

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82671; File No. SR-DTC-2018-001)

February 8, 2018

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Amend the By-Laws

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 February 2, 2018, 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 would amend the DTC By-Laws (“By-Laws”)³ to (i) make changes to DTC’s governance procedures, (ii) revise certain DTC Board of Directors (“Board”) and designated officer titles or offices and update the related powers and duties, (iii) revise the section describing the compensation of officers, and (iv) make certain other technical changes and corrections.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The By-Laws are included in the Rules, By-Laws and Organization Certificate of DTC (“Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures>.

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

In DTC's review of the By-Laws, DTC has identified and is proposing the following changes to the By-Laws: (i) changing its internal governance procedures, (ii) revising certain Board and designated officer titles or offices and updating the related powers and duties, (iii) revising the section describing the compensation of officers, and (iv) making certain technical changes and corrections. Specifically, regarding the proposed changes to the Board and designated officer titles or offices and updating the related powers and duties, DTC is proposing to: (1) change the title of Chairman of the Board to Non-Executive Chairman of the Board and update the related powers and duties associated with that role due to personnel changes in DTC's management, (2) add the office of the Chief Executive Officer ("CEO"), combine the office of the President and the office of the Chief Executive Officer into one office (President and Chief Executive Officer) and update the related powers and duties to reflect that the two positions are now combined and are held by one individual, (3) add the office of the Chief Financial Officer ("CFO") and delete the office of the Comptroller, (4) delete the office of the Chief Operating Officer ("COO"), (5) change the title of Vice President to Executive Director and update the related powers and duties, and (6) make other changes related to certain powers and duties of the Board and various officers, including Managing Directors, the

Vice Chairman of the Corporation, the Treasurer and the Assistant Treasurer, as described in greater detail below. DTC is proposing to make these changes to the By-Laws so that the By-Laws remain consistent and accurate and DTC's governance documents accurately reflect its management and organizational structure and the responsibilities within the purview of certain roles. DTC believes these changes would facilitate the efficient governance and operation of DTC.

Proposed Changes to the By-Laws⁴

A. *Changes to DTC's Governance Procedures*

DTC would revise the By-Laws to (1) change the frequency with which each of the Board and the Executive Committee is required to meet, (2) permit the Board to act by unanimous written consent, and (3) make a technical change by removing the word "monthly" from the phrase "regular monthly meetings" when describing Board meetings. DTC proposes to make the changes to the By-Laws that are described below.

1. **Changes to the Frequency of Board Meetings and Executive Committee Meetings; Technical Change to the Description of Regular Meetings of the Board**

Currently, the By-Laws require (1) the Board to meet for ten meetings per year with at least two meetings during any three-month period and (2) the Executive Committee to meet at least once in each 30-day period during which the Board does not meet. DTC is proposing to reduce the required frequency of its Board meetings and Executive Committee meetings to better align the frequency of DTC's Board meetings with those of Fixed Income Clearing Corporation and National Securities Clearing Corporation. DTC believes that

⁴ DTC last submitted a rule filing regarding changes to the By-Laws in 2006. See Securities Exchange Act Release No. 54173 (July 19, 2006), 71 FR 42890 (July 28, 2006) (SR-DTC-2006-10, SR-FICC-2006-09, and SR-NSCC-2006-08).

reducing the frequency of DTC's Board meetings to better align the occurrence of these meetings would facilitate the efficient use of corporate resources.

Specifically, DTC proposes to make the following changes to current Section 2.6 (Meetings) of the By-Laws to (1) reduce the required number of Board meetings and (2) eliminate the requirement that the Executive Committee meet at least once in each thirty-day period during which the Board does not meet:

- a. The minimum required number of meetings of the Board in current Section 2.6 (Meetings) would be reduced from ten meetings per year with at least two meetings during any three-month period to six meetings per year with at least one meeting during any three-month period.
- b. The provision in current Section 2.6 (Meetings) requiring the Executive Committee to meet during each 30-day period in which the Board does not meet would be deleted.

In addition, DTC proposes to make a technical change in current Section 2.6 (Meetings) by removing the word "monthly" from the phrase "regular monthly meetings" when describing that the Board may fix times and places for such meetings of the Board. The current provision refers to regular monthly meetings but also states that such meetings shall be held at least ten times a year. As such, DTC believes that the proposed language, which would state that the Board may fix times and places for regular meetings of the Board and no notice of such meetings need to be given, would improve clarity and consistency.

2. Unanimous Written Consent

DTC proposes to add proposed Section 2.9 (Action by Unanimous Written Consent), permitting the Board to act by unanimous written consent in lieu of a meeting. The Board would be permitted to take all actions that are required to or may be taken at a meeting by unanimous written consent. The provision would require that the written consent set forth the action to be taken, be signed by all of the directors, and be filed with the minutes of the proceedings of the Board. DTC has determined that the unanimous written consent provision would facilitate the efficient operation of DTC by permitting the Board to make necessary decisions in a timely and efficient manner.

B. Changes to Certain DTC Board and Designated Officer Titles or Offices and Updates to the Related Powers and Duties

DTC proposes to revise the titles or offices and update the related powers and duties of various designated officers and the Board, as further described below, and for the reasons described below.

1. Change the Title of Chairman of the Board to Non-Executive Chairman of the Board; Update the Powers and Duties of the Non-Executive Chairman of the Board

DTC proposes to replace the title of Chairman of the Board with the title Non-Executive Chairman of the Board (“Non-Executive Chairman of the Board”). This change in title reflects that this position is now held by an individual who is not part of DTC’s management (i.e., a non-executive). In 2016, DTC made personnel changes. As part of these personnel changes, the individual who was serving as Chairman of the Board and who was part of DTC’s management at that time became a non-executive. DTC believed that it would be beneficial and desirable to continue to have this individual serve as chairman of

the Board even though he is no longer part of DTC's management. Therefore, DTC proposes to change the title of this position in the By-Laws to Non-Executive Chairman of the Board to reflect that this position is held by a non-executive. DTC believes this proposed change would accurately reflect this organizational change. Furthermore, DTC proposes to revise the By-Laws to enumerate the powers and duties of the Non-Executive Chairman of the Board. To implement this proposed change, DTC would revise the By-Laws as described below.

Certain references to either Chairman or Chairman of the Board would be revised to Non-Executive Chairman of the Board in the sections of the By-Laws that would continue to apply to the Non-Executive Chairman of the Board.

Specifically, the following changes would be made:

- a. In current Section 1.2 (Special Meetings), current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), and current Section 6.1 (Certificates for Shares), the word "Non-Executive" would be added before each reference to the Chairman of the Board.

Certain references to Chairman of the Board in the By-Laws would be deleted because such references are in the sections of the By-Laws that only apply to members of DTC management. Because the Non-Executive Chairman of the Board would not be a management position, such sections of the By-Laws would no longer be applicable. Specifically, the following changes would be made:

- a. In current Section 3.1 (General Provisions), Chairman of the Board would be removed from the list of designated officers of DTC.
- b. In current Section 3.12 (Compensation of Officers), the references to the Chairman of the Board would also be deleted because the Non-Executive Chairman of the Board does not receive compensation and because, as further described below, this section would be revised to only address the setting of compensation for the President and CEO.

Current Section 3.2 (Powers and Duties of the Chairman of the Board) would be deleted and replaced by proposed Section 2.8 (Non-Executive Chairman of the Board). Specifically, the following changes would be made:

- a. Certain powers and duties prescribed to the Chairman of the Board in current Section 3.2 (Powers and Duties of the Chairman of the Board) would remain with the Non-Executive Chairman of the Board. Such powers and duties include: (i) presiding over the meetings of the stockholders and of the Board at which he is present and (ii) such other powers and duties as the Board may designate. This would be set forth in proposed Section 2.8 (Non-Executive Chairman of the Board). Furthermore, as is similarly stated in current Section 3.2 (Powers and Duties of the Chairman of the Board), proposed Section 2.8 (Non-Executive Chairman of the Board) would state that the “performance of any such duty by

the Non-Executive Chairman of the Board shall be conclusive evidence of his power to act.”

- b. DTC would also expressly include in proposed Section 2.8 (Non-Executive Chairman of the Board) that the Non-Executive Chairman of the Board has general supervision over the Board and its activities and would provide overall leadership to the Board. Consistent with his authority to supervise and lead the Board, DTC proposes to assign the responsibility for carrying out the policies of the Board of Directors to the Non-Executive Chairman of the Board rather than the President (as is provided in current Section 3.3 (Powers and Duties of the President)). Furthermore, in current Section 3.6 (Powers and Duties of the Secretary), the power to assign additional powers and duties to the Secretary would be revised to replace the reference to President with Non-Executive Chairman of the Board. DTC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have as part of his general supervision of the Board.
- c. In addition, proposed Section 2.8 (Non-Executive Chairman of the Board) would state that, in the absence of the Non-Executive Chairman of the Board, the presiding director, as elected by the Board, shall preside at all meetings of the stockholders and of the Board at which he or she is present. Current Section 3.3 (Powers and Duties of the President) provides that, in the absence or in

ability of the Chairman of the Board, the President shall preside at all meetings of shareholders and all meetings of the Board of Directors at which he is present. Pursuant to the Board of Directors of The Depository Trust & Clearing Corporation (“DTCC”), DTC, Fixed Income Clearing Corporation (“FICC”) and National Securities Clearing Corporation (“NSCC”) Mission Statement and Charter (“Board Mission Statement and Charter”), DTC annually elects a presiding director to preside at meetings when the Non-Executive Chairman of the Board is absent. As such, DTC believes the proposed language described above would enhance accuracy by correcting the inconsistency between the By-Laws and the Board Mission Statement and Charter.

- d. As further described below, in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer), the Non-Executive Chairman of the Board would have the authority to designate powers and duties to the President and CEO. DTC believes this authority to designate powers and duties to the President and CEO is within the scope of the supervisory role of the Non-Executive Chairman of the Board and therefore proposes to revise the By-Laws to expressly state that the Non-Executive Chairman has this authority.
- e. In current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), DTC would add the Non-Executive

Chairman of the Board to the list of individuals who have the power to assign powers and duties to Managing Directors as well as make conforming changes. DTC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have because he has general supervision over the Board.

2. Add the Office of the CEO and Combine the Office of the President and the Office of the CEO into the Office of the President and CEO; Update the Related Powers and Duties

DTC proposes to add the office of the CEO and combine the office of the President and the office of the CEO into one office (President and CEO) because one individual is the President and CEO. DTC proposes to revise the By-Laws to reflect that one individual holds the office of the President and CEO, including revising the list of designated officers in current Section 3.1 (General Provisions) to include the President and CEO. While current Section 3.3 (Powers and Duties of the President) provides that the President shall be the chief executive officer, current Section 3.1 (General Provisions) does not include CEO in the list of designated officer positions (President is currently included in this list). As such, DTC would revise certain references in the By-Laws from President to President and Chief Executive Officer. Specifically, DTC proposes to make the changes to the By-Laws that are described below.

- a. In current Section 1.2 (Special Meetings), current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), current Section 3.1 (General Provisions), current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), current Section 3.7 (Powers and Duties of the Treasurer), and

current Section 3.12 (Compensation of Officers), the words “and Chief Executive Officer” would be added after each reference to President.

- b. In current Section 6.1 (Certificates for Shares), the words “the President” would be deleted and replaced by the words “President and Chief Executive Officer.”

Furthermore, except as otherwise described below, the responsibilities, duties and powers granted to the President that are currently described in the By-Laws would continue to remain with the President and CEO. DTC proposes to make the following changes to the By-Laws to reflect the updated responsibilities and powers and duties that are granted to the President and CEO:

- a. A portion of current Section 3.3 (Powers and Duties of the President) would be deleted and replaced with proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer). The remaining portion of current Section 3.3 (Powers and Duties of the President) would be included in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer).
- b. Current Section 3.3 (Powers and Duties of the President) states that the President will have general supervision over the business and affairs of DTC subject to the direction of the Board. Additionally, current Section 3.3 (Powers and Duties of the President) states that the President may employ and discharge employees and agents of

DTC, except such as shall be elected or appointed by the Board, and he may delegate these powers. Similarly, proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer) would state that the President and Chief Executive Officer would have general supervision over the overall business strategy, business operations, systems, customer outreach, and risk management, control and staff functions, subject to the direction of the Board and the Non-Executive Chairman of the Board. DTC believes the additional detail provided in proposed Section 3.2 (Powers and Duties of the President and CEO) would add clarity to the powers and duties associated with the role of President and Chief Executive Officer and would be consistent with the combined role. In addition, because the office of the COO would be eliminated (as described further below), the responsibility of general supervision over the operations of DTC, which is designated to the COO role in current Section 3.4 (Powers and Duties of the Chief Operating Officer), would be assigned to the President and CEO.

- c. Proposed Section 3.2 (Powers and Duties of the President and CEO) would state that the President and CEO would have such other powers and perform such other duties as the Board or the Non-Executive Chairman of the Board may designate. DTC believes this generally aligns with current Section 3.3 (Powers and

Duties of the President). DTC believes that providing the Non-Executive Chairman of the Board with this additional authority to designate powers and duties to the President and CEO is within the scope of the supervisory role of the Non-Executive Chairman of the Board.

- d. As noted above, certain powers and duties listed in current Section 3.3 (Powers and Duties of the President) would be removed or assigned to another position. Specifically, as noted above, the responsibility for carrying out the policies of the Board would be assigned to the Non-Executive Chairman of the Board rather than to the President and CEO. Additionally, the statement that “performance of any such duty by the President shall be conclusive evidence of his power to act” that appears in current Section 3.3 (Powers and Duties of the President) would be removed as DTC believes it would be best practice to document specific designation of powers and/or duties made by the Board or Non-Executive Chairman of the Board to the President and CEO. Furthermore, as noted above, the language stating that, in the absence of the Non-Executive Chairman, the President and CEO shall preside at all meetings of shareholders and all meetings of the Board of Directors at which he is present would be deleted because, pursuant to the Board Mission Statement and Charter, that power resides with the presiding director who is elected annually by the

DTC Board. DTC believes deleting this language would enhance accuracy by correcting the inconsistency between the By-Laws and the Board Mission Statement and Charter.

- e. As described above, in current Section 3.6 (Powers and Duties of the Secretary), the power to assign additional powers and duties to the Secretary would be removed from the President and granted to the Non-Executive Chairman of the Board. DTC believes this is an appropriate responsibility for the Non-Executive Chairman of the Board to have as part of his general supervision of the Board.
- f. As described below, the President and Board currently have the authority to assign powers and duties to the Comptroller in current Section 3.8 (Powers and Duties of the Comptroller). Similarly, proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) would provide that the CFO would perform such other duties as he may agree with the President and CEO and the Board.

3. Add the Office of the CFO; Delete of the Office of the Comptroller

DTC would add the office of the CFO and assign to the CFO all of the powers and duties of the office of the chief financial officer. The CFO would, in general, have overall supervision of the financial operations of DTC.

Furthermore, references to the office of the Comptroller would be deleted. DTC does not currently have a Comptroller nor does DTC plan to appoint one.

Therefore, DTC believes it would be more accurate to remove all references to

such position in the By-Laws. Specifically, DTC would revise the By-Laws as described below.

- a. In current Section 3.1 (General Provisions), CFO would be added to and Comptroller would be removed from the list of designated officers of DTC.
- b. DTC would add proposed Section 3.5 (Powers and Duties of the Chief Financial Officer). This proposed section would enumerate the powers and duties of the CFO. It would state that the CFO would have overall supervision of the financial operations of DTC and upon request, would counsel and advise other officers of DTC and perform other duties as agreed with the President and CEO or as determined by the Board. DTC believes these powers and duties are appropriate for the newly created role of CFO. Proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) would also state that the CFO would report directly to the President and CEO. DTC believes it is appropriate for the CFO to report to the President and CEO and to specify this clear line of responsibility in the By-Laws.
- c. Furthermore, proposed Section 3.6 (Powers and Duties of the Treasurer) would also be revised to state that the Treasurer shall have all such powers and duties as generally are incident to the position of Treasurer or as the CFO (in addition to the President and CEO and the Board) may assign to him. Because the

Treasurer directly reports to the CFO, DTC believes it is appropriate for the CFO to assign powers and duties to the Treasurer.

- d. DTC would delete current Section 3.8 (Powers and Duties of the Comptroller), which, with the elimination of the office of the Comptroller, would no longer be necessary.

4. Delete the Office of the COO

DTC would also delete references to the designated office of the COO in the By-Laws. DTC believes this change is necessary because DTC no longer has a COO nor does DTC plan to appoint one. Specifically, DTC would make the changes to the By-Laws described below.

- a. In current Section 3.1 (General Provisions), the COO would be removed from the list of designated officers of DTC.
- b. Current Section 3.4 (Powers and Duties of the Chief Operating Officer) would be deleted, which, with the elimination of the office of the COO, would no longer be necessary. The power and duty prescribed to this position (general supervision over the operations of DTC) would be assigned to the President and CEO in proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer), as described above.

5. Change the Title of Vice President to Executive Director; Update the Related Powers and Duties

DTC proposes to change the title of Vice President to Executive Director and update the related powers and duties. DTC believes these changes are

necessary because DTC has decided that the title of Executive Director is more widely used in the financial services industry for roles similar to those designated as Vice Presidents. In DTC's organizational structure, Executive Directors report to Managing Directors. As such, it was decided that Executive Directors do not have sufficient seniority to call special meetings of shareholders, to preside over shareholder meetings unless specifically designated to do so by the Board, or to sign share certificates. DTC proposes to make the following changes to the By-Laws to reflect the change in the title from Vice President to Executive Director and to update the related powers and duties.

- a. In current Section 1.2 (Special Meetings), the proposed rule change would remove Vice Presidents from the list of officers authorized to call special meetings of shareholders. DTC believes that Vice Presidents do not have sufficient seniority to call special meetings of shareholders.
- b. In current Section 1.8 (Presiding Officer and Secretary), Vice President would be removed. DTC believes that a Vice President should not preside over a shareholder meeting unless specifically designated to do so by the Board.
- c. In current Section 3.1 (General Provisions), Vice Presidents would be removed from the list of designated officers of DTC. As described below, a parenthetical phrase would be added explaining that the Board's power to appoint other officers includes the power to appoint one or more Executive Directors.

d. In current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), all references to Vice President would be deleted. Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors) currently states that Vice Presidents and Managing Directors have such powers and perform such duties as the Board or the President may assign to them.⁵ Because individuals with the title of Executive Director report to Managing Directors, DTC believes the reference to Vice President in this section would not be necessary.

6. Other Changes to the Powers and Duties of the Board and Certain Other Designated Officers

Managing Directors

- a. In Section 1.2 (Special Meetings), the reference to the Managing Director would be added to the list of officers authorized to call special meetings of the stockholders to provide DTC's management with more flexibility by enabling additional persons within senior management to call special meetings of the Board.
- b. In current Section 2.6 (Meetings), the proposal would add Managing Directors to the list of officers authorized to call special meetings of the Board. DTC believes this proposed change would provide DTC's management with additional flexibility by enabling

⁵ With this proposal, this reference to President would be revised to President and CEO, and the Non-Executive Chairman of the Board would be added so the Non-Executive Chairman of the Board would also be able to assign powers and duties to the Managing Directors.

additional persons within senior management to call special meetings of the Board.

- c. In current Section 6.1 (Certificates for Shares), Managing Directors would be removed from the list of officers authorized to sign certificates for shares. By removing Managing Directors, DTC would be able to limit the authorized signatories of certificates for shares of DTC to a smaller number of individuals within senior management.

Vice Chairman of the Corporation

As described below, a parenthetical phrase would be added in current Section 3.1 (General Provisions) explaining that the Board's power to appoint other offices includes, but is not limited to, the power to appoint a Vice Chairman of the Corporation.

Board

- a. In current Section 3.1 (General Provisions), DTC proposes to add a parenthetical phrase explaining that the Board's power to appoint other offices includes, but is not limited to, the power to appoint a Vice Chairman of the Corporation and one or more Executive Directors to enhance clarity.
- b. Additionally, in current Section 3.1 (General Provisions), regarding the ability of any one person to hold more than one office, DTC proposes to enhance and clarify the exception by specifying that neither the Secretary nor any Assistant Secretary

can hold the following offices: (1) Vice Chairman of the Corporation or (2) President and CEO. DTC believes this proposed change is necessary to ensure that the Secretary and any Assistant Secretary would not hold those positions.

Treasurer

In current Section 6.1 (Certificates of Shares), DTC proposes to delete the reference to Treasurer from the list of authorized signatories because DTC expects the Secretary or an Assistant Secretary (who are each currently listed as authorized signatories) to sign any share certificates.

Assistant Treasurer

In current Section 6.1 (Certificates of Shares), DTC proposes to delete the reference to Assistant Treasurer from the list of authorized signatories because DTC expects the Secretary or the Assistant Secretary (who are each currently listed as authorized signatories) to sign any share certificates.

7. Revise Compensation of Officers to Compensation of the President and Chief Executive Officer

Current Section 3.12 (Compensation of Officers) would be revised to accurately reflect DTC's compensation setting practices. Current Section 3.12 states that: (i) the compensation, if any, of the Chairman of the Board, and the President shall be fixed by a majority (which shall not include the Chairman of the Board or the President) of the entire Board of Directors and (ii) salaries of all other officers shall be fixed by the President with the approval of the Board and

no officer shall be precluded from receiving a salary because he is also a director. Current Section 3.12 would be revised to state that the Compensation Committee of the Corporation will recommend the compensation for the President and Chief Executive Officer to the Board of Directors for approval because, pursuant to the DTCC/DTC/FICC/NSCC Compensation and Human Resources Committee Charter (“Compensation Committee Charter), this is the process that is followed. In addition, DTC also proposes to delete the language stating that salaries of all other officers shall be fixed by the President with approval of the Board and no officer shall be precluded from receiving a salary because he is also a director. DTC believes the proposed changes are appropriate because they no longer reflect DTC’s compensation setting procedures. In addition, as noted above, references to Chairman of the Board would be deleted because the Non-Executive Chairman of the Board does not receive compensation. Furthermore, the title of this section would be revised from Compensation of Officers to Compensation of the President and Chief Executive Officer because this section would no longer speak to the compensation of officers other than the President and CEO.

C. Technical Changes and Corrections

DTC has identified the following technical changes and/or corrections that it proposes to make to the By-Laws to enhance the clarity and readability of the By-Laws.

1. Delete Direct Reference to Statutes and Statutory Requirements

DTC would delete direct statutory references from the By-Laws as set forth below so that the By-Laws remain consistent and accurate despite any changes to a specifically cited statute. DTC believes this proposed change would

also provide DTC with a broad base to act in accordance with relevant law without violating the By-Laws and thereby also provide DTC with more flexibility. Specifically, DTC proposes to make the following changes to the By-Laws:

- a. In current Section 1.2 (Special Meetings), regarding stockholders' ability to compel the Secretary to call a special meeting of the stockholders for the election of directors, the reference to the provisions of Section 6003 of the New York Banking Law would be deleted.
- b. In current Section 1.4 (Notice of Meetings), regarding the composition of notices for stockholder meetings, the reference to the specific provisions and requirements of Section 6022 of the New York Banking Law would be deleted.
- c. In current Section 2.2 (Election and Term of Directors), regarding the directors' oath of office, the specific citation to Section 7015 would be removed. DTC also would clarify that the Banking Law is in fact referring to the New York Banking Law.

2. Technical Changes to Section Describing Audit Committee

DTC proposes to revise proposed Section 2.11 (Audit Committee) to conform the description of the composition of the Audit Committee to the description of the Audit Committee in the by-laws of FICC because the composition of such committee is the same for DTC, FICC and NSCC and therefore, DTC believes the description of such committee should be consistent.

Specifically, DTC proposes to revise proposed Section 2.11 (Audit Committee) to state that the Board of Directors may appoint an Audit Committee consisting of three or more directors other than officers of DTC or DTCC. Furthermore, language stating that the Audit Committee will review the progress of all internal audits conducted by the Auditor (if there be one) and all periodic reports of such audits submitted to it by the Auditor pursuant to Section 3.9 and shall supervise, and cooperate and coordinate with, the Auditor in the performance of his duties would be deleted as a conforming change and for consistency with the by-Laws of FICC.

3. Other Technical Changes and Corrections

In addition to the technical changes proposed above, DTC proposes to make the additional technical and grammatical changes described below.

- a. In the heading for current Article I, DTC proposes to delete “STOCKHOLDERS” and replace it with “Stockholders” and in the heading for current Article II, delete “BOARD OF DIRECTORS” and replace it with “Board of Directors” to be consistent with the headings of the other Articles in the By-Laws.
- b. In current Section 1.2 (Special Meetings), current Section 1.3 (Record Date for Meetings and Other Purposes), current Section 1.8 (Presiding Officer and Secretary), current Section 2.6 (Meetings), current Section 3.1 (General Provisions), current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors), current Section 3.6 (Powers and Duties of the

Treasurer), current Section 3.12 (Compensation of Officers), and current Section 6.1 (Certificates for Shares), conforming grammatical corrections would be made.

- c. In current Section 1.10 (Inspectors of Election), each use of the word “corporation” would be capitalized so that it would read “Corporation” and the word “such” would be replaced with the word “the” before the word “Corporation” in the last sentence to correct typographical errors and enhance consistency and readability.
- d. In current Section 2.3 (Newly Created Directorships and Vacancies), the extra space before and after the word “of” in the first sentence would be deleted.
- e. In addition, additional spaces between the section number and the section title would be added in current Section 1.1 (Annual Meeting) through Section 1.12 (Written Consent of Stockholders Without a Meeting), in current Section 2.1 (Number of Directors) through current Section 2.7 (Quorum and Voting), proposed Section 2.8 (Non-Executive Chairman of the Board), proposed Section 2.10 (Executive Committee) through proposed Section 2.13 (Compensation of Directors), current Section 3.1 (General Provisions), proposed Section 3.3 (Powers and Duties of Managing Directors), proposed Section 3.4 (Powers and Duties of the Secretary), proposed Section 3.6 (Powers and Duties of the

- Treasurer), proposed Section 3.7 (Powers and Duties of the Auditor) through proposed Section 3.10 (Compensation of Officers), and current Section 6.1 (Certificates for Shares) through current Section 6.4 (Lost, Stolen or Destroyed Certificates).
- f. In current Section 2.6 (Meetings), each use of the word “board” in the second paragraph would be capitalized to correct typographical errors and enhance consistency.
- g. Current Section 2.8 (Executive Committee) through current Section 2.11 (Compensation of Directors) would be renumbered to reflect the addition of proposed Section 2.8 (Non-Executive Chairman of the Board) and proposed Section 2.9 (Action by Unanimous Written Consent).
- h. Current Section 3.5 (Powers and Duties of Vice Presidents and Managing Directors) through current Section 3.12 (Compensation of Officers) would be renumbered to reflect the addition of proposed Section 3.2 (Powers and Duties of the President and Chief Executive Officer) and proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) and the deletion of current Section 3.2 (Powers and Duties of the Chairman of the Board), current Section 3.3 (Powers and Duties of the President), current Section 3.4 (Powers and Duties of the Chief Operating Officer) and current Section 3.8 (Powers and Duties of the Comptroller).

- i. Proposed Article X (Gender References) would be added to clarify that the By-Laws are intended to be gender neutral with any reference to one gender deemed to include the other.

2. Statutory Basis

Section 17A(b)(3)(A) of the Act requires, among other things, that a clearing agency is so organized to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.⁶ DTC believes the proposed changes to the By-Laws described above are consistent with this provision. Specifically, DTC believes that the (1) change of title from Chairman of the Board to Non-Executive Chairman of the Board and changes to the related powers and duties, (2) addition of the office of the CEO, the combination of the offices of the President and CEO and changes to the related powers and duties, (3) addition of the office of the CFO and deletion of the office of the Comptroller, (4) change of title from Vice President to Executive Director and changes to the related powers and duties, (5) deletion of the office of the COO, (6) changes to the powers and duties of the Board, (7) changes to the powers and duties of Managing Directors, (8) changes to the powers and duties of Vice Chairman of the Corporation, (9) changes to the powers and duties of the Treasurer, and (10) changes to the powers and duties of the Assistant Treasurer are designed to facilitate the effective and efficient governance and operation of DTC and accurately reflect DTC's current Board and management structure. DTC also believes the changes to the powers and duties of the Board and designated officer positions are appropriate and aligned with each role. Furthermore, these proposed changes are intended to promote additional

⁶ 15 U.S.C. 78q-1(b)(3)(A).

clarity as to the responsibilities of the Board and certain designated officers. DTC believes the proposed changes to the section describing the compensation of officers are designed to accurately reflect: (1) the process that is followed for setting compensation pursuant to the Compensation Committee Charter and (2) that the Non-Executive Chairman of the Board does not receive compensation and would promote additional clarity as to the setting of compensation of the President and CEO and Non-Executive Chairman of the Board. DTC also believes the technical changes and corrections to the By-Laws would enhance clarity and transparency in DTC's organizational documents. DTC also believes that the proposed changes that would: (1) reduce the minimum number of required Board meetings, (2) eliminate the requirement that the Executive Committee meet during each 30-day period in which the Board does not meet, and (3) authorize the Board to act by unanimous written consent in lieu of a meeting would facilitate the efficient operation of DTC by permitting the Board to make necessary decisions in a timely and efficient manner. DTC also believes that removing the word "monthly" when describing that the Board may fix times and places of regular meetings of the Board would enhance clarity and consistency regarding the requirements associated with such meetings. Therefore, DTC believes these proposed changes are consistent with the requirement that DTC is so organized to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.

Rule 17Ad-22(e)(1) under the Act requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent and enforceable legal basis for each aspect of its

activities in all relevant jurisdictions.⁷ DTC believes the (1) proposed changes to the titles or offices and the related powers and duties of the Board and certain officers and (2) proposed technical changes and corrections to the By-Laws are designed to ensure that DTC's organizational documents accurately describe DTC's organizational structure and that such organizational documents remain clear, transparent, and consistent. Therefore, DTC believes these proposed changes are consistent with Rule 17Ad-22(e)(1) because they are designed to ensure that DTC's organizational documents remain well-founded, transparent and enforceable in all relevant jurisdictions.⁸

Rule 17Ad-22(e)(2) under the Act requires that DTC establish, implement, maintain and enforce written policies and procedures to provide for governance arrangements that, among other things, (1) are clear and transparent, (2) support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of owners and participants; and (3) specify clear and direct lines of responsibility.⁹ DTC believes the proposed changes to the By-Laws described above are designed to be consistent with Rule 17Ad-22(e)(2).¹⁰ Specifically, DTC believes the proposed changes to the By-Laws regarding the titles or offices and the related powers and duties of various officers and the Board would enhance clarity and transparency because they would clearly and accurately set forth the organizational structure of DTC, including the roles and lines of responsibility of various officers and

⁷ 17 CFR 240.17Ad-22(e)(1).

⁸ Id.

⁹ 17 CFR 240.17Ad-22(e)(2).

¹⁰ Id.

the Board. DTC also believes that the proposed changes that would: (1) reduce the minimum number of required Board meetings, (2) eliminate the requirement that the Executive Committee meet during each 30-day period in which the Board does not meet, and (3) authorize the Board to act by unanimous written consent in lieu of a meeting would facilitate the efficient operation of DTC by permitting the Board to make necessary decisions in a timely and efficient manner. DTC also believes that removing the word “monthly” when describing that the Board may fix times and places of regular meetings would enhance clarity and consistency regarding the requirements associated with such meetings. DTC also believes the proposed changes relating to the compensation of officers would enhance clarity and transparency regarding its compensation setting procedures by (1) accurately reflecting the process that is followed pursuant to the Compensation Committee Charter and (2) clarifying that the Non-Executive Chairman of the Board does not receive compensation. In addition, the proposed technical changes and corrections to the By-Laws are also designed to enhance the clarity, transparency, and readability of the By-Laws. DTC believes that, taken together, these proposed changes would facilitate the effective and efficient governance and operation of DTC, and therefore would enable DTC to better serve its Participants. As such, DTC believes these proposed changes would also support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to clearing agencies, and the objectives of its owners and participants. Therefore, DTC believes these proposed rule changes are consistent with Rule 17Ad-22(e)(2) because they are designed to enhance clarity and transparency in DTC’s governance arrangements, support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q-1) applicable to

clearing agencies, and the objectives of owners and participants, and specify clear and direct lines of responsibility for various officer positions and the Board within DTC's organizational structure.¹¹

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

DTC does not believe that the proposed rule change would have any impact on competition. The proposed rule change would amend the By-Laws to: (1) accurately reflect DTC's organizational structure and reflect changes to titles or offices and the related powers and duties of the Board and various designated officers, (2) accurately reflect (a) the process that is followed for setting compensation pursuant to the Compensation Committee Charter and (b) that the Non-Executive Chairman of the Board does not receive compensation, (3) permit the Board to continue to make necessary decisions in a timely and efficient manner by reducing the minimum number of required Board meetings, authorizing the Board to act by unanimous written consent in lieu of meetings, and make other related changes, and (4) enhance the clarity, transparency, and readability of the By-Laws by making technical changes and corrections. DTC does not believe that this proposal would affect any of its current practices regarding the rights or obligations of its Participants. Therefore, DTC believes that the proposal would not have any effect on its Participants and thus, would not have any impact or burden on competition.

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

DTC has not received any written comments relating to this proposal. DTC will notify the Commission of any written comments received by it.

¹¹ Id.

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

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

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

should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2018-001 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-2018-001. 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-2018-001 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.¹²

Eduardo A. Aleman
Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).