

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="36"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2016"/> - * <input type="text" value="003"/>	Amendment No. (req. for Amendments *) <input type="text"/>			
Filing by The Depository Trust Company Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934						
Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>	
			Rule			
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/>	19b-4(f)(1)	<input type="checkbox"/>	19b-4(f)(4)
			<input type="checkbox"/>	19b-4(f)(2)	<input type="checkbox"/>	19b-4(f)(5)
			<input type="checkbox"/>	19b-4(f)(3)	<input type="checkbox"/>	19b-4(f)(6)
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934			
Section 806(e)(1) * <input type="checkbox"/>		Section 806(e)(2) * <input type="checkbox"/>		Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>		Exhibit 3 Sent As Paper Document <input type="checkbox"/>				
<b>Description</b>						
Provide a brief description of the action (limit 250 characters, required when Initial is checked *).						
The Depository Trust Company is proposing to add Rule 33 that would establish the circumstances under which DTC would impose and release a Deposit Chill or Global Lock, and the fair procedures for notice and an opportunity for the issuer to challenge the Deposit Chill or Global Lock.						
<b>Contact Information</b>						
Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.						
First Name * <input type="text" value="Aimee"/>		Last Name * <input type="text" value="Bandler"/>				
Title * <input type="text" value="Assistant General Counsel"/>						
E-mail * <input type="text" value="abandler@dtcc.com"/>						
Telephone * <input type="text" value="(212) 855-3148"/>		Fax <input type="text"/>				
<b>Signature</b>						
Pursuant to the requirements of the Securities Exchange Act of 1934,						
has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.						
(Title *)						
Date <input type="text" value="05/27/2016"/>		<input type="text" value="Managing Director and Deputy General Counsel"/>				
By <input type="text" value="Lois J. Radisch"/>		<input type="text"/>				
(Name *)						
NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.						
<input type="button" value="Persona Not Validated - 1450121136367"/>						

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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

**Form 19b-4 Information \***

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

**Exhibit 1 - Notice of Proposed Rule Change \***

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

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

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

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

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Exhibit Sent As Paper Document

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

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

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

**Exhibit 4 - Marked Copies**

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

**Exhibit 5 - Proposed Rule Text**

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

**Partial Amendment**

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

## **1. Text of the Proposed Rule Change**

(a) The proposed rule change of The Depository Trust Company (“DTC”) is annexed hereto as Exhibit 5.<sup>1</sup> The proposal would add new Rule 33 (Deposit Chills and Global Locks) to establish: (i) the circumstances under which DTC would impose and release a restriction on Deposits of an Eligible Security (a “Deposit Chill”) or on book-entry services for an Eligible Security (a “Global Lock”); and (ii) the fair procedures for notice and an opportunity for the issuer of the Eligible Security (the “Issuer”) to challenge the Deposit Chill or Global Lock (each, a “Restriction”), as described below.

(b) Not applicable.

(c) Not applicable.

## **2. Procedures of the Self-Regulatory Organization**

(a) The Risk Committee of the Board of Directors of DTC, acting pursuant to authority delegated by the Board of Directors, approved the proposed rule changes and the submission of this rule filing at a meeting duly held on May 20, 2016.

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

### (a) Purpose

The proposal would add new Rule 33 (Deposit Chills and Global Locks) to establish: (i) the circumstances under which DTC would impose and release a Deposit Chill or a Global Lock; and (ii) the fair procedures for notice and an opportunity for the Issuer to challenge the Restriction, as described below.

#### (i) Background

##### A. DTC

DTC is the nation’s central securities depository, registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934, as amended (the “Act”).<sup>2</sup> DTC’s deposit

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

<sup>2</sup> See Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983) (File No. 600-1).

and book-entry transfer services help facilitate the operation of the nation's securities markets. By serving as registered holder of trillions of dollars of Securities, DTC, on a daily basis, processes enormous volumes of securities transactions facilitated by book-entry movement of interests, without the need to transfer physical certificates.

DTC performs services and maintains Securities Accounts for its Participants, primarily banks and broker dealers, pursuant to its Rules and Procedures. Participants agree to be bound by the Rules and Procedures of DTC as a condition of their DTC membership.<sup>3</sup> DTC allows a Participant to present Securities to be made eligible for DTC's depository and book-entry services. If a Security is accepted by DTC as meeting DTC's eligibility requirements for services<sup>4</sup> and is deposited with DTC for credit to the Securities Account of a Participant, it becomes an Eligible Security. Thereafter, Participants may deposit shares of that Eligible Security into their respective DTC accounts. To facilitate book-entry transfers and other services that DTC provides for its Participants with respect to Deposited Securities, the Deposited Securities are generally registered on the books of the Issuer (typically, in a register maintained by a transfer agent) in DTC's nominee name, Cede & Co. Deposited Securities that are eligible for book-entry services are maintained in "fungible bulk," *i.e.*, each Participant whose Securities of an issue have been credited to its Securities Account has a pro rata (proportionate) interest in DTC's entire inventory of that issue, but none of the Securities on deposit are identifiable to or "owned" by any particular Participant.<sup>5</sup>

The U.S. Securities and Exchange Commission ("Commission") has recognized that DTC plays a "critical function" in the National Clearance and Settlement system.<sup>6</sup> More recently, the federal Financial Stability Oversight Council, which was established pursuant to the

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<sup>3</sup> See supra note 2.

<sup>4</sup> See Rule 5, supra note 1; DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services), January 2012 (the "Operational Arrangements"), Section 1, available at <http://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>.

<sup>5</sup> See Securities Exchange Act Release No. 19678 (April 15, 1983), 48 FR 17603, 17605, n.5 (April 25, 1983) (describing fungible bulk); see also N.Y. UNIFORM COMMERCIAL CODE, § 8-503, OFF. CMT 1 ("... all entitlement holders have a pro rata interest in whatever positions in that financial asset the [financial] intermediary holds").

<sup>6</sup> See Securities Exchange Act Release No. 47978 (June 4, 2003), 68 FR 35037, 35041 (June 11, 2003) (File No. SR-DTC-2003-02).

Dodd-Frank Wall Street Reform and Consumer Protection Act,<sup>7</sup> designated DTC as a Systemically Important Financial Market Utility (as defined therein).<sup>8</sup>

B. Deposit Chills and Global Locks: Prior Procedures

Previously, upon detecting suspiciously large deposits of a thinly traded Eligible Security, DTC imposed or proposed to impose a Deposit Chill as a measure to maintain the status quo while, pursuant to its Operational Arrangements,<sup>9</sup> DTC required the Issuer to confirm by legal opinion of independent counsel that the Eligible Security fulfilled the requirements for eligibility. The Deposit Chill would be maintained until the Issuer provided a satisfactory legal opinion. The Deposit Chill could remain in place for years, due to an Issuer's non-responsiveness, refusal, or inability to submit the required legal opinion.

With respect to Global Locks, DTC previously imposed a Global Lock on an Eligible Security when a governmental or regulatory authority commenced a proceeding or action alleging violations of Section 5 of the Securities Act of 1933, as amended, with respect to such Eligible Security. A Global Lock could be released when the underlying enforcement action was withdrawn, dismissed on the merits with prejudice, or otherwise resolved in a final, non-appealable judgment in favor of the defendants allegedly responsible for the violations of federal securities laws. However, many enforcement actions are only resolved after several years<sup>10</sup> and commonly without any definitive determination of wrongdoing.<sup>11</sup>

The above describes, in part, the proposed procedures filed by DTC on December 5, 2013,<sup>12</sup> in response to the Commission's opinion and order in In re International Power Group,

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<sup>7</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>8</sup> See Financial Stability Oversight Council, 2012 Annual Report, Appendix A, available at <https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Appendix%20A%20Designation%20of%20Systemically%20Important%20Market%20Utilities.pdf>.

<sup>9</sup> See Operational Arrangements, Section I.A, supra note 4.

<sup>10</sup> See, e.g., SEC v. Kahlon, 12-CV-517 (E.D. Tex., filed August 14, 2012); SEC v. Bronson, 12-cv-06421-KMK (S.D.N.Y., filed August 22, 2012). As of the date of this filing, neither case has been resolved.

<sup>11</sup> See, e.g., SEC v. Reiss, 13-cv-01537, dkt no. 10 (S.D.N.Y. 2014) (issuing a final judgment against the defendant in an enforcement action, without the defendant admitting or denying the allegations).

<sup>12</sup> See Securities Exchange Act Release No. 71132 (December 18, 2013); 78 FR 77755 (December 24, 2013) (File No. SR-DTC-2013-11).

Ltd. (“IPWG”) directing DTC to “adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H).”<sup>13</sup> DTC withdrew the proposed rule change on August 18, 2014.<sup>14</sup>

As a result of DTC’s experiences following the IPWG decision and in connection with the previous proposed rule change, DTC has determined that its proposed procedures for imposing Deposit Chills and Global Locks are more appropriately directed to current trading halts or suspensions imposed by the Commission, the Financial Industry Regulatory Authority, Inc. (“FINRA”), or a court of competent jurisdiction, and therefore are more effective in targeting suspected securities fraud that is ongoing at the time the Restriction is imposed. In particular, with respect to Deposit Chills imposed pursuant to DTC’s previous procedures, DTC believes that wrongdoers have seemingly taken into account DTC’s Restriction process, and have been avoiding it by shortening the timeframe in which they complete their scheme, dump their shares into the market, and move on to another issue.

Additionally, Global Locks were typically being imposed on the basis of a Commission enforcement action alleging securities law violations that had occurred in the past, and so could not affect the violative behavior (unless the alleged securities law violations were ongoing). In fact, it is DTC’s understanding that, by the time of an enforcement action, the wrongdoers had long since transferred the subject securities. In addition, although a Global Lock bars book-entry settlements within DTC, it does not affect the trading of the issue, which occurs outside of DTC.

(ii) Proposal

A. Proposed Basis for the Imposition of Deposit Chills and Global Locks

With this proposal, DTC would establish the basis for the imposition of Deposit Chills and Global Locks, premised on direct current judicial or regulatory intervention or the threat of imminent adverse consequences to DTC or its Participants. DTC believes that the proposed rule change would provide a basis for imposing and releasing Restrictions that is consistent with its obligations under applicable law.

Under subsections (a) and (b) of Section 1 of the proposed rule, if FINRA or the Commission halts or suspends trading of an Eligible Security, DTC would impose a Global Lock. Similarly, under subsection (c) of Section 1 of the proposed rule, DTC would impose a Restriction if ordered to do so by a court of competent jurisdiction. Consistent with its mandate “to promote the prompt and accurate clearance and settlement of securities transactions,”<sup>15</sup>

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<sup>13</sup> See Securities Exchange Act Release No. 66611 (March 15, 2012), 2012 SEC LEXIS 844 at \*32 (March 15, 2012) (Admin. Proc. File No. 3-13687).

<sup>14</sup> See Securities Exchange Act Release No. 72860 (August 18, 2014), 79 FR 49825 (August 22, 2014) (File No. SR-DTC-2013-11).

<sup>15</sup> 15 U.S.C. 78q-1(b)(3)(F).

DTC's facilities should not be available to settle transactions otherwise prohibited by the Commission, FINRA, or a court of competent jurisdiction. The imposition of a Global Lock on an Eligible Security for which trading is halted or suspended would prevent settlement of trades that continue despite the halt or suspension, and prevent a bad actor from liquidating a position through DTC in order to obtain the proceeds of fraudulent activities.

Notwithstanding subsections (a) and (b) of Section 1 of the proposed Rule, DTC recognizes that FINRA and the Commission issue trading halts and suspensions for numerous reasons, and so there may be certain limited circumstances where a Global Lock would not further the regulatory purpose of such trading halt or suspension. Therefore, if DTC reasonably determines that such is the case, DTC may decline to impose a Global Lock. Some examples of when DTC may decline to impose a Global Lock include, but are not limited to, if FINRA issues a trading halt in all OTC equity securities due to a technical glitch; or if FINRA issues a trading halt clearly based on financial uncertainty in a foreign jurisdiction that doesn't affect DTC's ability to settle transactions.

Finally, under subsection (d) of Section 1 of the proposed rule, DTC would impose a Restriction when it becomes aware of a need for immediate action to avert an imminent harm, injury, or other such material adverse consequence to DTC or its Participants that could arise from further Deposits of, or continued book-entry services with respect to, an Eligible Security. While it is impossible to anticipate all possible scenarios that may give rise to the need for action by DTC under this subsection (d) to avoid imminent harm, DTC does not anticipate that it would impose Restrictions pursuant to this formulation frequently. Some examples where this provision may be invoked include, but are not limited to, if DTC becomes aware that marketplace actors were about to deposit Securities at DTC in connection with an ongoing corporate hijacking, market manipulation, or in violation of other applicable laws; if an Issuer or its agent provides DTC with plausible information that Security certificates were stolen and were about to be deposited; or if an Issuer notifies DTC that shares of a Security had just been issued erroneously upon a conversion of previously satisfied notes.

The concept of taking immediate action to avoid imminent harm to DTC or its Participants was recognized in the Commission's opinion in IPWG. The Commission ruled that, when faced with justifiable circumstances, DTC may design fair procedures "in accordance with its own internal needs and circumstances,"<sup>16</sup> recognizing that:

If DTC believes that circumstances exist that justify imposing a suspension of services with respect to an issuer's securities in advance of being able to provide the issuer with notice and an opportunity to be heard on the suspension, it may do so. However, in such circumstances, these processes should balance the

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<sup>16</sup> IPWG, 2012 SEC LEXIS at \*30, n.36.

identifiable need for emergency action with the issuer's right to fair procedures under the Exchange Act. Under such procedures, DTC would be authorized to act to avert an imminent harm, but it could not maintain such a suspension indefinitely without providing expedited fair process to the affected issuer.<sup>17</sup>

B. Proposed Basis for the Release of Deposit Chills and Global Locks

As part of DTC's process for imposing Restrictions premised on direct court or regulatory agency intervention or the prospect of imminent adverse consequences to DTC or its Participants, the proposed rule change provides corresponding criteria for releasing such Restrictions.

As an initial matter, pursuant to the proposed rule change, DTC would release a Restriction when DTC reasonably determines that its imposition of the Restriction was based on a clerical mistake.

In the case of a Global Lock imposed pursuant to subsections (a) or (b) of Section 1 of the proposed rule (FINRA trading halt or Commission trading suspension), under the proposed rule change, DTC would release the Global Lock when the halt or suspension of trading of the Eligible Security has been lifted. In the case of a Restriction imposed pursuant to subsection (c) of Section 1 of the proposed rule (order from a court of competent jurisdiction), under the proposed rule change, DTC would release the Restriction when a court of competent jurisdiction orders DTC to release the Restriction. Since trading would no longer be prohibited by FINRA, the Commission, or court order, respectively, there should not be any settlement restrictions, other than those otherwise provided in the Rules.

Finally, in the case of a Restriction imposed pursuant to subsection (d) of Section 1 of the proposed rule (imminent adverse consequences to DTC or its Participants), pursuant to the proposed rule change, DTC would release the Restriction when it reasonably determines that the release of the Restriction would not pose a threat of imminent adverse consequences to DTC or its Participants, obviating the original basis for the Restriction.

It is impossible to anticipate all possible scenarios that may give rise to a release of a Restriction under this basis. However, DTC anticipates that it would release such Restriction in a number of circumstances, including without limitation:

- when DTC determines that the perceived harm has passed or is significantly remote;

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<sup>17</sup> Id. at \*29. See also In re Atlantis Internet Group (“Atlantis”), Securities Exchange Act Release No. 75168 at 7-8, 2015 SEC LEXIS 2394 at \*18 (June 12, 2015) (Admin. Proc. File No. 3-15432) (“DTC’s imposition of the Global Lock without advance notice was an appropriate exercise of its authority to act to prevent imminent harm ...”).



- when the basis for the Restriction no longer exists. For example, where DTC imposed a Deposit Chill on the basis of plausible information that certificates were stolen and about to be deposited, and DTC subsequently receives plausible information that the certificates have been recovered and will not be deposited, or where DTC imposed a Deposit Chill based on erroneously issued shares, and subsequently receives copies of a “Stop transfer”<sup>18</sup> directive and cancellation of such shares before they have been deposited; or
- when an Eligible Security had been previously Globally Locked based on a Commission enforcement action but there is no indication that illegally distributed Securities are about to be deposited.

### C. Proposed Fair Procedures

DTC has developed the procedures in the proposed rule change to give the Issuer a timely notice of the Restriction, provide the Issuer an opportunity to submit a written challenge to the Restriction, provide a review and written determination by an independent officer, and maintain a complete record of the proceeding, consistent with Section 17A(b)(3)(H) of the Act<sup>19</sup> and the Commission’s opinion and order in IPWG.

Pursuant to the proposed rule change, DTC would send written notice (“Restriction Notice”) to the Issuer’s last known business address and to the last known business address of the Issuer’s transfer agent, if any, on record with DTC. The Restriction Notice would be sent within three Business Days of imposition of a Restriction and would set forth: (i) the basis for the Restriction; (ii) the date the Restriction was imposed; (iii) that the Issuer may submit a written response to DTC detailing the basis for release of the Restriction under proposed Rule 33 (“the Restriction Response”); and (iv) that the Restriction Response must be received by DTC within twenty Business Days of delivery of the Restriction Notice.

Once the Restriction Response is received by DTC, the proposed rule change provides that it would be reviewed by a DTC officer who did not have responsibility for the imposition of the Restriction. DTC may request additional information from the Issuer. After the officer’s review is completed, DTC would provide a written decision (a “Restriction Decision”) to the Issuer. Within ten Business Days of delivery of the Restriction Decision, the Issuer may submit a supplement (a “Supplement”) for the sole purpose of establishing that DTC made a clerical mistake or mistake arising from an oversight or omission in reviewing the Restriction Response.

If the Issuer submits a Supplement, the officer would provide a supplement decision (a “Supplement Decision”) within ten Business Days after the Supplement was delivered. The Restriction Notice, the Restriction Response, the Restriction Decision, the Supplement, the

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<sup>18</sup> A “stop transfer” is an order made to prevent the transfer of ownership of a security.

<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(H).

Supplement Decision, and any other documents submitted in connection with these procedures would constitute the record for purposes of any appeal to the Commission.

The proposed rule change would not affect DTC's ability (A) to lift or modify a Restriction; (B) to operationally restrict book-entry services, Deposits or other services in the ordinary course of business, as such restrictions do not constitute Deposit Chills or Global Locks for purposes of proposed Rule 33; (C) to communicate with the Issuer or its transfer agent or representative, if any, provided that substantive communications are memorialized in writing to be included in the record for purposes of any appeal to the Commission; or (D) to send out a Restriction Notice prior to the imposition of a Restriction.

DTC believes that these procedures comport with Section 17A(b)(3)(H) of the Act, which requires that a registered clearing agency that denies or limits access to the agency's services to a "person," it must "provide a fair procedure."<sup>20</sup> Such procedures require the clearing agency to give the person notice and an opportunity to address the specific grounds for denial or prohibition or limitation and to keep a record.<sup>21</sup> In its decision in IPWG, the Commission ruled, inter alia, that issuers are "persons" for the purposes of Section 17A(b)(3).<sup>22</sup>

Section 17A of the Act does not specify the nature of the fair procedures DTC must provide to "persons," including issuers. In IPWG, the Commission observed that:

Exchange Act Section 17A(b)(5)(B) states that, when a registered clearing agency determines that "a person shall be . . . prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for . . . prohibition or limitation under consideration and keep a record."<sup>23</sup>

As stated in IPWG, "DTC may design such [Section 17A procedures] in accordance with its own internal needs and circumstances."<sup>24</sup> The Commission further ruled in IPWG that DTC "should adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H), which may be applied uniformly" in the cases where DTC denies or limits services with respect to an Issuer's Securities.

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<sup>20</sup> See id.

<sup>21</sup> See 15 U.S.C. 78q-1(b)(5)(B).

<sup>22</sup> IPWG, 2012 SEC LEXIS at \*24.

<sup>23</sup> Id.

<sup>24</sup> Id. at \*30 n.36.

In the Commission's more recent opinion in Atlantis, the Commission upheld the notice, opportunity to be heard, and recordkeeping that DTC provided to a Globally Locked issuer. Significantly, the Commission held that Section 17A of the Act does not require DTC to hold a formal hearing in order to satisfy its obligations under Section 17A to provide Issuers with an opportunity to be heard.<sup>25</sup>

DTC believes that the procedures in proposed Rule 33 for giving notice of the Restriction to the Issuer with an opportunity to be heard are consistent with the fair procedures upheld by the Commission in Atlantis. In addition, consistent with the Commission's broad directive in IPWG, DTC believes that the proposed rule would establish uniform standards for the imposition of Restrictions, as well as the fair procedures for Issuers whose Securities are subject to a Restriction.

#### Implementation Timeframe

DTC will announce the effective date via Important Notice upon the Commission's approval of the proposed rule change.

#### (b) Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to DTC, in particular Section 17A(b)(3)(F) of the Act<sup>26</sup> and Section 17A(b)(3)(H) of the Act.<sup>27</sup>

Section 17A(b)(3)(F) of the Act<sup>28</sup> requires, inter alia, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. By establishing a framework for DTC to impose and release Restrictions, the proposed rule change would provide a mechanism for DTC to act quickly and efficiently to screen out, prior to deposit, or restrict, after deposit, Securities for which trading has been prohibited by the Commission, FINRA, or a court of competent jurisdiction, or which pose a threat of imminent adverse consequences to DTC or its Participants, to assure the safeguarding of Securities deposited to and held by DTC, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act, cited above.

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<sup>25</sup> Id. at \*19.

<sup>26</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>27</sup> 15 U.S.C. 78q-1(b)(3)(H).

<sup>28</sup> 15 U.S.C. 78q-1(b)(3)(F).

Section 17A(b)(3)(H) of the Act, requires, *inter alia*, that the rules of a clearing agency are in accordance with the provisions of Section 17A(b)(5)(B) of the Act,<sup>29</sup> and in general provide a fair procedure with respect to the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency. By establishing a procedure that would provide for: (A) criteria for notice to an Issuer that a Deposit Chill or Global Lock has been imposed; (B) an explanation of the specific grounds upon which any Restriction has been imposed; (C) the actions that the Issuer may take to object to the Restriction; (D) the process DTC would undertake to review written submissions of the Issuer and to render a final decision concerning the Restriction; (E) the grounds upon which DTC may release the Restriction; and (F) the maintenance of a complete record for submission to the Commission in the event an Issuer appeals, the proposed rule change would provide Issuers with fair procedures with respect to Deposit Chills and Global Locks, consistent with the requirements of the Act, in particular Section 17A(b)(3)(H) of the Act, cited above.<sup>30</sup>

#### **4. Self-Regulatory Organization’s Statement on Burden on Competition**

DTC does not believe that the proposed rule change would have any impact on, or impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed procedures as described above would apply to all Eligible Securities that may be subject to a Deposit Chill or Global Lock.

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

Written comments relating to the proposed rule change have not been solicited or received with respect to this filing. To the extent DTC receives written comments on the proposed rule change DTC will forward such comments to the Commission.

#### **6. Extension of Time Period for Commission Action**

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

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<sup>29</sup> Section 17A(b)(5)(B) of the Act, 15 U.S.C. 78q-1(b)(5)(B) provides: “In any proceeding by a registered clearing agency to determine whether a person shall be denied participation or prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for denial or prohibition or limitation under consideration and keep a record. A determination by the clearing agency to deny participation or prohibit or limit a person with respect to access to services offered by the clearing agency shall be supported by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based.”

<sup>30</sup> 15 U.S.C. 78q-1(b)(3)(H).

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

- (a) Not applicable.
- (b) Not applicable.
- (c) Not applicable.
- (d) Not applicable.

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

The proposed rule change is not based on the rules of another self-regulatory organization or the Commission.

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

Not applicable.

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

Not applicable.

**11. Exhibits**

Exhibit 1 – Not applicable.

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

Exhibit 2 – Not applicable.

Exhibit 3 – Not applicable.

Exhibit 4 – Not applicable.

Exhibit 5 – Text of proposed rule change.

**EXHIBIT 1A**

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[\_\_\_\_\_]; File No. SR-DTC-2016-003)

[DATE]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Pursuant to Which It Would Impose Deposit Chills and Global Locks and Provide Fair Procedures to Issuers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 27, 2016, 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 DTC. DTC filed the proposed rule change pursuant to Section 19(b)(2) of the Act.<sup>3</sup> 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 amendments to the Rules, By-Laws and Organization Certificate of DTC (the “Rules”) in order to add a Rule which establishes: (i) the circumstances under which DTC would impose and release a restriction on Deposits of an Eligible Security (a “Deposit Chill”) or on book-entry services for an Eligible Security (a “Global Lock”); and (ii) the fair procedures for notice and an

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(2).

opportunity for the issuer of the Eligible Security (the “Issuer”) to challenge the Deposit Chill or Global Lock (each, a “Restriction”), as described below.<sup>4</sup>

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 proposal would add new Rule 33 (Deposit Chills and Global Locks) to establish: (i) the circumstances under which DTC would impose and release a Deposit Chill or a Global Lock; and (ii) the fair procedures for notice and an opportunity for the Issuer to challenge the Restriction, as described below.

(i) Background

A. DTC

DTC is the nation’s central securities depository, registered as a clearing agency under Section 17A of the Act.<sup>5</sup> DTC’s deposit and book-entry transfer services help

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<sup>4</sup> Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

facilitate the operation of the nation's securities markets. By serving as registered holder of trillions of dollars of Securities, DTC, on a daily basis, processes enormous volumes of securities transactions facilitated by book-entry movement of interests, without the need to transfer physical certificates.

DTC performs services and maintains Securities Accounts for its Participants, primarily banks and broker dealers, pursuant to its Rules and Procedures. Participants agree to be bound by the Rules and Procedures of DTC as a condition of their DTC membership.<sup>6</sup> DTC allows a Participant to present Securities to be made eligible for DTC's depository and book-entry services. If a Security is accepted by DTC as meeting DTC's eligibility requirements for services<sup>7</sup> and is deposited with DTC for credit to the Securities Account of a Participant, it becomes an Eligible Security. Thereafter, Participants may deposit shares of that Eligible Security into their respective DTC accounts. To facilitate book-entry transfers and other services that DTC provides for its Participants with respect to Deposited Securities, the Deposited Securities are generally registered on the books of the Issuer (typically, in a register maintained by a transfer agent) in DTC's nominee name, Cede & Co. Deposited Securities that are eligible for book-entry services are maintained in "fungible bulk," i.e., each Participant whose

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<sup>5</sup> See Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983) (File No. 600-1).

<sup>6</sup> See supra note 5.

<sup>7</sup> See Rule 5, supra note 4; DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services), January 2012 (the "Operational Arrangements"), Section 1, available at <http://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>.



Securities of an issue have been credited to its Securities Account has a pro rata (proportionate) interest in DTC's entire inventory of that issue, but none of the Securities on deposit are identifiable to or "owned" by any particular Participant.<sup>8</sup>

The Commission has recognized that DTC plays a "critical function" in the National Clearance and Settlement system.<sup>9</sup> More recently, the federal Financial Stability Oversight Council, which was established pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act,<sup>10</sup> designated DTC as a Systemically Important Financial Market Utility (as defined therein).<sup>11</sup>

B. Deposit Chills and Global Locks: Prior Procedures

Previously, upon detecting suspiciously large deposits of a thinly traded Eligible Security, DTC imposed or proposed to impose a Deposit Chill as a measure to maintain the status quo while, pursuant to its Operational Arrangements,<sup>12</sup> DTC required the Issuer to confirm by legal opinion of independent counsel that the Eligible Security fulfilled the

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<sup>8</sup> See Securities Exchange Act Release No. 19678 (April 15, 1983), 48 FR 17603, 17605, n.5 (April 25, 1983) (describing fungible bulk); see also N.Y. UNIFORM COMMERCIAL CODE, § 8-503, OFF. CMT 1 ("... all entitlement holders have a pro rata interest in whatever positions in that financial asset the [financial] intermediary holds").

<sup>9</sup> See Securities Exchange Act Release No. 47978 (June 4, 2003), 68 FR 35037, 35041 (June 11, 2003) (File No. SR-DTC-2003-02).

<sup>10</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

<sup>11</sup> See Financial Stability Oversight Council, 2012 Annual Report, Appendix A, available at <https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Appendix%20A%20Designation%20of%20Systemically%20Important%20Market%20Utilities.pdf>.

<sup>12</sup> See Operational Arrangements, Section I.A, supra note 7.

requirements for eligibility. The Deposit Chill would be maintained until the Issuer provided a satisfactory legal opinion. The Deposit Chill could remain in place for years, due to an Issuer's non-responsiveness, refusal, or inability to submit the required legal opinion.

With respect to Global Locks, DTC previously imposed a Global Lock on an Eligible Security when a governmental or regulatory authority commenced a proceeding or action alleging violations of Section 5 of the Securities Act of 1933, as amended, with respect to such Eligible Security. A Global Lock could be released when the underlying enforcement action was withdrawn, dismissed on the merits with prejudice, or otherwise resolved in a final, non-appealable judgment in favor of the defendants allegedly responsible for the violations of federal securities laws. However, many enforcement actions are only resolved after several years<sup>13</sup> and commonly without any definitive determination of wrongdoing.<sup>14</sup>

The above describes, in part, the proposed procedures filed by DTC on December 5, 2013,<sup>15</sup> in response to the Commission's opinion and order in In re International Power Group, Ltd. ("IPWG") directing DTC to "adopt procedures that accord with the fairness

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<sup>13</sup> See, e.g., SEC v. Kahlon, 12-CV-517 (E.D. Tex., filed August 14, 2012); SEC v. Bronson, 12-cv-06421-KMK (S.D.N.Y., filed August 22, 2012). As of the date of this filing, neither case has been resolved.

<sup>14</sup> See, e.g., SEC v. Reiss, 13-cv-01537, dkt no. 10 (S.D.N.Y. 2014) (issuing a final judgment against the defendant in an enforcement action, without the defendant admitting or denying the allegations).

<sup>15</sup> See Securities Exchange Act Release No. 71132 (December 18, 2013); 78 FR 77755 (December 24, 2013) (File No. SR-DTC-2013-11).

requirements of Section 17A(b)(3)(H).”<sup>16</sup> DTC withdrew the proposed rule change on August 18, 2014.<sup>17</sup>

As a result of DTC’s experiences following the IPWG decision and in connection with the previous proposed rule change, DTC has determined that its proposed procedures for imposing Deposit Chills and Global Locks are more appropriately directed to current trading halts or suspensions imposed by the Commission, the Financial Industry Regulatory Authority, Inc. (“FINRA”), or a court of competent jurisdiction, and therefore are more effective in targeting suspected securities fraud that is ongoing at the time the Restriction is imposed. In particular, with respect to Deposit Chills imposed pursuant to DTC’s previous procedures, DTC believes that wrongdoers have seemingly taken into account DTC’s Restriction process, and have been avoiding it by shortening the timeframe in which they complete their scheme, dump their shares into the market, and move on to another issue.

Additionally, Global Locks were typically being imposed on the basis of a Commission enforcement action alleging securities law violations that had occurred in the past, and so could not affect the violative behavior (unless the alleged securities law violations were ongoing). In fact, it is DTC’s understanding that, by the time of an enforcement action, the wrongdoers had long since transferred the subject securities. In

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<sup>16</sup> See Securities Exchange Act Release No. 66611 (March 15, 2012), 2012 SEC LEXIS 844 at \*32 (March 15, 2012) (Admin. Proc. File No. 3-13687).

<sup>17</sup> See Securities Exchange Act Release No. 72860 (August 18, 2014), 79 FR 49825 (August 22, 2014) (File No. SR-DTC-2013-11).

addition, although a Global Lock bars book-entry settlements within DTC, it does not affect the trading of the issue, which occurs outside of DTC.

(ii) Proposal

A. Proposed Basis for the Imposition of Deposit Chills and Global Locks

With this proposal, DTC would establish the basis for the imposition of Deposit Chills and Global Locks, premised on direct current judicial or regulatory intervention or the threat of imminent adverse consequences to DTC or its Participants. DTC believes that the proposed rule change would provide a basis for imposing and releasing Restrictions that is consistent with its obligations under applicable law.

Under subsections (a) and (b) of Section 1 of the proposed rule, if FINRA or the Commission halts or suspends trading of an Eligible Security, DTC would impose a Global Lock. Similarly, under subsection (c) of Section 1 of the proposed rule, DTC would impose a Restriction if ordered to do so by a court of competent jurisdiction. Consistent with its mandate “to promote the prompt and accurate clearance and settlement of securities transactions,”<sup>18</sup> DTC’s facilities should not be available to settle transactions otherwise prohibited by the Commission, FINRA, or a court of competent jurisdiction. The imposition of a Global Lock on an Eligible Security for which trading is halted or suspended would prevent settlement of trades that continue despite the halt or suspension, and prevent a bad actor from liquidating a position through DTC in order to obtain the proceeds of fraudulent activities.

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<sup>18</sup> 15 U.S.C. 78q-1(b)(3)(F).

Notwithstanding subsections (a) and (b) of Section 1 of the proposed Rule, DTC recognizes that FINRA and the Commission issue trading halts and suspensions for numerous reasons, and so there may be certain limited circumstances where a Global Lock would not further the regulatory purpose of such trading halt or suspension. Therefore, if DTC reasonably determines that such is the case, DTC may decline to impose a Global Lock. Some examples of when DTC may decline to impose a Global Lock include, but are not limited to, if FINRA issues a trading halt in all OTC equity securities due to a technical glitch; or if FINRA issues a trading halt clearly based on financial uncertainty in a foreign jurisdiction that doesn't affect DTC's ability to settle transactions.

Finally, under subsection (d) of Section 1 of the proposed rule, DTC would impose a Restriction when it becomes aware of a need for immediate action to avert an imminent harm, injury, or other such material adverse consequence to DTC or its Participants that could arise from further Deposits of, or continued book-entry services with respect to, an Eligible Security. While it is impossible to anticipate all possible scenarios that may give rise to the need for action by DTC under this subsection (d) to avoid imminent harm, DTC does not anticipate that it would impose Restrictions pursuant to this formulation frequently. Some examples where this provision may be invoked include, but are not limited to, if DTC becomes aware that marketplace actors were about to deposit Securities at DTC in connection with an ongoing corporate hijacking, market manipulation, or in violation of other applicable laws; if an Issuer or its agent provides DTC with plausible information that Security certificates were stolen and

were about to be deposited; or if an Issuer notifies DTC that shares of a Security had just been issued erroneously upon a conversion of previously satisfied notes.

The concept of taking immediate action to avoid imminent harm to DTC or its Participants was recognized in the Commission's opinion in IPWG. The Commission ruled that, when faced with justifiable circumstances, DTC may design fair procedures "in accordance with its own internal needs and circumstances,"<sup>19</sup> recognizing that:

If DTC believes that circumstances exist that justify imposing a suspension of services with respect to an issuer's securities in advance of being able to provide the issuer with notice and an opportunity to be heard on the suspension, it may do so. However, in such circumstances, these processes should balance the identifiable need for emergency action with the issuer's right to fair procedures under the Exchange Act. Under such procedures, DTC would be authorized to act to avert an imminent harm, but it could not maintain such a suspension indefinitely without providing expedited fair process to the affected issuer.<sup>20</sup>

B. Proposed Basis for the Release of Deposit Chills and Global Locks

As part of DTC's process for imposing Restrictions premised on direct court or regulatory agency intervention or the prospect of imminent adverse consequences to DTC or its Participants, the proposed rule change provides corresponding criteria for releasing such Restrictions.

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<sup>19</sup> IPWG, 2012 SEC LEXIS at \*30, n.36.

<sup>20</sup> Id. at \*29. See also In re Atlantis Internet Group ("Atlantis"), Securities Exchange Act Release. No. 75168 at 7-8, 2015 SEC LEXIS 2394 at \*18 (June 12, 2015) (Admin. Proc. File No. 3-15432) ("DTC's imposition of the Global Lock without advance notice was an appropriate exercise of its authority to act to prevent imminent harm ...").

As an initial matter, pursuant to the proposed rule change, DTC would release a Restriction when DTC reasonably determines that its imposition of the Restriction was based on a clerical mistake.

In the case of a Global Lock imposed pursuant to subsections (a) or (b) of Section 1 of the proposed rule (FINRA trading halt or Commission trading suspension), under the proposed rule change, DTC would release the Global Lock when the halt or suspension of trading of the Eligible Security has been lifted. In the case of a Restriction imposed pursuant to subsection (c) of Section 1 of the proposed rule (order from a court of competent jurisdiction), under the proposed rule change, DTC would release the Restriction when a court of competent jurisdiction orders DTC to release the Restriction. Since trading would no longer be prohibited by FINRA, the Commission, or court order, respectively, there should not be any settlement restrictions, other than those otherwise provided in the Rules.

Finally, in the case of a Restriction imposed pursuant to subsection (d) of Section 1 of the proposed rule (imminent adverse consequences to DTC or its Participants), pursuant to the proposed rule change, DTC would release the Restriction when it reasonably determines that the release of the Restriction would not pose a threat of imminent adverse consequences to DTC or its Participants, obviating the original basis for the Restriction.

It is impossible to anticipate all possible scenarios that may give rise to a release of a Restriction under this basis. However, DTC anticipates that it would release such Restriction in a number of circumstances, including without limitation:

- when DTC determines that the perceived harm has passed or is significantly remote;
- when the basis for the Restriction no longer exists. For example, where DTC imposed a Deposit Chill on the basis of plausible information that certificates were stolen and about to be deposited, and DTC subsequently receives plausible information that the certificates have been recovered and will not be deposited, or where DTC imposed a Deposit Chill based on erroneously issued shares, and subsequently receives copies of a “Stop transfer”<sup>21</sup> directive and cancellation of such shares before they have been deposited; or
- when an Eligible Security had been previously Globally Locked based on a Commission enforcement action but there is no indication that illegally distributed Securities are about to be deposited.

### C. Proposed Fair Procedures

DTC has developed the procedures in the proposed rule change to give the Issuer a timely notice of the Restriction, provide the Issuer an opportunity to submit a written challenge to the Restriction, provide a review and written determination by an independent officer, and maintain a complete record of the proceeding, consistent with Section 17A(b)(3)(H) of the Act<sup>22</sup> and the Commission’s opinion and order in IPWG.

Pursuant to the proposed rule change, DTC would send written notice (“Restriction Notice”) to the Issuer’s last known business address and to the last known

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<sup>21</sup> A “stop transfer” is an order made to prevent the transfer of ownership of a security.

<sup>22</sup> 15 U.S.C. 78q-1(b)(3)(H).



business address of the Issuer's transfer agent, if any, on record with DTC. The Restriction Notice would be sent within three Business Days of imposition of a Restriction and would set forth: (i) the basis for the Restriction; (ii) the date the Restriction was imposed; (iii) that the Issuer may submit a written response to DTC detailing the basis for release of the Restriction under proposed Rule 33 ("the Restriction Response"); and (iv) that the Restriction Response must be received by DTC within twenty Business Days of delivery of the Restriction Notice.

Once the Restriction Response is received by DTC, the proposed rule change provides that it would be reviewed by a DTC officer who did not have responsibility for the imposition of the Restriction. DTC may request additional information from the Issuer. After the officer's review is completed, DTC would provide a written decision (a "Restriction Decision") to the Issuer. Within ten Business Days of delivery of the Restriction Decision, the Issuer may submit a supplement (a "Supplement") for the sole purpose of establishing that DTC made a clerical mistake or mistake arising from an oversight or omission in reviewing the Restriction Response.

If the Issuer submits a Supplement, the officer would provide a supplement decision (a "Supplement Decision") within ten Business Days after the Supplement was delivered. The Restriction Notice, the Restriction Response, the Restriction Decision, the Supplement, the Supplement Decision, and any other documents submitted in connection with these procedures would constitute the record for purposes of any appeal to the Commission.

The proposed rule change would not affect DTC's ability (A) to lift or modify a Restriction; (B) to operationally restrict book-entry services, Deposits or other services in

the ordinary course of business, as such restrictions do not constitute Deposit Chills or Global Locks for purposes of proposed Rule 33; (C) to communicate with the Issuer or its transfer agent or representative, if any, provided that substantive communications are memorialized in writing to be included in the record for purposes of any appeal to the Commission; or (D) to send out a Restriction Notice prior to the imposition of a Restriction.

DTC believes that these procedures comport with Section 17A(b)(3)(H) of the Act, which requires that a registered clearing agency that denies or limits access to the agency's services to a "person," it must "provide a fair procedure."<sup>23</sup> Such procedures require the clearing agency to give the person notice and an opportunity to address the specific grounds for denial or prohibition or limitation and to keep a record.<sup>24</sup> In its decision in IPWG, the Commission ruled, inter alia, that issuers are "persons" for the purposes of Section 17A(b)(3).<sup>25</sup>

Section 17A of the Act does not specify the nature of the fair procedures DTC must provide to "persons," including issuers. In IPWG, the Commission observed that:

Exchange Act Section 17A(b)(5)(B) states that, when a registered clearing agency determines that "a person shall be . . . prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of, and give him an opportunity to be heard upon, the specific grounds for . . . prohibition or limitation under consideration and keep a record."<sup>26</sup>

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<sup>23</sup> See id.

<sup>24</sup> See 15 U.S.C. 78q-1(b)(5)(B).

<sup>25</sup> IPWG, 2012 SEC LEXIS at \*24.

<sup>26</sup> Id.

As stated in IPWG, “DTC may design such [Section 17A procedures] in accordance with its own internal needs and circumstances.”<sup>27</sup> The Commission further ruled in IPWG that DTC “should adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H), which may be applied uniformly” in the cases where DTC denies or limits services with respect to an Issuer’s Securities.

In the Commission’s more recent opinion in Atlantis, the Commission upheld the notice, opportunity to be heard, and recordkeeping that DTC provided to a Globally Locked issuer. Significantly, the Commission held that Section 17A of the Act does not require DTC to hold a formal hearing in order to satisfy its obligations under Section 17A to provide Issuers with an opportunity to be heard.<sup>28</sup>

DTC believes that the procedures in proposed Rule 33 for giving notice of the Restriction to the Issuer with an opportunity to be heard are consistent with the fair procedures upheld by the Commission in Atlantis. In addition, consistent with the Commission’s broad directive in IPWG, DTC believes that the proposed rule would establish uniform standards for the imposition of Restrictions, as well as the fair procedures for Issuers whose Securities are subject to a Restriction.

#### Implementation Timeframe

DTC will announce the effective date via Important Notice upon the Commission’s approval of the proposed rule change.

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<sup>27</sup> Id. at \*30 n.36.

<sup>28</sup> Id. at \*19.

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to DTC, in particular Section 17A(b)(3)(F) of the Act<sup>29</sup> and Section 17A(b)(3)(H) of the Act.<sup>30</sup>

Section 17A(b)(3)(F) of the Act<sup>31</sup> requires, inter alia, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. By establishing a framework for DTC to impose and release Restrictions, the proposed rule change would provide a mechanism for DTC to act quickly and efficiently to screen out, prior to deposit, or restrict, after deposit, Securities for which trading has been prohibited by the Commission, FINRA, or a court of competent jurisdiction, or which pose a threat of imminent adverse consequences to DTC or its Participants, to assure the safeguarding of Securities deposited to and held by DTC, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act, cited above.

Section 17A(b)(3)(H) of the Act, requires, inter alia, that the rules of a clearing agency are in accordance with the provisions of Section 17A(b)(5)(B) of the Act,<sup>32</sup> and in

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<sup>29</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>30</sup> 15 U.S.C. 78q-1(b)(3)(H).

<sup>31</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>32</sup> Section 17A(b)(5)(B) of the Act, 15 U.S.C. 78q-1(b)(5)(B) provides: “In any proceeding by a registered clearing agency to determine whether a person shall be denied participation or prohibited or limited with respect to access to services offered by the clearing agency, the clearing agency shall notify such person of,

general provide a fair procedure with respect to the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency. By establishing a procedure that would provide for: (A) criteria for notice to an Issuer that a Deposit Chill or Global Lock has been imposed; (B) an explanation of the specific grounds upon which any Restriction has been imposed; (C) the actions that the Issuer may take to object to the Restriction; (D) the process DTC would undertake to review written submissions of the Issuer and to render a final decision concerning the Restriction; (E) the grounds upon which DTC may release the Restriction; and (F) the maintenance of a complete record for submission to the Commission in the event an Issuer appeals, the proposed rule change would provide Issuers with fair procedures with respect to Deposit Chills and Global Locks, consistent with the requirements of the Act, in particular Section 17A(b)(3)(H) of the Act, cited above.<sup>33</sup>

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

DTC does not believe that the proposed rule change would have any impact on, or impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed procedures as described above would apply to all Eligible Securities that may be subject to a Deposit Chill or Global Lock.

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and give him an opportunity to be heard upon, the specific grounds for denial or prohibition or limitation under consideration and keep a record. A determination by the clearing agency to deny participation or prohibit or limit a person with respect to access to services offered by the clearing agency shall be supported by a statement setting forth the specific grounds on which the denial or prohibition or limitation is based.”

<sup>33</sup> 15 U.S.C. 78q-1(b)(3)(H).

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

Written comments relating to the proposed rule change have not been solicited or received with respect to this filing. To the extent DTC receives written comments on the proposed rule change DTC will forward such comments to the Commission.

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](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2016-003 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-2016-003. 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 am and 3:00 pm. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2016-003 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.<sup>34</sup>

Secretary

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<sup>34</sup> 17 CFR 200.30-3(a)(12).



**Bold, underlined** text indicates additions.

**~~Bold, strikethrough~~** text indicates deletions.

**RULES, BY-LAWS  
AND ORGANIZATION CERTIFICATE  
  
OF  
  
THE DEPOSITORY TRUST COMPANY**

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**RULE 33**

**DEPOSIT CHILLS AND GLOBAL LOCKS**

**Section 1. The Corporation shall restrict Deposits of an Eligible Security (a “Deposit Chill”) or book-entry services with respect to an Eligible Security (a “Global Lock”) (each a “Restriction”) when:**

**(a) the Financial Industry Regulatory Authority, Inc. (“FINRA”) has issued an order for the halt of trading of the Eligible Security;**

**(b) the U.S. Securities and Exchange Commission (“Commission”) has issued an order for the suspension of trading of the Eligible Security;**

**(c) a court of competent jurisdiction orders the Corporation to impose a Restriction on the Eligible Security; or**

**(d) the Corporation identifies or otherwise becomes aware of a need for immediate action to avert an imminent harm, injury or other such material adverse consequence to the Corporation or its Participants that could arise from further Deposits of, or continued book-entry services to, the Eligible Security.**

**With respect to Sections 1(a) and 1(b) of this Rule, the Corporation shall impose a Global Lock; provided, however, that the Corporation may decline to impose a Global Lock if it reasonably determines that imposing the Global Lock would not further the regulatory purpose of the halt or suspension of trading. With respect to Section 1(c) of this Rule, the Corporation shall impose the Restriction specified by the court or shall impose a Global Lock if no Restriction is specified. With respect to Section 1(d) of this Rule, the**

**Corporation shall impose the Restriction that the Corporation reasonably determines will best mitigate the harm, injury, or other material adverse consequence identified by the Corporation.**

**Section 2. The Corporation shall send written notice (a “Restriction Notice”) to the issuer of the Eligible Security subject to the Restriction (the “Issuer”) within three (3) Business Days after imposition of the Restriction. The Restriction Notice shall be sent by overnight courier to (i) the Issuer’s last known business address, and (ii) the last known business address of the Issuer’s transfer agent, if any, on record with the Corporation.**

**(a) The Restriction Notice shall set forth, with reasonable specificity:**

**(i) the basis for the Restriction;**

**(ii) the date the Restriction was imposed;**

**(iii) that the Issuer may submit a written response to the Corporation, setting forth its objection to the Restriction and detailing the reasons under Section 4 of this Rule that the Restriction should be released (a “Restriction Response”); and**

**(iv) that the Restriction Response must be received by the Corporation within twenty (20) Business Days after the delivery date of the Restriction Notice (unless the Corporation agrees, upon the Issuer having established good cause, to extend such date), to constitute an effective challenge to the Restriction. For the avoidance of doubt, “delivery date of the Restriction Notice” shall mean the earlier of the delivery to the Issuer and delivery to the Issuer’s transfer agent.**

**(b) In response to the Restriction Response, the Corporation may reasonably request additional information or documentation from the Issuer.**

**(c) Failure by the Issuer to comply with any deadline set forth in this Rule or as to any submission provided hereunder, unless expressly waived or extended in writing by the Corporation, shall constitute a waiver by the Issuer of its right to make the submission for which the deadline has lapsed.**

**(d) The Corporation, the Issuer, the Issuer’s transfer agent, if any, and the Issuer’s authorized representatives, if any, shall send correspondence by a means that demonstrates the date of delivery to the recipient’s last known business address, which includes, without limitation, overnight courier and electronic mail.**

**Section 3. The Corporation shall provide each Issuer that submits a Restriction Response with a written decision (a “Restriction Decision”).**

**(a) Subject to Section 4 of this Rule, the Restriction Decision shall be made by an officer of the Corporation (as defined in Section 3.1 of the By-Laws of**

the Corporation) (a “Review Officer”), who shall not be an officer who had responsibility for the imposition of the Restriction, or his delegate.

(b) The Restriction Decision shall give the Issuer ten (10) Business Days from the delivery date of the Restriction Decision to submit a supplemental written response (a “Supplement”) limited to establishing that the Corporation had made a clerical mistake or mistake arising from an oversight or omission in reviewing the Restriction Response.

(c) The Review Officer shall review the Supplement and provide the Issuer with a written decision (a “Supplement Decision”) within ten (10) Business Days after the delivery date of the Supplement.

(d) The Restriction Notice, the Restriction Response, the Restriction Decision, the Supplement, the Supplement Decision, and any documents submitted in connection therewith shall constitute the record for purposes of any appeal to the Commission.

Section 4. The Corporation may determine to release a Restriction based on its judgment that adequate cause exists to do so. Adequate cause for the release of a Restriction shall be deemed to exist if:

(a) in the case of a Global Lock imposed pursuant to Section 1(a) of this Rule, the halt of trading of the Eligible Security has been lifted;

(b) in the case of a Global Lock imposed pursuant to Section 1(b) of this Rule, the suspension of trading of the Eligible Security has been lifted;

(c) in the case of a Restriction imposed pursuant to Section 1(c) of this Rule, a court of competent jurisdiction orders the Corporation to release it;

(d) in the case of a Restriction imposed pursuant to Section 1(d) of this Rule, the Corporation reasonably determines that the release of the Restriction will not pose a threat of imminent harm, injury or other such material adverse consequence to the Corporation or its Participants; or

(e) the Corporation reasonably determines that it made a clerical mistake.

Section 5. No provision of this Rule 33 shall:

(a) prevent the Corporation from lifting or modifying a Restriction;

(b) apply to other restrictions expressly provided for in the Procedures, or otherwise to any determination by the Corporation to operationally restrict book-entry services, Deposits or other services in the ordinary course of business, including without limitation in processing corporate actions or MMI transactions or

**for risk management purposes, none of which shall constitute Deposit Chills or Global Locks for purposes of this Rule;**

**(c) prohibit the Corporation from communicating with an Issuer and/or its transfer agent or other authorized representative actually known to the Corporation to represent the Issuer, except that substantive communications shall be memorialized in writing and shall be included in the record for purposes of any appeal to the Commission; or**

**(d) prohibit the Corporation from sending a Restriction Notice prior to the imposition of a Restriction.**