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.\textsuperscript{77}  

As discussed above, the proposed rule change would update the By-Laws by (1) providing specific requirements for, and removing ambiguous language around, the Board’s required meeting frequency, (2) updating DTC’s description of the titles and responsibilities of its Board and senior management to match DTC’s current corporate structure, (3) documenting DTC’s current compensation-setting process, and (4) enacting technical corrections to increase readability.  

Each of the proposed changes is designed to help ensure that the By-Laws better reflect DTC’s governance practices in a clear, transparent, and consistent manner. This increased transparency would help convey to DTC’s stakeholders, and the public generally, a key legal basis for the activities of the highest levels of DTC’s leadership described in the By-Laws. Therefore, the Commission finds that the proposed rule change is designed to help ensure that DTC’s organizational documents remain well-founded, transparent, and legally enforceable in all relevant jurisdictions, consistent with Rule 17Ad–22(e)(1) under the Act.\textsuperscript{78}  

C. Rule 17Ad–22(e)(2)(i) and (v) Under the Act  

Rule 17Ad–22(e)(2)(i) and (v) under the Act requires that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things, (1) are clear and transparent and (2) specify clear and direct lines of responsibility.\textsuperscript{79}  

As described above, DTC proposes a number of changes to its By-Laws that would provide clarity and transparency by setting specific standards for DTC (in the case of Board meeting frequency), and revising By-Laws provisions that were outdated or incorrect (in the case of responsibilities and titles of its Board members and senior management, compensation-setting practices, and technical edits). Specifically, the new Board meeting requirements would set clear numerical parameters around the specific frequency of such meetings, while also providing consistency with similar meetings at FINRA and NSCC. The proposal also would provide clarity that the Board does not have to meet monthly (as is currently stated) by removing the qualifier “monthly.” The proposed change allowing the Board to act by unanimous written consent, in lieu of a meeting, also would help provide transparency by clearly indicating how the Board may act without conducting a formal meeting. Similarly, the proposed changes to the titles and offices (and their related powers and duties) would provide clarity and transparency because they would clearly set forth DTC’s current organizational structure, including the lines of responsibility of various officers and the Board. The proposed changes relating to compensation-setting would also give clarity and transparency 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. Finally, the proposed technical changes and corrections would raise the clarity and transparency of the By-Laws by removing grammatical and typographical errors.  

For these reasons, the Commission finds that the proposed rule change is designed to enhance clarity and transparency in DTC’s governance arrangements, as well as to specify clear and direct lines of responsibility for various officer positions and the Board within DTC’s organizational structure, consistent with Rule 17Ad–22(e)(2)(i) and (v) under the Act.\textsuperscript{80}  

III. Conclusion  

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act\textsuperscript{81} and the rules and regulations thereunder.  

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–DTC–2018–001 be, and hereby is, APPROVED.\textsuperscript{82} For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.\textsuperscript{83}  

Eduardo A. Aleman,  
Assistant Secretary.  

[FR Doc. 2018–06021 Filed 3–23–18; 8:45 am]  

BILLING CODE 8011–01–P  

SECURITIES AND EXCHANGE COMMISSION  


Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Amend the By-Laws  

March 20, 2018.  

On February 2, 2018, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change SR–NSCC–2018–001, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")\textsuperscript{1} and Rule 19b–4 thereunder.\textsuperscript{2} The proposed rule change was published for comment in the Federal Register on February 14, 2018.\textsuperscript{3} The Commission did not receive any comment letters on the proposed rule change. For the reasons discussed below, the Commission approves the proposed rule change.  

I. Description of the Proposed Rule Change  

The proposed rule change would amend the NSCC By-Laws ("By-Laws")\textsuperscript{4} to (1) change certain NSCC Board of Directors ("Board") titles, officer titles, and offices (and their respective powers and duties), (2) update the compensation section for officers, and (3) make technical changes and corrections, each discussed more fully below. The proposed rule change would amend the Rules to incorporate, by reference, the By-Laws and the Certificate of Incorporation.  

A. Changes to Certain Titles, Offices, and Related Powers and Duties  

NSCC proposes changes to the titles, offices, and related powers and duties of

\textsuperscript{77} Id.  
\textsuperscript{78} 17 CFR 240.17Ad–22(e)(1).  
\textsuperscript{79} Id.  
\textsuperscript{80} Id.  
\textsuperscript{81} 15 U.S.C. 78q–1.  
\textsuperscript{82} In approving the proposed rule change, the Commission considered the proposals’ impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).  
\textsuperscript{83} 17 CFR 200.30–3(a)(12).  
The proposal also identifies the individuals to whom the Non-Executive Chairman may assign duties. In proposed Section 3.2 (Powers and Duties of the President and Managing Directors), NSCC also would add the Non-Executive Chairman of the Board to the list of individuals who have the ability to assign powers and duties to Managing Directors. Finally, in proposed Section 3.4 (Powers and Duties of the Secretary), the Non-Executive Chairman of the Board (i.e., not the President and CEO) would have the authority to assign additional powers and duties to the Secretary.

2. Office of the CEO

NSCC proposes to revise the By-Laws to reflect that one individual holds the office of the President and CEO. As such, the proposal would change the By-Laws 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), reflecting that the President shall be the CEO, current Section 3.1 (General Provisions) does not include CEO in the list of designated officer positions, though President is currently included in this list. Therefore, NSCC proposes to revise the relevant references in the By-Laws from “Chairman” and “Chairman of the Board” to “Non-Executive Chairman of the Board.”

Additionally, NSCC proposes to make several By-Laws revisions to reflect the responsibilities for the consolidated role of President and CEO. First, NSCC would delete and replace current Section 3.3 (Powers and Duties of the President) with proposed Section 3.2 (Powers and Duties of the President and CEO), which gives presiding authority over stockholder meetings to a presiding director who is elected annually by the Board when present. Similarly, NSCC would delete language from the By-Laws stating that, in the absence of the Chairman of the Board, the President shall preside at all meetings of shareholders and all Board meetings (when present). Similarly, NSCC would delete language from the By-Laws stating that 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), as discussed below. In proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) the President and CEO and Board would have the authority to assign duties to the Chief Financial Officer (“CFO”). The proposal also removes certain responsibilities from the President. In proposed Section 3.4 (Powers and

21 Id.
22 Id.
23 Id.
24 Id.
25 Id.
26 Id.
27 Id. As stated above, that power resides with the presiding director who is elected annually by the Board. See supra note 20.
28 Notice, 83 FR at 6642.
29 Id.

5 Notice, 83 FR at 6634.
6 Id.
7 Id.
8 Id.
9 Id.
10 Id. This provision is designed to correct an inaccuracy in current By-Laws Section 3.3 (Powers and Duties of the President), which gives presiding authority over stockholder meetings to the President when the Chairman of the Board is absent. Proposed Section 2.8 (Non-Executive Chairman of the Board) would be consistent with the Mission Statement and Charter of the Depository Trust Corporation (“DTC”), Fixed Income Clearing Corporation (“FICC”), NSCC, and the Depository Trust and Clearing Corporation (“DTCC”), which gives presiding authority over stockholder meetings to a presiding director when the Non-Executive Chairman of the Board is absent. DTC, FICC, and NSCC are subsidiaries of DTCC, each having the same Board of Directors as DTCC. See Securities Exchange Act Release No. 74142 (January 27, 2015), 80 FR 5188 (January 30, 2015) (SR–FICC–2014–810, SR–NSCC–2014–811, SR–DTC–2014–812).
11 Notice, 83 FR at 6634.
12 Notice, 83 FR at 6635.
13 Id.
14 Id.
15 Id.
16 Id.
17 Id.
18 Id.
19 Id.
20 Id.
21 Id.
22 Id.
23 Id.
24 Id.
25 Id.
26 Id.
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.30

3. Office of the CFO; Office of the Comptroller

The proposal would add the office of the CFO and assign to the CFO general supervision of the financial operations of NSCC.31 References in the By-Laws to the Comptroller would be deleted because NSCC states that it neither has a Comptroller nor plans to appoint one.32 In proposed Section 3.5 (Powers and Duties of the Chief Financial Officer) the CFO would be granted overall supervision authority over the financial operations of NSCC, and upon request, the CFO would counsel and advise other officers of NSCC and perform other duties as agreed with the President and CEO (or as determined by the Board).33 The proposal also provides that the CFO would report directly to the President and CEO.34 Furthermore, because the Treasurer would directly report to the CFO, proposed Section 3.6 (Powers and Duties of the Treasurer) would provide that the Treasurer would 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.35

4. Office of the COO

In this proposal, NSCC would delete references in the By-Laws to the COO because NSCC states that it no longer has a COO and has no plans to appoint one.36

5. Executive Director; Vice President

In this proposal, NSCC would change the title of Vice President to Executive Director, and update the Executive Director position’s related powers and duties to reflect the position’s seniority level.37 In NSCC’s organizational structure, Executive Directors report to Managing Directors.38 Due to this level of seniority, NSCC proposes to remove provisions in the By-Laws that previously allowed Vice Presidents (now, Executive Directors) to call special meetings of shareholders, to sign share certificates, or to preside over shareholder meetings unless specifically designated to do so by the Board.39

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

In proposed Section 3.1 (General Provisions), NSCC proposes to add a parenthetical phrase to clarify that the Board’s power to appoint other officers includes, but is not limited to, the power to appoint a Vice Chairman of the Corporation and one or more Executive Directors.40 Additionally, in current Section 3.1 (General Provisions), NSCC proposes to clarify that neither the Secretary nor any Assistant Secretary can hold the following offices (1) Vice Chairman of the Corporation or (2) President and CEO.41

The proposal also enumerates the responsibilities of NSCC’s Managing Directors.42 In proposed Section 1.8 (Presiding Officer and Secretary), Managing Directors would be removed from the list of officers authorized to preside over a stockholders’ meeting unless specifically authorized by the Board.43 Similarly, in proposed Section 2.6 (Meetings), Managing Directors would be added to the list of officers authorized to call special meetings of the Board.44

NSCC also proposes to amend the By-Laws to remove specific powers from the Treasurer and Assistant Treasurer.45 In current Section 5.1 (Certificates of Shares), NSCC proposes to delete the reference to Treasurer and Assistant Treasurer from the list of authorized signatories because NSCC expects the Secretary or Assistant Secretary (who are each currently listed as authorized signatories) to sign any share certificates.46

B. Compensation of the President and CEO

Proposed Section 3.10 (Compensation of the President and CEO) would reflect NSCC’s current compensation-setting practices. Current Section 3.12 (Compensation of Officers) states that (1) 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 (2) 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.47 NSCC proposes to state that the Compensation Committee of the Corporation will recommend the compensation for the President and CEO to the Board of Directors for approval.48 In addition, NSCC also proposes to delete the language stating that (1) salaries of all other officers shall be fixed by the President with approval of the Board, and (2) no officer shall be precluded from receiving a salary because he is also a director.49 NSCC proposes to delete compensation-related references to the Chairman of the Board because the Non-Executive Chairman of the Board does not receive compensation.50

Finally, NSCC proposes to change the title of proposed Section 3.10 from “Compensation of Officers” to “Compensation of the President and Chief Executive Officer” because this section would no longer address the compensation of officers other than the President and CEO.51

C. Technical Changes and Corrections

NSCC proposes technical changes and/or corrections to the By-Laws for clarity and readability, as described below.52

1. Statutory References and Requirements

NSCC would delete direct statutory references from the By-Laws.53 NSCC states that it would make this change to have the By-Laws remain consistent and accurate despite any changes to a specifically cited statute.54

2. Audit Committee

NSCC proposes to revise proposed Section 2.11 (Audit Committee) to have the description of its Audit Committee conform to the description of the Audit Committee in the by-laws of FICC.55

3. Other Technical Changes and Corrections

NSCC proposes to make additional technical and grammatical changes to address (1) typographical errors, (2) section numbering, (3) grammatical

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30 Id.
31 Notice, 83 FR at 6636.
32 Id.
33 Id.
34 Id.
35 Id.
36 Id.
37 Id.
38 Id.
39 Id.
40 Id.
41 Id.
42 Id.
43 Id.
44 Id.
45 Id.
46 Notice, 83 FR at 6637.
47 Id.
48 Notice, 83 FR at 6637. NSCC states that it proposes this change for consistency with the DTUC/DTFC/FICC/NSCC Compensation and Human Resources Committee Charter. Id.
49 Id.
50 Id.
51 Notice, 83 FR at 6644.
52 Id.
53 Id.
54 Id.
55 Id.
errors, (4) heading consistency, and (5) gender references.56

D. Proposed Changes to the Rules

NSCC proposes to add an addendum (“Addendum V”) to the Rules.57 NSCC proposes that Addendum V would be entitled “By-Laws and Restated Certificate of Incorporation” and would indicate that the By-Laws and Certificate of Incorporation are incorporated into the Rules by reference.58

II. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self‐regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to such organization.59 The Commission believes the proposal is consistent with Act, specifically Section 17A(b)(3)(F) of the Act and Rules 17Ad–22(e)(1) and, in part, (2) under the Act.60

A. Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency, such as NSCC, be designed to protect the public interest.61 As discussed above, the proposed rule change would make a number of updates to the By-Laws.

First, NSCC proposes to revise NSCC’s description of the titles and responsibilities of its Board and senior management to match NSCC’s current corporate structure. These changes would help the Board, as well as NSCC’s management, employees, and members, understand which officer or office is responsible for each of NSCC’s executive-level functions.

Second, the proposal would update the compensation-setting section of the By-Laws to reflect the Compensation Committee Charter practice, as well as to reflect that the Non-Executive Chairman of the Board would not receive compensation. The proposal’s increased clarity around compensation-setting would better inform NSCC stakeholders and the general public about how NSCC sets the level of compensation for its highest-level executive (the President and CEO) and that the Non-Executive Chairman does not draw a salary.

Third, NSCC’s proposed technical changes and corrections to its By-Laws would enhance the clarity, transparency, and readability of NSCC’s organizational documents. In this way, the proposal would better enable the Board, as well as NSCC’s management, employees, and members, to understand their respective authorities, rights, and obligations regarding NSCC’s clearance and settlement of securities transactions.

Finally, NSCC’s proposed addendum would incorporate the By-Laws and Certificate of Incorporation into the Rules. This change would increase the clarity and transparency of NSCC’s organizational documents by integrating the By-Laws and the Certificate of Incorporation into the Rules, to which all NSCC members are subject and have access.

Governance arrangements are critical to the sound operation of clearing agencies.62 Specifically, clear and transparent governance documents promote accountability and reliability in the decisions, rules, and procedures of a clearing agency.63 Clear and transparent governance documents also provide interested parties, including owners, members, and general members of the public, with information about how a clearing agency’s decisions are made and what the rules and procedures are designed to accomplish.64 Further, the decisions, rules, and procedures of a clearing agency are important, as they can have widespread impact, affecting multiple market members, financial institutions, markets, and jurisdictions.65

As stated above, the proposed rule change would provide NSCC stakeholders with a better understanding of how NSCC makes decisions that could ultimately affect the financial system. Such transparency helps ensure that NSCC reliably makes decisions and follows clearly articulated policies and procedures. Accordingly, the Commission finds that the proposed rule change is designed to enhance the clarity and transparency of NSCC’s organizational documents, which would help protect the public interest, consistent with Section 17A(b)(3)(F) of the Act.66

B. Rule 17Ad–22(e)(1) Under the Act

Rule 17Ad–22(e)(1) under the Act requires a covered clearing agency67 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.68

As discussed above, the proposed rule change would update the By-Laws by (1) updating NSCC’s description of the titles and responsibilities of its Board and senior management to match NSCC’s current corporate structure, (2) documenting NSCC’s current compensation-setting process, and (3) enacting technical corrections to increase readability. The proposed rule change would also add an addendum to the Rules to incorporate the By-Laws and the Certificate of Incorporation by reference.

The proposed changes are designed to help ensure that the By-Laws better reflect NSCC’s governance practices, as well as to organize NSCC’s organizational documents in a clear, transparent, and consistent manner. This increased transparency would help convey to NSCC’s stakeholders, and the public generally, a key legal basis for the activities of the highest levels of NSCC’s leadership described in the By-Laws. Therefore, the Commission finds that the proposed rule change is designed to help ensure that NSCC’s organizational documents remain well-founded, transparent, and legally enforceable in all relevant jurisdictions, consistent with Rule 17Ad–22(e)(1) under the Act.69

C. Rule 17Ad–22(e)(2)(i) and (v) Under the Act

Rule 17Ad–22(e)(2)(i) and (v) under the Act requires that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that, among other things, (1) are clear and

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56 Notice, 83 FR at 6637–38.
57 Notice, 83 FR at 6638.
58 Id.
60 15 U.S.C. 78q–1(b)(3)(F); 17 CFR 240.17Ad–22(e)(1) and (2).
64 Id.
65 Covered Clearing Agency Standards Proposing Release, 79 FR at 29521.
68 17 CFR 240.17Ad–22(e)(1).
69 Id.
For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018–06030 Filed 3–23–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; The Depository Trust Company; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend the Loss Allocation Rules and Make Other Changes

March 20, 2018.

I. Introduction


II. Summary of the Proposed Rule Change

As described in the Notice,9 DTC proposes to revise Rule 4 (Participants Fund Deposits of Non-Defaulting Participants) to primarily change (i) the application of the Participants Fund in a Participant Default and for settlement;10 (ii) the loss allocation process;11 (iii) the loss allocation governance for Non-Default Events;12 and (iv) the retention time for the Actual Participants Fund Deposit of former participants.13 Furthermore, the Proposed Rule Change would revise Rule 1 (Definitions; Governing Law) to add cross-references to terms that would be defined in proposed Rule 4.14

A. Application of the Participants Fund in a Participant Default and for Settlement

DTC proposes to revise Rule 4, Section 4 (Application of Participants Fund Deposits of Non-Defaulting Participants) to address the situation where the application of the Actual Participants Fund Deposit of a Participant that has failed to settle is insufficient to complete settlement among non-defaulting Participants on any Business Day.15 In such a situation, proposed Section 4 would state that the Participants Fund shall constitute a liquidity resource which may be applied by DTC in such amounts as DTC shall determine, in its sole discretion, to fund settlement among non-defaulting Participants.16

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular the requirements of Section 17A of the Act73 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that proposed rule change SR–NSCC–2018–001 be, and hereby is, approved.74

79 17 CFR 240.17Ad–22(e)(2)(i) and (v).
71 In approving the proposed rule change, the Commission considered the proposals’ impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
72 17 CFR 240.17Ad–22(e)(2)(i) and (v).
73 For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.
74 Eduardo A. Aleman, Assistant Secretary.