

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81001; File No. SR-DTC-2017-009)

June 22, 2017

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Establish a Swap Margin Segregation Account For the Segregation of Swap Margin With Respect to Deposited Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 15, 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 DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)⁴ thereunder. 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 by DTC would add new Rule 36 (Segregated Accounts for Swap Margin) (“Proposed Rule 36”) to provide Accounts⁵ for the segregation of Securities held at DTC that are intended to be Pledged as swap margin in conformity with

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of The Depository Trust Company (the “DTC Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

certain regulations applicable to swap counterparties posting swap margin. The proposal would allow Participants to transfer Deposited Securities to an Account (“Swap Margin Segregation Account”) of a Pledgee designated for the purpose of segregating interests in Deposited Securities securing margin obligations with respect to uncleared swaps⁶ and security-based swaps⁷ (“Swap Margin”) subject to applicable Swap Margin Segregation Rules (defined below). A Swap Margin Segregation Account would be maintained by DTC for, and at the instruction of, the Pledgee⁸ (“Swap Margin Pledgee”).

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

⁶ A Pledgee may be a bank, trust company, broker-dealer, or other Person approved by DTC that enters into an agreement with DTC that is satisfactory to DTC. A Pledgee may be a Participant, if it satisfies the further conditions of the DTC Rules. See Rule 1 and Rule 2, Section 3, supra note 1. A Pledgee that is not a Participant may not receive a Pledge Versus Payment. Rule 2, Section 3, supra note 1.

⁷ “Security-based swap” is defined to include a swap based on a single security or loan or on a narrow-based security index. See 15 U.S.C. 78c(a)(68).

⁸ “Swap” is defined to include interest rate swaps, commodity-based swaps, equity swaps and credit default swaps. See 7 U.S.C. 1a(47). “Uncleared swaps” and “non-cleared swaps” mean swaps that are not directly or indirectly, submitted to and cleared by a derivatives clearing organization (“DCO”) registered with the Commission. See 7 U.S.C. 1a(7) (“The term ‘cleared swap’ means any swap that is, directly or indirectly, submitted to and cleared by a derivatives clearing organization registered with the Commission.”).

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

1. Purpose

The proposal would add Proposed Rule 36 to provide Accounts for the segregation of Securities held at DTC that are intended to be Pledged as swap margin in conformity with certain regulations applicable to swap counterparties posting swap margin. The proposal would allow Participants to transfer Deposited Securities to a Swap Margin Segregation Account of a Pledgee designated for the purpose of segregating Swap Margin subject to applicable Swap Margin Segregation Rules (defined below). A Swap Margin Segregation Account would be maintained by DTC for, and at the instruction of, the Swap Margin Pledgee.

A. Existing DTC Pledge Services

Currently, a Participant ("Pledgor") may instruct DTC to Pledge Securities from its Account to the Account of a Pledgee ("Pledgee Account"), in order to Pledge such Securities to such Pledgee.⁹ A Pledge may be (i) free of payment, where no funds are transferred through DTC, or (ii) versus payment through DTC net funds settlement in the ordinary course of business.

⁹ A Pledge under DTC Rules effects the transfer to the Pledgee of a limited interest in the Pledged Securities, which may be a security interest if the Pledgor and Pledgee have an agreement outside of DTC that constitutes a security agreement under applicable law and as to which the other requirements for attachment and enforceability of a security interest have been satisfied. See, e.g., N.Y. U.C.C. Law § 9-203. The characterization of any Pledge depends on agreements between the Pledgor and the Pledgee made outside of DTC. DTC does not inquire into the terms and conditions of those agreements but affords its Participants the means to Pledge the Securities by book-entry and, thereby, to perfect any properly created security interest with Control. See, e.g., N.Y. U.C.C. Law § 8-106 and § 9-106.

The Pledgor continues to own the Securities, subject to the Pledge, and the Pledgee may Release the Pledged Securities to the Pledgor. The DTC Rules further provide that the Pledgee may exercise Control¹⁰ of the Pledged Securities by instructing DTC to transfer the Pledged Securities to its Participant Account (if it is a Participant) or to the Account of another Participant, in either case, without the further consent of the Pledgor.¹¹ Securities credited to a Pledgee Account are not subject to any lien or any claim of DTC and cannot be designated as or included in Collateral for any obligation of the Pledgor or the Pledgee to DTC.”¹²

DTC also offers a shared-control Account for Pledges (“Shared Control Account”).¹³ A Shared Control Account differs from an ordinary Pledgee Account in that the Pledgor has the flexibility to transfer the Securities in a Shared Control Account without obtaining the Pledgee’s Release of the Securities.

The proposed rule change would build on these existing Pledge services to expressly accommodate the requirements of the Swap Margin Segregation Rules, as further described below.

¹⁰ Under the DTC Rules, the term “Control” has the meaning given to the term “control” in N.Y. U.C.C. Law § 8-106. DTC Rule 1, Section 1, supra note 5.

¹¹ By giving such an instruction to DTC, the Pledgee represents that it is acting in accordance with applicable law and agreements. Rule 9(B), Section 1, supra note 5. Typically, a Pledgee would take this step in the event of a default of the Pledgor under the outside agreements governing the Pledge.

¹² See DTC Rule 4(A), supra note 5.

¹³ See DTC Settlement Service Guide, p.15, available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Settlement.pdf>.

B. Swap Margin Segregation Rules

The Prudential Regulators, as defined below, and the CFTC have adopted rules (the “Swap Margin Segregation Rules”)¹⁴ that require that registered swap dealers, major swap participants, security-based swap dealers and major security-based swap participants (“Swap Entities”) post Swap Margin with respect to swap agreements¹⁵ for uncleared swaps and/or uncleared securities-based swaps that are subject to the Swap

¹⁴ In 2015, the Office of the Comptroller of the Currency (“OCC”), the Board of Governors of the Federal Reserve System (“FRB”), the Federal Deposit Insurance Corporation (“FDIC”), the Farm Credit Administration (“FCA”) and the Federal Housing Finance Agency (“FHFA”) (collectively, the “Prudential Regulators”) adopted joint margin rules (the “Bank Margin Rules”). See Margin and Capital Requirements for Covered Swap Entities, 80 Fed. Reg. 74840 (November 30, 2015). Each Prudential Regulator has codified its rule within its respective title of the Code of Federal Regulations. Specifically, the Prudential Regulators codified the rules as follows: 12 CFR 45 (OCC); 12 CFR 237 (FRB); 12 CFR 349 (FDIC); 12 CFR 624 (FCA); and 12 CFR 1221 (FHFA). In addition, the Commodity Futures Trading Commission (“CFTC”) subsequently adopted its own version of margin rules substantially similar to the Bank Margin Rules (the “CFTC Margin Rules”). See Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 Fed. Reg. 636 (January 6, 2016) (codified at 17 CFR 23, 140). The Bank Margin Rules apply to a Swap Entity that, pursuant to section 1a(39) of the Commodity Exchange Act, has a Prudential Regulator. The CFTC Margin Rules apply to a Swap Entity that does not have a Prudential Regulator. Under the Bank Margin Rules, a covered swap includes, subject to certain grandfathering and cross-border provisions, any (i) swap that is not cleared by a DCO that is registered or exempt from registration with the CFTC or (ii) security-based swap that is not cleared by a clearing agency that is registered or exempt from registration with the Commission. Under the CFTC Margin Rules, a covered swap includes, subject to certain grandfathering and cross-border provisions, any swap that is not cleared by a DCO that is registered or exempt from registration with the CFTC. Non-cleared security-based swaps entered into by a registered security-based swap dealer or major security-based swap participant that does not have a Prudential Regulator will be subject to margin rules to be adopted by the Commission.

¹⁵ A “swap agreement” is a customized, bilateral agreement that transfer risk from one party to the other and is negotiated privately between the two counterparties and then booked directly with each other. See ISDA Product Descriptions and Frequently Asked Questions, available at <http://www.isda.org/educat/faqs.html>.

Margin Segregation Rules.¹⁶ Under the Swap Margin Segregation Rules, the Swap Margin must be segregated at a third-party custodian that is neither one of the swap counterparties nor an affiliate¹⁷ of either of the swap counterparties (“Unaffiliated Swap Margin Custodian”)¹⁸ pursuant to a custody agreement with such Swap Margin Custodian (“Swap Margin Custody Agreement”) that meets prescribed standards.¹⁹ In particular, the Swap Margin Segregation Rules require, among other things, that the Swap Margin Custody Agreement prohibit the Unaffiliated Swap Margin Custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement or other means) the collateral held by the Unaffiliated Swap Margin Custodian.²⁰

¹⁶ DTC is not subject to the Swap Margin Segregation Rules.

¹⁷ Under the Swap Margin Segregation Rules, a company is an affiliate of another company if (1) either company consolidates the other on financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards; (2) both companies are consolidated with a third company on a financial statement prepared in accordance with such principles or standards; or (3) for a company that is not subject to such principles or standards, if consolidation as described in (1) or (2) of this definition would have occurred if such principles or standards had applied. See Bank Margin Rules §__.2; CFTC Margin Rules, 17 CFR 23.151. In addition, under the Prudential Regulators version of the Swap Margin Segregation Rules, a company is an affiliate of another company if the applicable Prudential Regulator has determined that a company is an affiliate of another company, based on the Prudential Regulator’s conclusion that either company provides significant support to, or is materially subject to the risks or losses of, the other company. See Bank Margin Rules §__.2. Under these definitions, DTC would not be an affiliate of any Participant or Pledgee.

¹⁸ See Bank Margin Rules §__.7; CFTC Margin Rules, 17 CFR 23.157.

¹⁹ See Bank Margin Rules §__.7(c); CFTC Margin Rules, 17 CFR 23.157(c).

²⁰ Id.

C. Proposed Rule 36

In light of these requirements, in order to facilitate use of DTC by Participants and Pledgees that are subject to the Swap Margin Segregation Rules, DTC designed Proposed Rule 36 to provide an express set of provisions that track the requirements of the Swap Margin Segregation Rules. Proposed Rule 36 would (i) provide that a Swap Margin Pledgee may establish a Swap Margin Segregation Account which would operate as a Pledgee Account,²¹ and (ii) set forth how the operation of such Swap Margin Segregation Account satisfies the conditions of the regulatory requirements for posting Swap Margin at an Unaffiliated Swap Margin Custodian.

The proposed rule change would add Rule 36 to the DTC Rules, which would provide for a number of items, as described below.

1. Proposed Rule 36 would provide for the establishment and maintenance of one or more Swap Margin Segregation Accounts by a Swap Margin Pledgee, for the purpose of holding Swap Margin. There would be two types of Swap Margin Segregation Accounts:

- i. a Swap Margin Segregation Account with respect to which only the Swap Margin Pledgee may issue instructions (“Restricted Access Swap Margin Account”); and
- ii. a Swap Margin Segregation Account with respect to which either a Swap Margin Pledgee or Swap Margin Pledgor may issue instructions (“Shared Access Swap Margin Account”). The purpose of a Shared Access Swap Margin Account, like

²¹ A Swap Margin Segregation Account would be a Pledgee Account, and all DTC Rules and Procedures applicable to a Pledgee Account would be applicable to a Swap Margin Segregation Account.

the Shared Control Account referred to above, would be to provide the Swap Margin Pledgor a mechanism to transfer the Swap Margin Securities from the Shared Access Swap Margin Account without obtaining the consent of the Swap Margin Pledgee, if the Swap Margin Pledgee were in default in accordance with the agreements of the parties to the relevant swap or security-based swap.²²

2. Proposed Rule 36 would provide for the instruction of a Swap Margin Pledgor to DTC to:

i. transfer Swap Margin from an account of the Swap Margin Pledgor (“Swap Margin Origination Account”) to a Restricted Access Swap Margin Account or Shared Access Swap Margin Account of a Swap Margin Pledgee, free of payment through the facilities of DTC. By issuing such an instruction, the Swap Margin Pledgor would be representing to DTC that the instruction complies with the Swap Margin Segregation Rules and the Swap Agreement of the parties; and

ii. transfer Swap Margin from a Shared Access Swap Margin Account of a Swap Margin Pledgee back to the relevant Swap Margin Origination Account of the Swap Margin Pledgor, free of payment. By issuing such an instruction, the Swap Margin Pledgor would be representing to DTC that the instruction complies with the Swap Margin Segregation Rules and the Swap Agreement of the parties.

3. Proposed Rule 36 would provide for the instruction of a Swap Margin Pledgee to DTC to:

²² DTC would not monitor any such default but the action by the Swap Margin Pledgor in releasing or retrieving its Pledged Swap Margin Securities would constitute the representation and warranty that it is acting in accordance with its counterparty agreement.

i. transfer Swap Margin from a Swap Margin Segregation Account of the Swap Margin Pledgee back to the relevant Swap Margin Origination Account of a Swap Margin Pledgor, free of payment. By issuing such instruction, the Swap Margin Pledgee would be representing to DTC that the instruction complies with the Swap Margin Segregation Rules and the Swap Agreement of the parties; and

ii. transfer Swap Margin from a Swap Margin Segregation Account of the Swap Margin Pledgee to another Account of the Swap Margin Pledgee, free of payment. By issuing such instruction, the Swap Margin Pledgee would be representing to DTC that the instruction complies with the Swap Margin Segregation Rules and the Swap Agreement of the parties.

4. Proposed Rule 36 would provide for the covenants of DTC that:

i. Swap Margin held in a Swap Margin Segregation Account of a Swap Margin Pledgee shall be held by DTC free and clear of any security interest, lien or other claim by DTC to secure any obligation of any Swap Margin Pledgor or Swap Margin Pledgee to DTC; and

ii. DTC shall not rehypothecate, repledge, reuse or otherwise transfer (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement or other means) any such Swap Margin.

5. Proposed Rule 36 would provide for DTC's disclaimer of liability: to any Swap Margin Pledgee as a result of DTC acting on an instruction from any Swap Margin Pledgor (i) to transfer Swap Margin from a Swap Margin Origination Account of the Swap Margin Pledgor to a Swap Margin Segregation Account of the Swap Margin Pledgee or (ii) to transfer Swap Margin from a Shared Access Swap Margin Account of

the Swap Margin Pledgee back to the relevant Swap Margin Origination Account of the Swap Margin Pledgor even if DTC receives a conflicting instruction from the Swap Margin Pledgee to transfer such Swap Margin from such Shared Access Swap Margin Account to another Account of the Swap Margin Pledgee;

ii. to any Swap Margin Pledgor as a result of DTC acting on an instruction from any Swap Margin Pledgee (i) to transfer Swap Margin from a Swap Margin Segregation Account of the Swap Margin Pledgee back to the relevant Swap Margin Origination Account of the Swap Margin Pledgor, (ii) to transfer Swap Margin from a Restricted Access Swap Margin Account of the Swap Margin Pledgee to another Account of the Swap Margin Pledgee, or (iii) to transfer Swap Margin from a Shared Access Swap Margin Account of the Swap Margin Pledgee to another Account of the Swap Margin Pledgee even if DTC receives a conflicting instruction from the Swap Margin Pledgor to transfer such Swap Margin from such Shared Access Pledgee Account back to the relevant Swap Margin Origination Account of the Swap Margin Pledgor;

iii. to any Swap Margin Pledgor or Swap Margin Pledgee as a result of (i) any loss or liability suffered or incurred by such Swap Margin Pledgor or Swap Margin Pledgee arising out of or relating to the matters subject to Rule 36, unless caused directly by the gross negligence or willful misconduct of DTC or by a violation of Federal securities law by DTC for which there is a private rule of action, or (ii) any force majeure, market disruption or technical malfunction that prevents DTC from performing its obligations to such Swap Margin Pledgor or Swap Margin Pledgee pursuant to Rule 36; or

iv. to any third party (including any customer of any Swap Margin Pledgor or Swap Margin Pledgee) for any reason.

Implementation Timeframe

The proposed rule change would be implemented 30 days after the date of filing, or such shorter time as the Commission may designate.

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 Act²³ and Rule 17Ad-22(e)(21) thereunder.²⁴

Section 17A(b)(3)(F) of the Act requires, inter alia, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.²⁵ By providing for Accounts and Pledges expressly designed to satisfy the parameters of the Swap Margin Segregation Rules, the proposed rule change affords the efficiency of DTC book-entry transfers for the satisfaction of the Swap Margin Segregation Rules with respect to Deposited Securities held at DTC, thereby promoting the prompt and accurate clearance and settlement of these securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.

Rule 17Ad-22(e)(21) requires, inter alia, that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably

²³ 15 U.S.C. 78q-1(b)(3)(F).

²⁴ 17 CFR 240.17Ad-22(e)(21).

²⁵ 15 U.S.C. 78q-1(b)(3)(F).

designed to be efficient and effective in meeting the requirements of its participants and the markets it serves.²⁶ Pursuant to the proposed rule change, the DTC Rules would be updated to provide a transparent framework for the segregation of Swap Margin at DTC, and therefore is designed to meet the requirements of Participants and Pledges that are subject to the Swap Margin Segregation Rules, consistent with the requirements of Rule 17Ad-22(e)(21), cited above.

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

DTC does not believe that the proposed rule change would have any impact, or impose any burden, on competition because the proposed rule and its features are available to all Participants and Pledges equally on a non-discriminatory basis. Swap Margin Pledgors and Swap Margin Pledges will be charged fees applicable to the maintenance of Accounts and transaction fees that are not different from established published fees.

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

DTC has not solicited and does not intend to solicit comments regarding the proposed rule change. DTC has not received any unsolicited written comments from interested parties. 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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;

²⁶ 17 CFR 240.17Ad-22(e)(21).

- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁷ and Rule 19b-4(f)(6) thereunder.²⁸

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2017-009 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.

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(6).

All submissions should refer to File Number SR-DTC-2017-009. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). All comments received will be posted without change; 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-2017-009 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.²⁹

Eduardo A. Aleman
Assistant Secretary

²⁹ 17 CFR 200.30-3(a)(12).