

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-81099; File No. SR-DTC-2017-012)

July 7, 2017

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the DTC Settlement Service Guide in Order to Enhance the Memo Segregation Function in Connection with Deliveries Processed at DTC Related to the Direct Registration System

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 June 30, 2017, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(4)<sup>4</sup> thereunder. The proposed rule change was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change would revise the DTC Settlement Service Guide (“Service Guide”)<sup>5</sup> to enhance the Memo Segregation function (“Memo Seg”) with

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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)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(4).

<sup>5</sup> Available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Settlement.pdf>. Each term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of DTC

respect to its use by a Participant<sup>6</sup> in connection with Deliveries processed at DTC for transactions related to DRS,<sup>7</sup> as discussed below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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(the "Rules"), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>, and the Service Guide.

<sup>6</sup> For the purposes of this proposed rule change, the term Participant refers to both Participants and Limited Participants that use the Direct Registration System ("DRS"), as discussed below. (Pursuant to Rule 2 "...the term "Participant" shall include the term "Limited Participant" unless the (i) context otherwise requires or (ii) the Procedures otherwise provide." See Rule 2, supra note 5.)

<sup>7</sup> External to DTC, DRS allows an investor to hold a Security as the registered owner in electronic form on the books of a transfer agent rather than holding a certificate or holding indirectly through a Securities Intermediary (e.g., a broker-dealer). DRS-related transactions between transfer agents and broker-dealers that are both Participants may be processed through DTC. (Typically, transfer agents are Limited Participants for purposes of processing DRS-related transactions.) See Securities Exchange Act Release No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996) (SR-DTC-96-15).

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Memo Seg allows a Participant to elect to protect a designated quantity of Securities in a given CUSIP (“Designated Quantity”) from unintended intraday Delivery at DTC.<sup>8</sup> When a Participant uses Memo Seg, if the total quantity of Securities in its account in a given CUSIP as a result of processing the Delivery would be equal to, or less than, the Designated Quantity, the Securities will not be Delivered, unless (a) the Participant elects to reduce the Designated Quantity or (b) the Designated Quantity is automatically reduced as a result of the Participant executing certain transactions (e.g., withdrawals-by-transfer, certificate-on-demand withdrawals, and free Deliveries that are not identified as stock loan or stock loan returns).<sup>9</sup> This allows for automated processing of Securities, reducing manual entries of a Participant to maintain a certain quantity of Securities in an Account.

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<sup>8</sup> Participants that are registered broker-dealers use Memo Seg as a tool to maintain compliance with their obligations under Rule 15c3-3 (“Customer Protection Rule”). 17 CFR 240.15c3-3. The Customer Protection Rule requires, among other things, that broker-dealers maintain control of all fully-paid or excess margin Securities they hold for the accounts of customers. Compliance with those obligations by such broker-dealers is external to DTC. See Rule 2, supra note 5.

<sup>9</sup> See Service Guide, supra note 5, at 43-45.

Proposed Rule Change

1. *Proposal that Standing Instructions from a Receiving Participant Would Automatically Increase the Participant's Designated Quantity for Deliveries Associated with DRS Transactions*

By providing standing instructions, a Receiving Participant may currently elect to have Deliveries of Securities for certain types of transactions automatically increase the Receiving Participant's Designated Quantity.<sup>10</sup> However, Securities transferred through DRS do not automatically increase the Receiving Participant's Designated Amount. The Regulatory and Clearance Committee of the Securities Operations Section of the Securities Industry and Financial Markets Association ("SIFMA") has requested that DTC modify Memo Seg so that Deliveries of Securities processed through DRS would automatically increase the Receiving Participant's Designated Quantity.<sup>11</sup>

In this regard, pursuant to the proposed rule change, DTC would revise the Service Guide to allow a Receiving Participant in a DRS-related transaction to elect to have its Designated Quantity automatically increased when the Delivering Participant

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<sup>10</sup> Transaction types are designated by the Delivering Participant using a reason code provided on a Delivery instruction ("Code") (e.g., stock loan transactions, DRS-related, etc.). The Receiving Participant may provide standing instructions regarding its Designated Quantity using an indicator ("Indicator"), as discussed in the Service Guide. By selecting Indicators numbered 1, 2, 3 and 6, the Participant provides a standing instruction for its Designated Quantity to automatically increase when it is the Receiving Participant of a transaction designated with an applicable Code. See Service Guide, supra note 5 at 43-45.

<sup>11</sup> SIFMA has indicated that making this update to Memo Seg would strengthen the ability of Participants to control and protect customer fully-paid Securities transferred through DRS.

uses Codes 390 or 391.<sup>12</sup> A Receiving Participant would make this election by selecting Indicator 1.

2. *Proposal to Update Memo Seg to Prevent Automatic Decrease of a Participant's Designated Quantity for DRS Reclaims*

Pursuant to the Service Guide, a Free Delivery made by a Participant always reduces its Designated Quantity unless an exception for a given transaction type is expressly provided for. Pursuant to the proposed rule change, the text of the Service Guide would be revised so that a "Reclaim" of a DRS-related Free Delivery, where the related transaction is one that the Receiving Participant does not know ("DK") (performed with Code 396), would not automatically reduce the Receiving Participant's Designated Quantity. This change would allow a Participant to exercise greater control in managing its Designated Quantity.

3. *Proposal to Make Technical Changes to the Memo Seg Section of the Service Guide*

The proposed rule change would also make technical changes to the Memo Seg section of the Service Guide to:

- a. (i) change references to "you" and "your" to "a Participant," "the Participant," "Participants" or "its," as applicable and (ii) make grammatical and spacing changes to the text to provide enhanced clarity and readability with respect to provisions related to Memo Seg; and

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<sup>12</sup> Code 390 indicates a DRS-related Delivery and Code 391 indicates a DRS-related return of a Delivery.

- b. Add an annex to the Service Guide containing the descriptions of the Codes listed in the “Non-Optional Memo Segregation Transactions” and the “Optional Memo Segregation Indicators” subsections.

#### Effective Date of Proposed Rule Change

The proposed rule change would be effective upon filing with the Commission.

#### 2. Statutory Basis

Section 17A(b)(3)(F)<sup>13</sup> of the Securities Exchange Act of 1934 (“Act”) requires that the rules of the clearing agency be designed, *inter alia*, to protect investors and the public interest. DTC believes the proposed rule change is consistent with this provision because it would (i) reduce the risk of unintended Delivery of Securities that are the subject of a DRS-related transaction by a Participant that (A) elects to use applicable Indicators<sup>14</sup> or (B) enters a DK-related Reclaim in connection with a DRS-related Free Delivery and (ii) make other technical and grammatical changes to the text of the Service Guide that would provide enhanced clarity and readability with respect to provisions related to Memo Seg, as discussed above. Thus, by (i) reducing the risk of an unintended Delivery in this regard and (ii) making other technical and grammatical changes to the text of the Service Guide in order to provide enhanced clarity and readability with respect to provisions related to Memo Seg, DTC believes that the proposed rule change would

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<sup>13</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>14</sup> DTC makes Memo Seg available as a tool for Participants, but does not monitor, and is not responsible for, any Participant’s compliance with its obligation to protect customer fully-paid Securities. With respect to any Securities processed through DTC, DTC does not recognize (and is not required by its Rules and Procedures or applicable law to recognize) a distinction between proprietary and customer Securities.

help protect investors and the public interest, consistent with Section 17(b)(3)(F) of the Act, cited above.

The proposed rule change is also designed to be consistent with Rule 17Ad-22(e)(23) of the Act,<sup>15</sup> which was recently adopted by the Commission.<sup>16</sup> Rule 17Ad-22(e)(23) requires DTC, inter alia, to establish, implement, maintain and enforce written policies and procedures reasonably designed to publicly disclose all relevant rules and material procedures. The proposed rule change, as described above, would update the Service Guide to add descriptions of the Codes referenced in the Memo Seg section of the Service Guide, as discussed above. As such, DTC believes that the proposed rule change would promote disclosure of relevant rules and material procedures relating to Participants' use of Memo Seg, in accordance with the requirements of Rule 17Ad-22(e)(23), promulgated under the Act, cited above.

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

DTC does not believe that the proposed rule change would have any impact on competition because the proposed rule change would merely enhance the ability of any Receiving Participant to control Securities in its Account.

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<sup>15</sup> 17 CFR 240.17Ad-22(e)(23).

<sup>16</sup> The Commission adopted amendments to Rule 17ad-22, including the addition of new subsection 17ad-22(e), on September 28, 2016. See Securities Exchange Act Release No. 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7-03-14). DTC is a "covered clearing agency" as defined by new Rule 17ad-22(a)(5) and must comply with subsection (e) of Rule 17Ad-22. Id.

(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. DTC will notify the Commission of any written comments received by DTC. DTC management has discussed its intent to implement the proposed change with SIFMA and Participants.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>17</sup> of the Act and paragraph (f) of Rule 19b-4<sup>18</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f).

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2017-012 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-DTC-2017-012. 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 20549-1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change; 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-2017-012 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>19</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).