

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80454; File No. SR-DTC-2017-006)

April 13, 2017

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the DTC Rules in Order to Enhance Transparency with Regard to Application Criteria and Participation Requirements for Applicants and Participants

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 April 7, 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)³ of the Act and Rule 19b-4(f)(1)⁴ 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 amend the Rules, By-Laws and Organization Certificate of DTC (“Rules”)⁵ to expressly set forth in the Rules (i) the existing

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)(1).

⁵ Available at <http://www.dtcc.com/legal/rules-and-procedures>. Capitalized terms used herein and not otherwise defined shall have the meaning assigned to such terms in the Rules.

applicable minimum financial resource requirements that any applicant to become a Participant (“Applicant”) that is a U.S. bank, trust company or registered broker-dealer must respectively meet in order to qualify to become a Participant and, once admitted, continue as a Participant in good standing⁶ and (ii) the existing requirement that each Applicant that is a U.S. entity must provide a legal opinion as part of its application to become a Participant, 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.

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

1. Purpose

Pursuant to Rule 2,⁷ DTC has established application criteria and participation requirements for Applicants and Participants related to financial resources,

⁶ A U.S. bank or trust company that otherwise meets the application criteria and participation requirements established by DTC pursuant to the Rules is qualified to become a Participant pursuant to Section 1(d) of Rule 3. A U.S. broker dealer that otherwise meets the application criteria and participation requirements pursuant to the Rules is qualified to become a Participant pursuant to Section 1(h)(ii) of Rule 3. See Rule 3, supra note 5.

⁷ Rule 2, supra note 5.

creditworthiness and operational capability.⁸ These requirements are designed to manage the risks a Participant presents to DTC or to its membership, while facilitating fair and open access by market participants.⁹ The proposed rule change would amend the Rules to enhance transparency with respect to certain existing application criteria and participation requirements, specifically, (i) the minimum financial resource requirements for Applicants and Participants that are either U.S. banks, trust companies or registered broker-dealers and (ii) the requirement for Applicants that are U.S. entities to provide a legal opinion, as discussed below.

Minimum Financial Requirements

Rule 2 requires each Applicant or Participant to demonstrate that it has sufficient financial ability to meet its anticipated obligations to DTC.¹⁰ In this regard, DTC sets

⁸ See also Disclosure under the Principles for Financial Market Infrastructures (“PFMI”), available at http://www.dtcc.com/~media/Files/Downloads/legal/policy-and-compliance/DTC_Disclosure_Framework.pdf at 100-104 (Describing DTC access and participation requirements).

⁹ Rule 17 Ad-22(e)(18) under the Act, provides that each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, “establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.” 17 CFR 240.17Ad-22(e)(18). (The Commission adopted amendments to Rule 17Ad-22, including the addition of new section 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 in Rule 17Ad-22(a)(5), and must comply with new section (e) (including subsection (e)(18) described above) of Rule 17Ad-22 by April 11, 2017.)

¹⁰ Rule 2, supra note 5.

financial requirements for establishing and continuing participation that are based on the type of legal entity and the types of services that the entity will use at DTC. Currently, among other requirements, a registered broker dealer must have a minimum of \$500,000 in excess net capital over its regulatory net capital requirement,¹¹ and a U.S. bank or trust company must have more than \$2 million in equity capital¹² (collectively, “Minimum Financial Requirements”), to become, and continue in good standing as, a Participant.¹³ The Minimum Financial Requirements are currently disclosed in the PFMI and in a list of DTC application requirements that is made available to all Applicants (“Onboarding Requirements”). In order to increase transparency with regard to its application and

¹¹ For this purpose, the broker dealer’s minimum regulatory net capital requirement is the greater of (i) the amount imposed on it pursuant to Rule 15c3-1 under the Act, 17 CFR 240.15c3-1, and (ii) such higher amount imposed by the broker-dealer’s designated examining authority, as named by the Commission pursuant to Rule 17d-1 under the Act, 17 CFR 240.17d-1.

¹² For this purpose, equity capital has the meaning as defined on the form of Consolidated Report of Condition and Income and related instructions maintained by the Federal Financial Institutions Examination Council (FFIEC), available at https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_201612_f.pdf and https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_FFIEC041_201609_i.pdf, respectively.

¹³ Not including non-U.S. Participants, whose minimum financial resource requirements are set forth in the Policy Statement on the Admission of Participants (“Policy Statement”), See Policy Statement, supra note 5 at 122, most Applicants and Participants are (i) U.S. broker dealers or (ii) U.S. banks or trust companies. Since U.S. broker dealers and U.S. banks and trust companies are subject to standard regulatory capital requirements, DTC has determined that setting the Minimum Financial Requirements based on applicable regulatory requirements is a practical method for determining whether such entities have sufficient financial ability to meet their obligations to DTC. For other Applicants and Participants, DTC reviews any appropriate financial information or reports available with respect to that entity to determine whether it maintains sufficient financial ability to meet its obligations under the Rules.

participation requirements, DTC proposes to amend the Rules by adding the Minimum Financial Requirements for Applicants and Participants that are (i) U.S. broker-dealers or (ii) U.S. banks or trust companies to Section 1 of the Policy Statement.¹⁴

Legal Opinion Requirement

Each Applicant enters into a Participant's Agreement ("Agreement"), pursuant to which the Applicant agrees, inter alia, that the DTC Rules shall be a part of the terms and conditions of every contract or transaction that it may make or have with DTC. DTC requires that all Applicants provide an opinion of counsel that provides DTC with comfort as to the valid authorization, execution and delivery of the Agreement by an Applicant and, as applicable, the enforceability of the Agreement under applicable state and federal laws ("Legal Opinion Requirement"). Except with respect to non-U.S. Applicants,¹⁵ the Legal Opinion Requirement is not currently expressly set forth in the Rules.¹⁶ To enhance transparency with regard to the Legal Opinion Requirement, DTC proposes to amend the Rules to add the Legal Opinion Requirement for U.S. Applicants to the Policy Statement.

Proposed Changes to Rules Text

Pursuant to the proposed rule change, DTC would (i) amend the text of Section 1 of the Policy Statement to add the existing (A) Minimum Financial Requirements and (B) Legal Opinion Requirement that pertains to U.S. Applicants, as discussed above, and (ii) add a cross-reference within Rule 2 to the requirements that would be added to the Policy Statement.

¹⁴ See Policy Statement, supra note 5 at 121.

¹⁵ Id at 122.

¹⁶ The Legal Opinion Requirement is set forth in the Onboarding Requirements.

Effective Date of Proposed Rule Change

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

2. Statutory Basis

Section 17A(b)(3)(F) of the Act, requires, inter alia, that the Rules promote the prompt and accurate clearance and settlement of securities transactions.¹⁷ The proposed rule change would provide transparency in the Rules regarding existing participation requirements that Applicants and Participants must meet for access to DTC's services, including but not limited to participation in its settlement service, by (i) adding the Minimum Financial Requirements and the Legal Opinion Requirement to the Policy Statement and (ii) adding a cross-reference within Rule 2 to the Policy Statement, as discussed above. Collectively, the proposed changes would enhance the transparency and clarity of the Rules, which would enable stakeholders to readily understand DTC's access requirements. Therefore, by providing stakeholders with enhanced transparency and clarity with regard to existing participation requirements that Applicants and Participants must meet for access to DTC's services, including but not limited to participation in its settlement service, DTC believes that the proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions consistent with Section 17A(b)(3)(F) of the Act.

Rule 17Ad-22(d)(2) under the Act requires a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, require participants to have sufficient financial resources and robust

¹⁷ 15 U.S.C. 78q-1(b)(3)(F).

operational capacity to meet obligations arising from participation in the clearing agency; have procedures in place to monitor that participation requirements are met on an ongoing basis; and have participation requirements that are objective and publicly disclosed, and permit fair and open access.¹⁸ As mentioned above, the proposed rule change would provide transparency in the Rules regarding existing DTC participation requirements by (i) adding the Minimum Financial Requirements and the Legal Opinion Requirement to the Policy Statement and (ii) adding a cross-reference within Rule 2 to the Policy Statement, as discussed above. Therefore, by providing stakeholders with greater transparency with regard to existing participation requirements by providing an additional source of public disclosure in this regard through the Policy Statement, DTC believes that the proposed rule change is consistent with Rule 17Ad-22(d)(2) promulgated under the Act cited above.

The proposed rule change is also designed to be consistent with Rule 17Ad-22(e)(18) of the Act, which was recently adopted by the Commission.¹⁹ Rule 17Ad-22(e)(18) will require DTC, inter alia, to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational

¹⁸ 17 CFR 240.17Ad-22(d)(2).

¹⁹ 17 CFR 240.17Ad-22(e)(18). As mentioned above, 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 new subsection (e) of Rule 17Ad-22 by April 11, 2017. Id.

capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis. As mentioned above, the proposed rule change would provide transparency in the Rules regarding existing DTC participation requirements by (i) adding the Minimum Financial Requirements and the Legal Opinion Requirement to the Policy Statement and (ii) adding a cross-reference within Rule 2 to the Policy Statement, as discussed above. Therefore, by providing stakeholders with greater transparency with regard to existing participation requirements by providing an additional source of public disclosure in this regard through the Policy Statement, DTC believes that the proposed rule change is consistent with Rule 17Ad-22(e)(18) 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 change expressly reflects existing application criteria and participation requirements applicable to all Applicants and Participants.

(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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)²⁰ of the Act and paragraph (f) of Rule 19b-4²¹ 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2017-006 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-2017-006. This file number should be included on the subject line if e-mail is used. To help the Commission process

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f).

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-2017-006 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.²²

Brent J. Fields
Secretary

²² 17 CFR 200.30-3(a)(12).