Also, providing for the ability of DTC to disconnect DTCC Systems Participants, suspend the receipt or transmission of files or communications to or from a DTCC Systems Participant, and/or require the DTCC Systems Participant to take such other actions as are necessary to protect DTC and its Participants would, in each case, provide additional tools for DTC in the event of a Major Event.

Improving the governance around the determination of a Market Disruption Event, and the implementation of procedures allowing DTC to disconnect a DTCC Systems Participant or DTCC Systems Participants from DTC's systems or network due to an imminent threat of harm, would improve DTC's ability to address and minimize losses to DTC and its Participants. Risks, threats and potential vulnerabilities due to a Market Disruption Event or a Major Event could impact DTC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in its custody or control or for which it is responsible. In addition, providing governance around the ability to disconnect a DTCC Systems Participant that is having a systems disruption that could disrupt the ability of DTC or other DTCC Systems Participants from using DTC's systems would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. Although disconnecting or limiting the service of a DTCC Systems Participant in the event of a Major Event would likely be an impediment to such DTCC Systems Participant, improving DTC's ability to address and minimize losses to DTC and its Participants, and reducing risks, threats and potential vulnerabilities due to a Major Event that could

impact DTC's ability to clear and settle securities transactions, or to safeguard the securities and funds which are in its custody or control or for which it is responsible, would be consistent with Section 17A(b)(3)(F) of the Act.²⁵

Therefore, by implementing tools that would help to mitigate these risks, DTC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, assure the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible, and remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of Section 17A(b)(3)(F) of the Act.²⁶

Rule 17Ad-22(e)(1)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(1) promulgated under the Act,²⁷ which requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.

Establishing clear and consistent rules for each Participant with respect to the DTC Confidentiality Requirements would allow DTC to maintain one confidentiality standard for all Participants rather than maintaining potentially different confidentiality standards for Participants based on the various, unrelated regulatory bodies governing

²⁵ Id.

²⁶ Id.

²⁷ 17 CFR 240.17Ad-22(e)(1).

such Participants. In addition, setting forth a clear contractual obligation relating to Participant Confidentiality Requirements would enhance the understanding of the Participants receiving information from DTC and allow DTC to treat Participants equally with respect to how the information furnished to Participants should be protected by the Participants.

Adding the two officers to make a determination of a Market Disruption Event and adding the Systems Disconnect Rule are also consistent with Rule 17Ad-22(e)(1) under the Act because those changes would describe the circumstances under which DTC could take actions in the event of a Market Disruption Event or a Major Event that are necessary to protect DTC and its Participants. Providing clear guidelines with respect to Market Disruption Events and Major Events would allow DTC Participants to understand the rights and obligations of the Participants in the event of a Market Disruption Event or a Major Event.

Therefore, by establishing uniform and clear standards with respect to its receipt and furnishing of confidential information, and by providing clear rights and obligations of DTC and its Participants with respect to Market Disruption Events and Major Events, DTC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(1) promulgated under the Act.²⁸

Rule 17Ad-22(e)(21)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(21) promulgated under the Act,²⁹ which requires DTC to, inter alia, establish,

²⁸ Id.

²⁹ 17 CFR 240.17Ad-22(e)(21).

implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its Participants and the markets it serves. The proposed rule change would streamline the DTC Confidentiality Requirements by providing that DTC would apply one standard for all Participants relating to confidential information sent to DTC by Participants, which would enhance (i) efficiency by avoiding applying varying standards of confidentiality based on the rules and regulations of the varying regulatory bodies that regulate the Participants, and (ii) effectiveness by reducing potential conflicts of laws and providing equal treatment to Participants relating to such confidential information.

The addition of the Participant Confidentiality Requirements would also provide a uniform and easily discernable requirement for all Participants with respect to confidential information provided by DTC allowing DTC to provide necessary information to such Participants in a safe and efficient manner. Adding two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add additional flexibility and tools to DTC while maintaining proper risk controls and improve the ability of DTC to act quickly, efficiently and effectively in a Market Disruption Event to address and minimize losses. Also, providing for the ability of DTC to disconnect DTCC Systems Participants, suspend the receipt or transmission of files or communications to or from a DTCC Systems Participant, and/or require the DTCC Systems Participant to take such other actions as are necessary to protect DTC and its Participants would, in each case, provide additional tools for DTC in the event of a Major Event and improve DTC's

ability to act quickly, efficiently and effectively in the event of a Major Event to address and minimize losses.

Therefore, by establishing a more efficient and effective process for the treatment of confidential language, and establishing procedures designed to improve DTC's ability to act quickly, efficiently and effectively in the event of a Market Disruption Event and a Major Event, DTC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(21) promulgated under the Act.³⁰

Rule 17Ad-22(e)(2)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(2) promulgated under the Act,³¹ which requires DTC to, inter alia, establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent and that specify clear and direct lines of responsibility.

Adding two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene would add additional flexibility and tools to DTC while maintaining proper risk controls, and improve the ability of DTC to act quickly, efficiently and effectively in a Market Disruption Event and mitigate any impact from such Market Disruption Event. Adding these officers to the governance procedures relating to a determination of a Market Disruption Event would make such governance procedures clear and transparent, and

³⁰ Id.

³¹ 17 CFR 240.17Ad-22(e)(2).

specify clear and direct lines of responsibility with respect to the determination of a Market Disruption Event, consistent with Rule 17Ad-22(e)(2) under the Act.³²

Adding the governance procedures relating to making a determination of a Major Event in the Systems Disconnect Rule is also consistent with Rule 17Ad-22(e)(2) promulgated under the Act.³³ Identifying the officers that have the ability to determine if there is a Major Event, and providing for the ability of any management committee on which all of such officers serve and the Board of Directors to ratify, modify or rescind any determination of a Major Event by an officer would make such governance procedures clear and transparent, and specify clear and direct lines of responsibility with respect to the determination of a Major Event, consistent with Rule 17Ad-22(e)(2).³⁴

Rule 17Ad-22(e)(17)

In addition, the proposed rule change is designed to be consistent with Rule 17Ad-22(e)(17)(i) promulgated under the Act,³⁵ which requires DTC to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risks by identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls.

Adding two additional officers that are able to make an interim determination of a Market Disruption Event in the event that the Board of Directors is unable to convene

³² Id.

³³ Id.

³⁴ Id.

³⁵ 17 CFR 240.17Ad-22(e)(17)(i).

would add additional flexibility and tools to DTC while maintaining proper risk controls and improve the ability of DTC to act quickly, efficiently and effectively in a Market Disruption Event and mitigate any impact from such Market Disruption Event. Also, providing for the ability of DTC to disconnect DTCC Systems Participants, suspend the receipt or transmission of files or communications to or from a DTCC Systems Participant, and/or require the DTCC Systems Participant to take such other actions as are necessary to protect DTC and its Participants would, in each case, provide additional tools for DTC in the event of a Major Event and improve DTC's ability to act quickly, efficiently and effectively in the event of a Major Event and mitigate any impact from such Major Event.

Therefore, by providing clear, efficient procedures of DTC and its Participants with respect to Market Disruption Events and Major Events that help identify and mitigate operational risks, DTC believes that the proposed rule change is consistent with the requirements of Rule 17Ad-22(e)(17)(i) promulgated under the Act.³⁶

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

DTC does not believe that the proposed changes relating to the DTC Confidentiality Requirements would have any impact on competition. These changes would provide one standard for how DTC treats Participant information furnished subject to the DTC Confidentiality Requirements but would not affect the information that the Participants are required to provide or affect the manner in which the Participants must provide the information. As such, DTC believes these proposed rule changes would not have any impact on competition.

³⁶ Id.

DTC does not believe the proposed changes relating to adding Participant Confidentiality Requirements would have any impact on competition. Although the addition of the Participant Confidentiality Requirements would be adding obligations on Participants with respect to how they treat confidential or proprietary information of DTC or its affiliates, such obligations would be minimal because DTC would only require that such Participants hold such confidential information using the same means they use to protect their own confidential information but not less than a reasonable standard of care. The use of this standard would protect DTC by providing a clear legal obligation to protect such information but would not be burdensome or expensive for Participants, and therefore DTC believes that it would not have any impact on competition.

DTC does not believe the changes relating to adding the two officers to make a determination of a Market Disruption Event would have any impact on competition. The proposed rule change would add two senior executive officers of DTC, the Chief Information Officer and the Head of Clearing Agency Services, to the list of officers that could make a determination of a Market Disruption Event if the Board of Directors is unable to convene. Such addition would provide additional officers who could determine whether there is a Market Disruption Event but would not otherwise affect the rights of Participants or DTC in the determination of a Market Disruption Event or if a Market Disruption Event is declared. Therefore, DTC does not believe that the addition of the two officers would have any impact on competition.

DTC does not believe that the changes relating to adding the Systems Disconnect Rule would have any impact, or impose any burden, on competition not necessary or

appropriate in furtherance of the purposes of the Act.³⁷ To the extent that DTC determines that there is a Major Event, it could take or refrain from taking actions, or require Participants to take or refrain from taking actions, that could burden competition because such requirements could cause Participants to incur additional costs, allow DTC to suspend services or communications, or disconnect a DTCC Systems Participant from the DTCC Systems. DTC believes such burden on competition could be significant but would be both necessary and appropriate in furtherance of the purposes of the Act, as permitted by Section 17A(b)(3)(I) of the Act,³⁸ for the reasons described below.

DTC believes that the proposed changes to add the Systems Disconnect Rule are necessary in furtherance of the purposes of Section 17A(b)(3)(F) of the Act,³⁹ and Rules 17Ad-22(e)(1), (e)(2), (e)(17) and (e)(21) promulgated under the Act.⁴⁰ The proposed changes to add the Systems Disconnect Rule would (i) improve the ability of DTC to react to a Major Event allowing DTC to protect itself and its Participants and their ability to promptly and accurately clear and settle securities transactions, and allow DTC to safeguard securities and funds that are in its custody or control, consistent with the requirements of Section 17A(b)(3)(F) of the Act,⁴¹ (ii) provide clear guidelines with respect to Major Events that would allow Participants to understand the rights and obligations of the Participants and DTC in the event of a Major Event, consistent with

³⁷ 15 U.S.C. 78q-1(b)(3)(I).

³⁸ Id.

³⁹ 15 U.S.C. 78q-1(b)(3)(F).

⁴⁰ 17 CFR 240.17Ad-22(e)(1), (e)(2), (e)(17) and (e)(21).

⁴¹ 15 U.S.C. 78q-1(b)(3)(F).

Rule 17Ad-22(e)(1) promulgated under the Act,⁴² (iii) identify the officers that have the ability to determine if there is a Major Event, and provide for the ability of any management committee on which all of such officers serve, and the Board of Directors, to ratify, modify or rescind any determination of a Major Event by an officer, which would make such governance procedures clear and transparent, and specify clear and direct lines of responsibility with respect to the determination of a Major Event, consistent with Rule 17Ad 22(e)(2) promulgated under the Act,⁴³ (iv) improve the ability of DTC to act quickly, efficiently and effectively in the event of a Major Event, and mitigate any impact from such event by providing clear, efficient procedures of DTC and its Participants with respect to such event, consistent with the requirements of Rule 17Ad-22(e)(17)(i) promulgated under the Act⁴⁴ and (v) establish procedures designed to improve DTC's ability to act quickly, efficiently and effectively in the event of a Major Event, consistent with the requirements of Rule 17Ad-22(e)(21) promulgated under the Act.⁴⁵

In addition, DTC believes that the proposed changes to add the Systems Disconnect Rule are appropriate in furtherance of the Act. Such changes have been designed to improve the ability of DTC to act quickly, efficiently and effectively in the event of a Major Event, and mitigate any impact from such event while also providing the Participants clear guidelines with respect to such event to allow Participants to

⁴² 17 CFR 240.17Ad-22(e)(1).

⁴³ 17 CFR 240.17Ad-22(e)(2).

⁴⁴ 17 CFR 240.17Ad-22(e)(17)(i).

⁴⁵ 17 CFR 240.17Ad-22(e)(21).

understand their rights and obligations. Such changes have also been designed to apply uniformly to all Participants in the event of a Major Event and should not affect DTC's day-to-day operations under normal circumstances, or in the management of a typical Participant default scenario or non-default event.

Therefore, DTC does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.⁴⁶

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

DTC has not received or solicited any written comments relating to this proposal. 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:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

⁴⁶ 15 U.S.C. 78q-1(b)(3)(I).

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-2021-011 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-DTC-2021-011. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2021-011 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.⁴⁷

J. Matthew DeLesDernier
Assistant Secretary

⁴⁷ 17 CFR 200.30-3(a)(12).