

Title: It's time for independent oversight at the DTCC. Self-regulation must be dismantled.

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Linked Post Content:

This post is to get us started in understanding and eventually influencing the proposed rule to place restrictions on DTCC governance. Just a nice walkthrough of what's the rule, why is it a big thing, etc.

My previous posts on this:

****The DTCC fighting external governance 2012-2016:**** Superstonk/comments/wmhz6q/i_started_digging_into_the_new_dtcc_loses_its/?utm_source=share&utm_medium=web2x&context;=3

****Hester Peirce fighting this rule right now:**** Superstonk/comments/wmi4f6/hester_peirce_is_mad_about_the_new_dtcc_loses_its/?utm_source=share&utm_medium=web2x&context;=3

TLDR

On August 8th the SEC proposed a new rule, "Clearing Agency Governance and Conflicts of Interest". This rule would force a majority of the DTCC's board to be independent and not have conflicts of interest with the corporation. Among other things it would empower us to find conflicts of interest in DTCC board members and report them to the authorities. These are good things. Curtailing the DTCC's "do whatever the fuck I want" status is a good thing. BUT, it does not go far enough. So, we can do two things: (1) we can show up in the comments and provide thousands of well-written arguments against what the DTCC wants, and (2) we can push for the rule to be strengthened. The core mission here is stop the DTCC from getting what it wants; the core mission is to make them feel our influence. *We are here, and you don't get to do whatever you want any longer.*

The rule is long and complicated but we can ELIA it and then distill talking points for easy commenting. This post is the first in a series about the new DTCC rule that ratchets back its self-regulatory ability and will culminate in a post with everything you need to comment well on this rule.

That said, this rule is big and has a lot of things in it. If we work together (apes together strong, after all), we can do a lot more.

It is time to earn some wrinkles, my dudes.

What is this rule, anyway?

The rule is called Clearing Agency Governance and Conflicts of Interest. The proposal caused a bit of a stir at first:

<https://preview.redd.it/60v3kkwexfj91.png?width=1080&format=png&auto=webp&s=1da0b34eb4218318e952046dc088f7149c089cba>

And it appears to be happening because of what happened to us:

<https://preview.redd.it/sy9q5tfbyfj91.png?width=722&format=png&auto=webp&s=fb6636f00c849a4dc04b72b4116f28be1862bcd>

Here is the SEC's TLDR:

<https://preview.redd.it/04ye6ek5wfj91.png?width=899&format=png&auto=webp&s=954d10579f38c783f60dd5a1130d28b61868b43a>

What is a registered clearing agency, you ask? Here they are:

<https://preview.redd.it/5q9iak743gj91.png?width=615&format;=png&auto;=webp&s;=719629c9c200b1bb1e13176ad4a0248f2c36911b>

TLDR FACT SHEET (2 pages): [https://www.sec.gov/files/34-95431-fact-sheet_0.pdf](https://www.sec.gov/files/34-95431-fact-sheet_0.pdf)

PRESS RELEASE:

<https://www.sec.gov/news/press-release/2022-138>

RULE TEXT (174 pages): <https://www.sec.gov/rules/proposed/2022/34-95431.pdf>

This rule is a beast, so we will go through it one piece at a time. I have it printed:

[LFG](<https://preview.redd.it/ai64s4yzxfj91.png?width=582&format;=png&auto;=webp&s;=26d6cb02d1b3e0f8fce5c894f31d1146ffd0e6d2>)

What does this rule do, anyway?

The rule says "you can't just put whoever you want on the board any more", and has a lot of changes to the way the organization is governed.

The big ticket item is requiring the board to be majority independent. The other big thing is the "no more conflicts of interest" angle... we will have to figure out how many board members of the DTCC *currently* have conflicts of interest to see who would get immediately cut if this rule passes as-is.

For any ape who wants to see which board members will get cut by this rule, here's the list...

<https://www.dtcc.com/about/leadership/board>

A minimum of 34% will have to be independent, so that potentially means a lot of those people would be gone. Who will it be? Who will we report for conflicts of interest?

****The Main Points****

The first point seems desirable but may have a loophole in it: the majority on the board must be independent (yay!) unless... something to do with the voting rights and the shareholders of the DTCC. I don't know what these "participants" mean, so let's jot that term down for later.

[Is a broker a participant? That doesn't seem right. Independent majority seems right.](<https://preview.redd.it/vhf3qwd00gj91.png?width=793&format;=png&auto;=webp&s;=94d8eab7e4098d92fe809cba6bebe06b9cd7b98b>)

Next, we have requirements for who gets to nominate people for the board. This seems like something we will want input about.

[Who gets to decide who governs the DTCC?](<https://preview.redd.it/85zisjih0gj91.png?width=808&format;=png&auto;=webp&s;=0e089f85c6086d1a4773370b513402f7b48e6bcd>)

The third part of the rule is about the 'risk management committee', which must be the part that is completely fucking failing with rampant FTDs and apocalyptic systemic risk. Very relevant to GameStop.

[What should this committee do? How should the DTCC manage its risk? I'll bet Trimbath has a few ideas.](<https://preview.redd.it/0yx6ge9p0gj91.png?width=814&format=png&auto=webp&s=fe27faceb1a320081b95423de31506240c34de85>)

Fourth, we see requirements about identifying, mitigating, eliminating, and documenting conflicts of interest. There is a 100% chance the DTCC will want to write these themselves, so let's not let them do that.

[You don't get to decide if you have a conflict of interest bro](<https://preview.redd.it/eme08ghf1gj91.png?width=814&format=png&auto=webp&s=98eddb2a6f5d23b5023fc624ae52c155bf8a16f8>)

Fifth, we see policies and procedures that require directors to report potential conflicts of interest "promptly". This is a place we can insert ourselves into the process: we are good at looking up board members and finding conflicts of interest. We will want a process through which we can use our DD to burn away conflicts of interest when they inevitably arise.

[\"Promptly\" is a lawyer word... the DTCC will probably want that out.](<https://preview.redd.it/lr8kooen1gj91.png?width=797&format=png&auto=webp&s=0a27f3d9752b1ea6ffb79c25bd24bb606b1ce359>)

Sixth, we have something I don't understand yet - "providers for critical services". Let's jot that down for later. Is this Citadel?

[So many policies and procedures. Necessary but insufficient!](<https://preview.redd.it/41nacm0y1gj91.png?width=776&format=png&auto=webp&s=4f66c61208dc3fc0b3f92bd08fef9452660e40af>)

And finally, we have a requirement to solicit, consider, and document the DTCC's "consideration of the views" it receives about its governance and operations. I would want a public record of problems, and I hope "other relevant stakeholders" includes "everyone who uses the markets that are at the DTCC's mercy". So let's jot that down, and see if that is what this means. If it isn't in the rule, we should put it there.

[Are the people who get fucked by the DTCC \"stakeholders\"? If not... why the fuck not?!](<https://preview.redd.it/313660q32gj91.png?width=776&format=png&auto=webp&s=a3cc780034286f1aae0caaddb40cc631aeefd8b7>)

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The Actual Introduction

Can you believe we aren't even at the introduction yet? LOL

I'll save you wading through all the jibber-jabber about how great this rule is, because we have our own priorities. The first big point is, I think, when they start talking about the existing rules governing clearing agencies:

"...the Commission adopted a series of clearing agency governance requirements. In 2012, the Commission adopted a general governance rule for all registered clearing agencies (that are not covered clearing agencies) under Rule 17Ad-22(d). In 2016, the Commission adopted a governance rule under Rule 17Ad-22(e) as part of its heightened standards for covered clearing agencies, defined as a registered clearing agency that provides the services of a central counterparty or central securities depository.

The Commission took a broad, principles-based approach in the design of both rules, and emphasized that governance remains an area of continued consideration and interest, with the goal of establishing an evolving regulatory framework for clearing agencies.**

Focus on the bold part. Translated, this means "we were super vague and didn't do much at the time, but we said we'd work on it some more later on", aka "we let the clearing agencies reduce these rules to jack and shit and kicked the regulatory can down the road".

I covered some of these rule comment shenanigans in a previous post [Superstonk/comments/wmhz6q/i_started_digging_into_the_new_dtcc_loses_its/?utm_source=share&utm_medium=web2x&context=3](https://www.reddit.com/comments/wmhz6q/i_started_digging_into_the_new_dtcc_loses_its/?utm_source=share&utm_medium=web2x&context=3)

...and this is referenced again near the end of the intro, on pg 10:

[page 10](<https://preview.redd.it/xy4gbrvs3gj91.png?width=804&format=png&auto=webp&s=4a9c12e90ec203deb64b4ba0119eb2f48142fcc5>)

Back in 2016, the SEC passed the first set of rules setting out standards for clearing agencies. The clearing agencies, of course, were all up in those comments arguing strongly to weaken the rule. They succeeded, and the standards and rules governing them were watered down. This is what is meant by "broad and principles-based": the rules were made vague and non-binding. The SEC says it intends this time to be different. Now we have more concrete rules. OK, let's push. We'll see ... and make sure things are strengthened rather than diluted.

The next important thing comes just after:

"...the rules are designed to take a ***multi-layered approach*** *to governance in that one rule alone would not necessarily capture and address an issue relating to governance; each of the different rules proposed today would provide one additional mitigation layer to help ensure that registered clearing agencies are designed, managed, and operated under a robust governance framework to protect investors and the public interest and help promote the prompt and accurate clearance and settlement of securities transactions."*

Critically:

<https://preview.redd.it/3gj1ldii4gj91.png?width=834&format=png&auto=webp&s=b515265bc9a6b34795957c075584c027224cff43>

This phrasing, to me, seems important for one reason: it is a place for lobbyists to insert themselves in the process. They can argue that the *other* "mitigation layers" (parts of the rule) do the job just fine, but *this one* (whatever they want to remove) is unnecessary. Each layer is good "by itself", right?

The Upshot

The DTCC and other clearing agencies are facing increased governance and independent oversight. They will fight it to keep things the way they are. We can support this rule, enhance it, and push back in a very public way. The next post I write will probably be in the "Know Your Opponent" style. We know what the big boys said last time they were threatened with regulation, and we know what Hester Peirce is saying now. Examining those lines of attack will help us frame our own arguments to support and change this rule.

Keeping educating yourself, keep reading, stay mad, stay motivated. I'll be making other posts as we go. This will take time... but then, all the best things do. Showing up and doing something the DTCC really feels will be an important step forward. A good brick.