

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 39		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No.* SR - 2018 - * 006 Amendment No. (req. for Amendments *)	
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"/>	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	
		Rule			
		<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 amend Rule 35 to provide for designated accounts for use with designated collateral management service providers					
<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 * Aimee		Last Name * Bandler			
Title * Director and Assistant General Counsel					
E-mail * abandler@dtcc.com					
Telephone * (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 07/09/2018		Managing Director and Deputy General Counsel			
By 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="lradisch@dtcc.com"/>					

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”) would amend Rule 35<sup>1</sup> to permit a Participant or Pledgee to designate one or more collateral management service providers,<sup>2</sup> acting on behalf of the Participant or Pledgee, to receive reports and information from, and provide certain instructions to, DTC with respect to specified Accounts of the Participant or Pledgee. In addition, the proposed rule change would make ministerial changes to Rule 35, as discussed below. The proposed amendments to Rule 35 are attached hereto as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

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

The proposed rule change was approved by the Board Risk Committee of the Board of Directors of DTC at a meeting duly called and held on February 9, 2016. The proposed rule change with respect to ministerial changes to Rule 35 was approved by the Deputy General Counsel of DTC on July 9, 2018, pursuant to delegated authority from the DTC Board of Directors.

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

### **(a) Purpose**

The proposed rule change of DTC would amend Rule 35 to permit a Participant or Pledgee to designate one or more collateral management service providers, acting on behalf of the Participant or Pledgee, to receive reports and information from, and provide certain instructions to, DTC with respect to specified Accounts of the Participant or Pledgee. In addition, the proposed rule change would make ministerial changes to Rule 35, as discussed below.

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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 The Depository Trust Company (the “Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

<sup>2</sup> Collateral management generally involves calculating collateral requirements and facilitating the transfer of collateral between counterparties. See Securities Exchange Act Release No. 64796 (July 1, 2011), 76 FR 39963, 39964 (July 7, 2011) (S7-28-11).

A. Background

i. Rule 35

On May 4, 2017, the Securities and Exchange Commission (“Commission”) approved a DTC rule change that added Rule 35.<sup>3</sup> DTC introduced Rule 35 at the request of DTCC Euroclear Global Collateral Ltd. (“DEGCL”)<sup>4</sup> in accordance with DEGCL specifications. The purpose of Rule 35 was to permit a Participant to authorize DEGCL to receive certain reports and information with respect to Securities held by the Participant at DTC in one or more sub-accounts (each, a “CMS Sub-Account”) so that DEGCL might provide collateral management services with respect to such Securities.<sup>5</sup>

As DEGCL sought to expand its activities under Rule 35, which would have required one or more amendments to the rule, DTC considered whether a more comprehensive approach to Rule 35 might better serve the collateral management needs of its Participants and Pledges.

ii. Proposed Rule Changes

The proposed rule change to amend Rule 35 would apply to any collateral management service provider that satisfies the requirements of the rule, and to any Account designated by a Participant or Pledgee. The amended rule would authorize DTC to provide information to the collateral management service provider (as it does for DEGCL currently) but, further, to act on instructions of the collateral management service provider.

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<sup>3</sup> See Securities Exchange Act Release No. 80598 (May 4, 2017), 82 FR 21837 (May 10, 2017) (SR-DTC-2017-001).

<sup>4</sup> DEGCL is a joint venture of The Depository Trust & Clearing Corporation, the corporate parent of DTC, and Euroclear S.A./N.V. and was formed for the purpose of offering global information, record keeping, and processing services for derivatives collateral transactions and other types of financing transactions. DEGCL offers service options for the selection of collateral to satisfy the collateral obligations of its users (“DEGCL CMS”). One option relates exclusively to Securities held at DTC, and is dependent on Rule 35. For more information on DEGCL and DEGCL CMS, see Securities Exchange Act Release No. 80280 (March 20, 2017), 82 FR 15081 (March 24, 2017) (SR-DTC-2017-001).

<sup>5</sup> Rule 35 provides that by establishing a CMS Sub-Account, a Participant authorizes DEGCL to receive from DTC (x) a “CMS Report,” which provides information regarding Securities credited to the CMS Sub-Account of such Participant at the time of the report, and (y) “CMS Delivery Information,” which provides real-time information regarding any Delivery or Pledge from, or Delivery or Release to, the CMS Sub-Account of such Participant.

More specifically, the proposed rule change would:

- (1) Introduce the concept of a “CMSP,” a collateral management service provider designated to DTC by a Participant or Pledgee to act on behalf of the Participant or Pledgee under the proposed rule. The concept of a CMSP would replace the singular designation of DEGCL to act under this rule;<sup>6</sup>
- (2) Introduce the concept of a “CMSP Account,” an Account of a Participant or Pledgee that the Participant or Pledgee, respectively, has designated as subject to the proposed rule. The scope of a CMSP Account would replace the narrower concept of the existing CMS Sub-Account;<sup>7</sup>
- (3) Add the concept of a “CMSP Instruction,” an instruction of a CMSP to DTC for the Delivery, Pledge, or Release of Securities to or from a CMSP Account for which the CMSP is designated under the proposed rule; and
- (4) Introduce the defined terms “CMSP Position Report” and “CMSP Information” (collectively, “CMSP Reports”). These reports are analogous to the CMS Report and CMS Delivery Information, respectively, provided to DEGCL under Rule 35.

B. Proposed Rule

i. CMSP

Proposed Section 2 of Rule 35 would set forth the requirements to be a CMSP.<sup>8</sup> Proposed Section 2 would provide that a partnership, corporation or other organization or entity may become a CMSP for purposes of proposed Rule 35 if it satisfies the following requirements: (a) it is designated to DTC by one or more Participants or Pledgees as a collateral management service provider for purposes of Rule 35; (b) it (i) satisfies at least one of the qualifications set forth in

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<sup>6</sup> DTC understands that DEGCL expects to be a CMSP under proposed Rule 35 and expects to offer collateral management services under the amended rule.

<sup>7</sup> Rule 35 currently requires that a designated Account must be a sub-Account, and can only be designated by a Participant, which were DEGCL specifications. By expanding the rule to Accounts more generally, which could be designated by any Participant or Pledgee, the proposed rule would provide a Participant or a Pledgee flexibility to choose among CMSPs with different models for collateral management services and to structure its Accounts in a manner that aligns most efficiently with its collateral management needs and the specifications of its designated CMSP(s).

<sup>8</sup> See supra note 6.

Section 1(a)-(h) of Rule 3<sup>9</sup> or (ii) is organized in a country other than the United States, is regulated by a financial regulatory authority in the country in which it is organized, and demonstrates that it has notified the Commission in writing of its intention to operate under Rule 35;<sup>10</sup> and (c) it establishes a connection to DTC in accordance with the reasonable requirements

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<sup>9</sup> Sections 1(a)-(h) of Rule 3 provide the qualifications for a partnership, corporation or other organization or entity to be eligible to become a Participant. Specifically, it must satisfy at least one of the following qualifications: “(a) it is a corporation which engages in clearance and settlement activities and which is a subsidiary of a national securities exchange or national securities association registered under the Exchange Act; (b) it is a member or member organization in good standing of a corporation described in paragraph (a) above; (c) it is a corporation which is authorized pursuant to Article 8 of the Uniform Commercial Code, or other similar statutory provision in effect in the jurisdiction in which such corporation engages in business, to engage in the business of effecting the transfer or pledge of Securities by book-entry and which engages in such business; (d) it is a bank or trust company which is subject to supervision or regulation pursuant to the provisions of Federal or State banking laws or any subsidiary of such a bank or trust company or a bank holding company or any subsidiary of a bank holding company; (e) it is an insurance company subject to supervision or regulation pursuant to the provisions of State insurance laws; (f) it is an investment company registered under section 8 of the Investment Company Act; (g) it is a pension fund or other employee benefit fund; or (h) if it does not qualify under paragraphs (a) through (g) above, it is (i) a financial institution which demonstrates to the Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from direct access to the Corporation’s services or (ii) a broker-dealer registered under the Exchange Act.” Supra note 1.

<sup>10</sup> In order to protect DTC, its Participants and Pledges, a collateral management service provider that wishes to act under proposed Rule 35 would need to be subject to regulatory oversight comparable to a Participant, as provided in proposed Section 2(b)(i) of Rule 35, or, if the entity is organized in a country other than the United States (a “non-U.S. entity”), it would need to be regulated by a financial regulatory authority in the country in which it is organized, as provided in proposed Section 2(b)(ii) of Rule 35. Further, the proposed rule change would require that, in order to be eligible to become a CMSP, the non-U.S. entity must notify the Commission in writing of its intention to operate under proposed Rule 35. While DTC reserves the right to request documentation and/or information relating to a collateral management service provider’s compliance with the requirements of proposed Section 2 of Rule 35, it would be the sole responsibility of the Participant or Pledgee to evaluate and choose an appropriate collateral management service provider that, at a minimum, satisfies the requirements. Under proposed Section 2 of Rule 35, the designating Participant or Pledgee would remain liable as principal for the actions of its designated CMSP(s) on its behalf, and would indemnify DTC for any loss, liability, or expense as a result of any claim arising from (i) any act or omission of the CMSP, (ii) the provision of CMSP Reports to the CMSP by DTC, or (iii) DTC’s compliance with instructions of the CMSP.

of DTC in order to be able to receive position and transaction information and to submit instructions to DTC in accordance with the Rules and Procedures.<sup>11</sup>

Proposed Section 2 of Rule 35 would also provide that DTC may decline to accept an entity as a CMSP if it would present material risk to DTC, its Participants and Pledges, or impose material costs to DTC. For illustrative purposes only, some examples of circumstances in which DTC might reject a collateral management service provider as a CMSP may include, without limitation, circumstances in which DTC reasonably believes that acceptance of the collateral management service provider as a CMSP would (i) subject DTC to additional legal or regulatory regimes, to which it is not otherwise subject; (ii) expose DTC to additional technology risk; or (iii) cause DTC to be in violation of applicable law or regulation.

ii. CMSP Accounts

The proposed rule change would amend Rule 35 to allow either a Participant or a Pledgee to designate any Account as a CMSP Account. The key feature of a CMSP Account is that it allows the designated CMSP access and authority to provide instruction to DTC (as further described below) for the Delivery, Pledge, or Release of Securities on behalf of a Participant or Pledgee, as applicable. The proposed rule change would specify that, with respect to a CMSP Account, a Participant or Pledgee would retain the right to instruct DTC as otherwise provided in the Rules and Procedures.

Pursuant to proposed Section 3 of Rule 35, a Participant or Pledgee would be able to designate one or more CMSP Accounts and, concurrently, designate one or more CMSPs with respect to each CMSP Account. The designation of a CMSP with respect to a CMSP Account by a Participant or Pledgee would constitute:

- (1) the appointment of the CMSP by the Participant or Pledgee of the CMSP to act on its behalf under Rule 35;
- (2) the authorization of the appointed CMSP by the Participant or Pledgee to receive CMSP Reports and to provide CMSP Instructions;
- (3) the authorization of DTC by the Participant or Pledgee to act in accordance with any CMSP Instruction of such CMSP; and
- (4) the representation and warranty of the Participant or Pledgee that it is duly authorized to instruct DTC to provide CMSP Reports to the CMSP and to act in accordance with any CMSP Instruction.

With the exception of references to Pledges and to the new concept of CMSP Instruction, these authorizations, representations, and warranties would substantially track Rule 35, as previously adopted.

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<sup>11</sup> See *infra* note 13.

In addition, the proposed rule change would not substantially alter the liability and indemnification provisions in Rule 35. The proposed rule change would provide that each Participant and Pledgee that designates a CMSP with respect to a CMSP Account would indemnify DTC, and any nominee of DTC, against any loss, liability or expense as a result of any claim arising from the compliance of DTC with CMSP Instructions, except to the extent such loss, liability, or expense is caused directly by the DTC's gross negligence or willful misconduct.

iii. CMSP Reports

As discussed above, Rule 35 currently provides a mechanism for a Participant to authorize DEGCL to receive position and transaction information from DTC, in the form of CMS Reports and CMS Delivery Information.<sup>12</sup> The proposed rule change would permit a Participant or Pledgee to designate a CMSP that would be authorized to receive CMSP Reports and give CMSP Instructions with respect to CMSP Accounts for which the CMSP is designated. The CMSP Position Report and CMSP Information are analogous to the reports provided to DEGCL under existing Rule 35 (defined as the CMS Report and CMS Delivery Information, respectively).<sup>13</sup>

Existing Rule 35 defines "CMS Delivery Information" to mean, "with respect to CMS Securities and any Delivery or Pledge thereof from, or Delivery or Release thereof to, a CMS Sub-Account, a copy of any Delivery, Pledge, or Release message sent to the CMS Participant by DTC, including the following information: (x) the CUSIP, ISIN, or other identification number of such CMS Securities, and (y) the number of shares or other units or principal amount of such CMS Securities." This definition was drafted to align with DEGCL specifications. Pursuant to the proposed rule change, the definition would be drafted in more general terms to provide flexibility for the different collateral management service offerings of CMSPs (in addition to DEGCL). Pursuant to the proposed rule change, "CMSP Information" would mean, "with respect to a CMSP Account of a Participant or Pledgee, a copy of any message sent to the Participant or Pledgee by the Corporation." These messages would include, but would not be limited to, the Delivery, Pledge, and Release messages referenced in the definition of CMS Delivery Information in existing Rule 35.

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<sup>12</sup> See supra note 5.

<sup>13</sup> The proposed rule change would not alter the provision in Rule 35 that states that DTC will provide the CMSP Reports "through such dedicated communications channels, satisfactory to [DTC] in its sole discretion, as [DTC] shall afford for this purpose." Typically, DTC would have infrastructure and operations that it would use to transmit information to, or receive information from, CMSPs under proposed Rule 35. DTC would consider requests from CMSPs for alternative methods of connectivity, taking into account factors that may include, but are not limited to, operational feasibility, user demand, and cost. In such a situation, the applicable CMSP would be responsible for all development, integration, implementation, and additional operating costs related to such alternate method of transmission.

Similarly, existing Rule 35 defines “CMS Report” to mean, “with respect to a CMS Participant and its CMS Sub-Account, the following information identifying the CMS Securities that are, at the time of such report, credited to such CMS Sub-Account: (i) the CUSIP, ISIN, or other identification number of the CMS Securities, and (ii) the number of shares or other units or principal amount of the CMS Securities.” This definition was drafted to align with DEGCL specifications. Pursuant to the proposed rule change, “(i) the CUSIP, ISIN, or other identification number of the CMS Securities, and (ii) the number of shares or other units or principal amount of the CMS Securities” would be deleted from the definition.

Finally, similar to existing Rule 35, proposed Rule 35 would provide that DTC would have no liability to any Participant or Pledgee as a result of providing one or more CMSP Reports to any CMSP pursuant to proposed Section 5 of Rule 35.

#### iv. CMSP Instructions

The proposed rule change would further amend Rule 35 to provide that a CMSP designated by a Participant or Pledgee with respect to a CMSP Account would be authorized to instruct DTC, on behalf of the Participant or Pledgee, for the Delivery, Pledge, or Release of Securities credited to such CMSP Account, as applicable.<sup>14</sup> CMSP Instructions would be subject to the terms and conditions of the Rules and the Procedures applicable to Deliveries, Pledges, and Releases of Securities generally, including risk management controls.<sup>15</sup> The purpose of this proposed change is to streamline collateral processing by CMSPs by allowing them to receive information directly from DTC and to take direct action on that information through CMSP Instructions, on behalf of Participants and Pledgees.

Pursuant to the proposed rule change, the right of any CMSP to instruct DTC with respect to a CMSP Account would not preclude instructions by the Participant or Pledgee itself, or CMSP Instructions by another CMSP, with respect to the same CMSP Account. Furthermore, Rule 35 would provide that DTC has no liability (i) to a Participant or Pledgee for acting in

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<sup>14</sup> For a CMSP Account of a Participant, that would include Delivery or Pledge. For a CMSP Account of a Pledgee, that would include Delivery or Release.

<sup>15</sup> DTC risk management controls, including Collateral Monitor and Net Debit Cap (as defined in Rule 1, Section 1 of the Rules), are designed so that DTC may complete system-wide settlement notwithstanding the failure to settle of its largest Participant or Affiliated Family of Participants. The Collateral Monitor tests whether a Participant has sufficient collateral for DTC to pledge or liquidate if that Participant were to fail to meet its settlement obligation. Pursuant to these controls under applicable DTC Rules and Procedures, DTC would not process any Delivery or Pledge instruction order from a CMSP Account that would cause the Participant to exceed its Net Debit Cap or to have insufficient DTC Collateral to secure its obligations to DTC. Deliveries would be processed in the same order and with the same priority as otherwise provided in the Rules and Procedures (i.e., such Deliveries and Pledges would not take precedence over any other type of Delivery or Pledge in the DTC system).

accordance with, or relying upon, CMSP Instructions, or (ii) to any CMSP as a result of DTC acting in accordance with, or relying upon, instructions of any other Person, including, but not limited to, the Participant or Pledgee or any other designated CMSP.

### C. Proposed Rule Changes

In connection with the foregoing, DTC proposes to make the following changes (including ministerial changes) to Rule 35.

Title. DTC is proposing to replace the current title “CMS Reporting” with “CMSP Reports and Instructions,” to reflect the amended substance of the proposed rule.

Section 1. For stylistic consistency, DTC is proposing to insert the title “Certain Defined Terms” for Section 1. For the reasons explained above, DTC is further proposing to (i) delete the definitions of CMS, CMS Participant, CMS Representative, CMS Securities, DEGCL, and DTCC; (ii) add definitions for CMSP, CMSP Account, CMSP Instruction, and CMSP Reports; (iii) replace the defined term “CMS Delivery Information” with “CMSP Information” and simplify the definition by referring to “a copy of any message sent to the Participant or Pledgee” with respect to a CMSP Account, instead of “a copy of any Delivery, Pledge, or Release message sent to the CMS Participant by DTC, including the following information: (x) the CUSIP, ISIN, or other identification number of such CMS Securities, and (y) the number of shares or other units or principal amount of such CMS Securities”; and (iv) replace the defined term “CMS Report” with “CMSP Position Report” and simplify the definition by removing the DEGCL specifications of “(i) the CUSIP, ISIN, or other identification number of the CMS Securities, and (ii) the number of shares or other units or principal amount of the CMS Securities.”

Proposed Section 2 (New). DTC is proposing to insert a new proposed Section 2, titled “Qualification as a CMSP.” As discussed above, Section 2 would set forth the requirements that an entity must satisfy to become a CMSP.

Section 2 (Proposed Section 3). DTC is proposing to renumber Section 2 to Section 3, and to change the title of proposed Section 3 to “CMSP Accounts.” DTC is further proposing to modify subsection (a) to delete DEGCL CMS-specific terms and to reflect that (i) a Participant or Pledgee can designate one or more CMSP Accounts, as well as designate one or more CMSPs for each CMSP Account, and (ii) the designation of a CMSP with respect to a CMSP Account by a Participant or Pledgee would constitute: (1) the appointment of the CMSP by the Participant or Pledgee of the CMSP to act on its behalf under Proposed Rule 35; (2) the authorization of the appointed CMSP by the Participant or Pledgee to receive CMSP Reports and to provide CMSP Instructions; (3) the authorization of DTC by the Participant or Pledgee to act in accordance with any CMSP Instructions of such CMSP; and (4) the representation and warranty of the Participant or Pledgee that it is duly authorized to instruct DTC to provide CMSP Reports to the CMSP and to act in accordance with CMSP Instructions. DTC is further proposing to modify subsection (b) to remove CMS-specific references, to reflect the inclusion of Pledgees, CMSPs, and CMSP Instruction in the proposed rule, and to make ministerial changes. Additionally, DTC proposes to remove subsection (c) as it would be no longer relevant because it relates exclusively to DEGCL.

Section 3 (Proposed Section 4). DTC is proposing to renumber Section 3 as Section 4, and to change the title of the section to “Instructions on a CMSP Account.” DTC is further proposing to (i) modify subsection (a) to remove provisions relating to the transfer of Securities to a CMS Sub-Account, and to insert a provision stating that a Participant or Pledgee retains its right to instruct DTC with respect to its CMSP Account, and (ii) modify subsection (b) to remove provisions relating to the transfer of Securities to a CMS Sub-Account, and to insert a provision specifying that a CMSP may instruct the Delivery, Pledge, or Release of Securities to or from a CMSP Account for which it is designated pursuant to proposed Section 3 of Rule 35. Further, DTC proposes to insert proposed subsection (c) that would state that all Deliveries, Pledges, and Releases to or from a CMSP Account would be subject to the terms and conditions of the Rules and Procedures applicable to Deliveries, Pledges, and Releases of Securities generally.

Section 4. DTC proposes to delete this section, as it relates to DEGCL specifications for a CMS Report and would no longer be relevant.

Section 5. DTC is proposing to replace the current title of “CMS Delivery Information” with “CMSP Reports.” DTC is further proposing to insert proposed subsection (a) to provide for the provision of CMSP Position Reports and CMSP Information to each CMSP for each CMSP Account for which it is designated. DTC additionally proposes to delete the following language, because it relates to DEGCL-specific requirements: “CMS Delivery Information. The Corporation shall, for purposes of CMS, provide CMS Delivery Information to the CMS Representative, in real-time, with respect to (i) each Delivery or Pledge from, and (ii) Delivery or Release to, any CMS Sub-Account.” Further, DTC proposes to incorporate the remaining language of Section 5, modified to conform with the defined terms of the proposed rule change, into proposed subsection (b).

Section 6. DTC is proposing to modify the section to (i) add references to CMSPs, Pledgees, CMSP Reports, and CMSP Instructions, (ii) remove references to CMS Participant, CMS Report, Delivery Information, and CMS Representative, and (iii) update a cross-reference relating to CMSP Reports. DTC is further proposing to add disclaimers of liability to (i) a Participant or Pledgee for acting in accordance with, or relying upon, CMSP Instructions, or (ii) any CMSP as a result of DTC acting in accordance with, or relying upon, instructions of any other Person, including, but not limited to, the Participant or Pledgee or any other designated CMSP, with respect to a CMSP Account.

For additional clarity, DTC is also proposing to make ministerial changes to (i) update articles, pronouns, and determiners, and (ii) modify language for stylistic conformity within the proposed rule.

#### Implementation Timeframe

DTC will implement the proposed rule change two Business Days after approval of this filing by the Commission. Participants would be advised of the implementation date of this proposed rule change through the issuance of a DTC Important Notice.

(b) Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (“Act”), and the rules and regulations thereunder applicable to DTC, in particular Section 17A(b)(3)(F) of the Act.<sup>16</sup>

Section 17A(b)(3)(F) of the Act<sup>17</sup> requires, inter alia, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions. By amending Rule 35 (i) to expand its application to CMSPs generally, and (ii) to provide that Pledges, in addition to Participants, may designate an Account under Rule 35, the proposed rule change would provide any Participant or Pledgee the opportunity to choose one or more CMSPs that align most efficiently with its specific collateral management needs and to structure its Accounts accordingly. In addition, by amending Rule 35 to permit any Participant or Pledgee to designate one or more CMSPs to provide CMSP Instructions to DTC with respect to a CMSP Account, the proposed rule change would reduce the number of actions that a Participant or Pledgee that has a CMSP would need to take in order to effect the settlement of collateral transactions at DTC, thereby adding efficiency by providing straight-through submission and processing of settlement instructions by a CMSP without further actions by the Participant or Pledgee. Further, for enhanced clarity, the proposed rule change would make ministerial changes to Rule 35 so the processes relating to CMSPs are clear and consistent. Therefore, by (i) providing Participants and Pledges the opportunity to choose a CMSP that aligns most efficiently with its needs, (ii) providing streamlined submission and processing of settlement instructions by a CMSP on behalf of the Participant or Pledgee, and (iii) providing a clear and consistent rule relating to CMSPs, the proposed rule change is designed to improve efficiency in the processing and settlement of collateral transactions, thereby promoting the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F).

Rule 17Ad-22(e)(21) promulgated under the Act requires, inter alia, that each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves.<sup>18</sup> By amending Rule 35 to permit a Participant or Pledgee to designate one or more CMSPs to provide CMSP Instructions to DTC with respect to a CMSP Account, the proposed rule change would provide (i) an efficient mechanism for a Participant or Pledgee to designate collateral management service providers for its Account at DTC, and (ii) flexibility to a Participant or Pledgee to structure its Accounts in a manner that is most effective for the collateral management needs of that Participant or Pledgee and for the specifications of its designated CMSP(s), and is therefore designed to be efficient and effective in meeting the

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<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>17</sup> Id.

<sup>18</sup> 17 CFR 240.17Ad-22(e)(21).

requirements of Participants, consistent with the requirements of the Act, in particular Rule 17Ad-22(e)(21).

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

DTC believes that the proposed rule change to amend Rule 35 to (i) expand its application to CMSPs generally, (ii) provide that Pledges, in addition to Participants, may designate an Account under Rule 35, and (iii) provide for CMSP Instructions to DTC with respect to a CMSP Account, would have an impact on competition by potentially promoting competition, and would not impose a burden on competition.<sup>19</sup> By removing provisions particular to DEGCL only, and providing that any Participant or Pledgee can designate a CMSP for a CMSP Account, the proposed rule change would (i) offer collateral management service providers (in addition to DEGCL) the opportunity to provide collateral management services to Participants and Pledges under proposed Rule 35, and (ii) provide any Participant or Pledgee the opportunity to choose from among competing collateral management service providers. In addition, by providing that a Participant or Pledgee can designate one or more CMSPs to provide CMSP Instructions to DTC with respect to a CMSP Account for which it is designated, the proposed rule change would provide CMSPs the opportunity to include direct messaging to DTC as part of their services to Participants or Pledges. Therefore, DTC believes that the proposed rule change would not impose a burden on competition but may promote competition.

DTC does not believe that the proposed ministerial changes to Rule 35 would have any impact on competition because these clarifications would merely make changes for accuracy and consistency and therefore would not affect the rights and obligations of any Participant or Pledgee or other interested party.

#### **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. DTC will notify the Commission of any written comments received by DTC.

#### **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<sup>20</sup> for Commission action.

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

<sup>20</sup> 15 U.S.C. 78s(b)(2).

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

- (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 Submissions 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 – Proposed changes to DTC Rules.

**EXHIBIT 1A**

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-[\_\_\_\_\_]; File No. SR-DTC-2018-006)

[DATE]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Amend Rule 35 to Provide for Designated Accounts for Use With Designated Collateral Management Service Providers

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 July 9, 2018, 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. 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 of DTC would amend Rule 35<sup>3</sup> to permit a Participant or Pledgee to designate one or more collateral management service providers,<sup>4</sup> acting on behalf of the Participant or Pledgee, to receive reports and information from, and provide

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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> 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 “Rules”), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

<sup>4</sup> Collateral management generally involves calculating collateral requirements and facilitating the transfer of collateral between counterparties. See Securities Exchange Act Release No. 64796 (July 1, 2011), 76 FR 39963, 39964 (July 7, 2011) (S7-28-11).

certain instructions to, DTC with respect to specified Accounts of the Participant or Pledgee. In addition, the proposed rule change would make ministerial changes to Rule 35, 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

The proposed rule change of DTC would amend Rule 35 to permit a Participant or Pledgee to designate one or more collateral management service providers, acting on behalf of the Participant or Pledgee, to receive reports and information from, and provide certain instructions to, DTC with respect to specified Accounts of the Participant or Pledgee. In addition, the proposed rule change would make ministerial changes to Rule 35, as discussed below.

A. Background

i. Rule 35

On May 4, 2017, the Commission approved a DTC rule change that added Rule 35.<sup>5</sup> DTC introduced Rule 35 at the request of DTCC Euroclear Global Collateral Ltd. (“DEGCL”)<sup>6</sup> in accordance with DEGCL specifications. The purpose of Rule 35 was to permit a Participant to authorize DEGCL to receive certain reports and information with respect to Securities held by the Participant at DTC in one or more sub-accounts (each, a “CMS Sub-Account”) so that DEGCL might provide collateral management services with respect to such Securities.<sup>7</sup>

As DEGCL sought to expand its activities under Rule 35, which would have required one or more amendments to the rule, DTC considered whether a more comprehensive approach to Rule 35 might better serve the collateral management needs of its Participants and Pledgees.

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<sup>5</sup> See Securities Exchange Act Release No. 80598 (May 4, 2017), 82 FR 21837 (May 10, 2017) (SR-DTC-2017-001).

<sup>6</sup> DEGCL is a joint venture of The Depository Trust & Clearing Corporation, the corporate parent of DTC, and Euroclear S.A./N.V. and was formed for the purpose of offering global information, record keeping, and processing services for derivatives collateral transactions and other types of financing transactions. DEGCL offers service options for the selection of collateral to satisfy the collateral obligations of its users (“DEGCL CMS”). One option relates exclusively to Securities held at DTC, and is dependent on Rule 35. For more information on DEGCL and DEGCL CMS, see Securities Exchange Act Release No. 80280 (March 20, 2017), 82 FR 15081 (March 24, 2017) (SR-DTC-2017-001).

<sup>7</sup> Rule 35 provides that by establishing a CMS Sub-Account, a Participant authorizes DEGCL to receive from DTC (x) a “CMS Report,” which provides information regarding Securities credited to the CMS Sub-Account of such Participant at the time of the report, and (y) “CMS Delivery Information,” which provides real-time information regarding any Delivery or Pledge from, or Delivery or Release to, the CMS Sub-Account of such Participant.

ii. Proposed Rule Changes

The proposed rule change to amend Rule 35 would apply to any collateral management service provider that satisfies the requirements of the rule, and to any Account designated by a Participant or Pledgee. The amended rule would authorize DTC to provide information to the collateral management service provider (as it does for DEGCL currently) but, further, to act on instructions of the collateral management service provider.

More specifically, the proposed rule change would:

- (1) Introduce the concept of a “CMSP,” a collateral management service provider designated to DTC by a Participant or Pledgee to act on behalf of the Participant or Pledgee under the proposed rule. The concept of a CMSP would replace the singular designation of DEGCL to act under this rule;<sup>8</sup>
- (2) Introduce the concept of a “CMSP Account,” an Account of a Participant or Pledgee that the Participant or Pledgee, respectively, has designated as subject to the proposed rule. The scope of a CMSP Account would replace the narrower concept of the existing CMS Sub-Account;<sup>9</sup>

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<sup>8</sup> DTC understands that DEGCL expects to be a CMSP under proposed Rule 35 and expects to offer collateral management services under the amended rule.

<sup>9</sup> Rule 35 currently requires that a designated Account must be a sub-Account, and can only be designated by a Participant, which were DEGCL specifications. By expanding the rule to Accounts more generally, which could be designated by any Participant or Pledgee, the proposed rule would provide a Participant or a Pledgee flexibility to choose among CMSPs with different models for collateral management services and to structure its Accounts in a manner that aligns most

- (3) Add the concept of a “CMSP Instruction,” an instruction of a CMSP to DTC for the Delivery, Pledge, or Release of Securities to or from a CMSP Account for which the CMSP is designated under the proposed rule; and
- (4) Introduce the defined terms “CMSP Position Report” and “CMSP Information” (collectively, “CMSP Reports”). These reports are analogous to the CMS Report and CMS Delivery Information, respectively, provided to DEGCL under Rule 35.

B. Proposed Rule

i. CMSP

Proposed Section 2 of Rule 35 would set forth the requirements to be a CMSP.<sup>10</sup> Proposed Section 2 would provide that a partnership, corporation or other organization or entity may become a CMSP for purposes of proposed Rule 35 if it satisfies the following requirements: (a) it is designated to DTC by one or more Participants or Pledgees as a collateral management service provider for purposes of Rule 35; (b) it (i) satisfies at least one of the qualifications set forth in Section 1(a)-(h) of Rule 3<sup>11</sup> or (ii) is organized in a

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efficiently with its collateral management needs and the specifications of its designated CMSP(s).

<sup>10</sup> See supra note 8.

<sup>11</sup> Sections 1(a)-(h) of Rule 3 provide the qualifications for a partnership, corporation or other organization or entity to be eligible to become a Participant. Specifically, it must satisfy at least one of the following qualifications: “(a) it is a corporation which engages in clearance and settlement activities and which is a subsidiary of a national securities exchange or national securities association registered under the Exchange Act; (b) it is a member or member organization in good standing of a corporation described in paragraph (a) above; (c) it is a corporation which is authorized pursuant to Article 8 of the Uniform Commercial Code, or other similar statutory provision in effect in the jurisdiction in which

country other than the United States, is regulated by a financial regulatory authority in the country in which it is organized, and demonstrates that it has notified the Commission in writing of its intention to operate under Rule 35;<sup>12</sup> and (c) it establishes a connection to DTC in accordance with the reasonable requirements of DTC in order to be able to receive position and transaction information and to submit instructions to DTC in

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such corporation engages in business, to engage in the business of effecting the transfer or pledge of Securities by book-entry and which engages in such business; (d) it is a bank or trust company which is subject to supervision or regulation pursuant to the provisions of Federal or State banking laws or any subsidiary of such a bank or trust company or a bank holding company or any subsidiary of a bank holding company; (e) it is an insurance company subject to supervision or regulation pursuant to the provisions of State insurance laws; (f) it is an investment company registered under section 8 of the Investment Company Act; (g) it is a pension fund or other employee benefit fund; or (h) if it does not qualify under paragraphs (a) through (g) above, it is (i) a financial institution which demonstrates to the Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from direct access to the Corporation's services or (ii) a broker-dealer registered under the Exchange Act.”  
Supra note 3.

<sup>12</sup> In order to protect DTC, its Participants and Pledges, a collateral management service provider that wishes to act under proposed Rule 35 would need to be subject to regulatory oversight comparable to a Participant, as provided in proposed Section 2(b)(i) of Rule 35, or, if the entity is organized in a country other than the United States (a “non-U.S. entity”), it would need to be regulated by a financial regulatory authority in the country in which it is organized, as provided in proposed Section 2(b)(ii) of Rule 35. Further, the proposed rule change would require that, in order to be eligible to become a CMSP, the non-U.S. entity must notify the Commission in writing of its intention to operate under proposed Rule 35. While DTC reserves the right to request documentation and/or information relating to a collateral management service provider's compliance with the requirements of proposed Section 2 of Rule 35, it would be the sole responsibility of the Participant or Pledgee to evaluate and choose an appropriate collateral management service provider that, at a minimum, satisfies the requirements. Under proposed Section 2 of Rule 35, the designating Participant or Pledgee would remain liable as principal for the actions of its designated CMSP(s) on its behalf, and would indemnify DTC for any loss, liability, or expense as a result of any claim arising from (i) any act or omission of the CMSP, (ii) the provision of CMSP Reports to the CMSP by DTC, or (iii) DTC's compliance with instructions of the CMSP.

accordance with the Rules and Procedures.<sup>13</sup>

Proposed Section 2 of Rule 35 would also provide that DTC may decline to accept an entity as a CMSP if it would present material risk to DTC, its Participants and Pledgees, or impose material costs to DTC. For illustrative purposes only, some examples of circumstances in which DTC might reject a collateral management service provider as a CMSP may include, without limitation, circumstances in which DTC reasonably believes that acceptance of the collateral management service provider as a CMSP would (i) subject DTC to additional legal or regulatory regimes, to which it is not otherwise subject; (ii) expose DTC to additional technology risk; or (iii) cause DTC to be in violation of applicable law or regulation.

ii. CMSP Accounts

The proposed rule change would amend Rule 35 to allow either a Participant or a Pledgee to designate any Account as a CMSP Account. The key feature of a CMSP Account is that it allows the designated CMSP access and authority to provide instruction to DTC (as further described below) for the Delivery, Pledge, or Release of Securities on behalf of a Participant or Pledgee, as applicable. The proposed rule change would specify that, with respect to a CMSP Account, a Participant or Pledgee would retain the right to instruct DTC as otherwise provided in the Rules and Procedures.

Pursuant to proposed Section 3 of Rule 35, a Participant or Pledgee would be able to designate one or more CMSP Accounts and, concurrently, designate one or more CMSPs with respect to each CMSP Account. The designation of a CMSP with respect to a CMSP Account by a Participant or Pledgee would constitute:

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<sup>13</sup> See *infra* note 15.

- (1) the appointment of the CMSP by the Participant or Pledgee of the CMSP to act on its behalf under Rule 35;
- (2) the authorization of the appointed CMSP by the Participant or Pledgee to receive CMSP Reports and to provide CMSP Instructions;
- (3) the authorization of DTC by the Participant or Pledgee to act in accordance with any CMSP Instruction of such CMSP; and
- (4) the representation and warranty of the Participant or Pledgee that it is duly authorized to instruct DTC to provide CMSP Reports to the CMSP and to act in accordance with any CMSP Instruction.

With the exception of references to Pledgees and to the new concept of CMSP Instruction, these authorizations, representations, and warranties would substantially track Rule 35, as previously adopted.

In addition, the proposed rule change would not substantially alter the liability and indemnification provisions in Rule 35. The proposed rule change would provide that each Participant and Pledgee that designates a CMSP with respect to a CMSP Account would indemnify DTC, and any nominee of DTC, against any loss, liability or expense as a result of any claim arising from the compliance of DTC with CMSP Instructions, except to the extent such loss, liability, or expense is caused directly by the DTC's gross negligence or willful misconduct.

### iii. CMSP Reports

As discussed above, Rule 35 currently provides a mechanism for a Participant to authorize DEGCL to receive position and transaction information from DTC, in the form

of CMS Reports and CMS Delivery Information.<sup>14</sup> The proposed rule change would permit a Participant or Pledgee to designate a CMSP that would be authorized to receive CMSP Reports and give CMSP Instructions with respect to CMSP Accounts for which the CMSP is designated. The CMSP Position Report and CMSP Information are analogous to the reports provided to DEGCL under existing Rule 35 (defined as the CMS Report and CMS Delivery Information, respectively).<sup>15</sup>

Existing Rule 35 defines “CMS Delivery Information” to mean, “with respect to CMS Securities and any Delivery or Pledge thereof from, or Delivery or Release thereof to, a CMS Sub-Account, a copy of any Delivery, Pledge, or Release message sent to the CMS Participant by DTC, including the following information: (x) the CUSIP, ISIN, or other identification number of such CMS Securities, and (y) the number of shares or other units or principal amount of such CMS Securities.” This definition was drafted to align with DEGCL specifications. Pursuant to the proposed rule change, the definition would be drafted in more general terms to provide flexibility for the different collateral management service offerings of CMSPs (in addition to DEGCL). Pursuant to the proposed rule change, “CMSP Information” would mean, “with respect to a CMSP

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<sup>14</sup> See supra note 7.

<sup>15</sup> The proposed rule change would not alter the provision in Rule 35 that states that DTC will provide the CMSP Reports “through such dedicated communications channels, satisfactory to [DTC] in its sole discretion, as [DTC] shall afford for this purpose.” Typically, DTC would have infrastructure and operations that it would use to transmit information to, or receive information from, CMSPs under proposed Rule 35. DTC would consider requests from CMSPs for alternative methods of connectivity, taking into account factors that may include, but are not limited to, operational feasibility, user demand, and cost. In such a situation, the applicable CMSP would be responsible for all development, integration, implementation, and additional operating costs related to such alternate method of transmission.

Account of a Participant or Pledgee, a copy of any message sent to the Participant or Pledgee by the Corporation.” These messages would include, but would not be limited to, the Delivery, Pledge, and Release messages referenced in the definition of CMS Delivery Information in existing Rule 35.

Similarly, existing Rule 35 defines “CMS Report” to mean, “with respect to a CMS Participant and its CMS Sub-Account, the following information identifying the CMS Securities that are, at the time of such report, credited to such CMS Sub-Account: (i) the CUSIP, ISIN, or other identification number of the CMS Securities, and (ii) the number of shares or other units or principal amount of the CMS Securities.” This definition was drafted to align with DEGCL specifications. Pursuant to the proposed rule change, “(i) the CUSIP, ISIN, or other identification number of the CMS Securities, and (ii) the number of shares or other units or principal amount of the CMS Securities” would be deleted from the definition.

Finally, similar to existing Rule 35, proposed Rule 35 would provide that DTC would have no liability to any Participant or Pledgee as a result of providing one or more CMSP Reports to any CMSP pursuant to proposed Section 5 of Rule 35.

#### iv. CMSP Instructions

The proposed rule change would further amend Rule 35 to provide that a CMSP designated by a Participant or Pledgee with respect to a CMSP Account would be authorized to instruct DTC, on behalf of the Participant or Pledgee, for the Delivery, Pledge, or Release of Securities credited to such CMSP Account, as applicable.<sup>16</sup> CMSP Instructions would be subject to the terms and conditions of the Rules and the Procedures

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<sup>16</sup> For a CMSP Account of a Participant, that would include Delivery or Pledge. For a CMSP Account of a Pledgee, that would include Delivery or Release.

applicable to Deliveries, Pledges, and Releases of Securities generally, including risk management controls.<sup>17</sup> The purpose of this proposed change is to streamline collateral processing by CMSPs by allowing them to receive information directly from DTC and to take direct action on that information through CMSP Instructions, on behalf of Participants and Pledges.

Pursuant to the proposed rule change, the right of any CMSP to instruct DTC with respect to a CMSP Account would not preclude instructions by the Participant or Pledgee itself, or CMSP Instructions by another CMSP, with respect to the same CMSP Account. Furthermore, Rule 35 would provide that DTC has no liability (i) to a Participant or Pledgee for acting in accordance with, or relying upon, CMSP Instructions, or (ii) to any CMSP as a result of DTC acting in accordance with, or relying upon, instructions of any other Person, including, but not limited to, the Participant or Pledgee or any other designated CMSP.

### C. Proposed Rule Changes

In connection with the foregoing, DTC proposes to make the following changes (including ministerial changes) to Rule 35.

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<sup>17</sup> DTC risk management controls, including Collateral Monitor and Net Debit Cap (as defined in Rule 1, Section 1 of the Rules), are designed so that DTC may complete system-wide settlement notwithstanding the failure to settle of its largest Participant or Affiliated Family of Participants. The Collateral Monitor tests whether a Participant has sufficient collateral for DTC to pledge or liquidate if that Participant were to fail to meet its settlement obligation. Pursuant to these controls under applicable DTC Rules and Procedures, DTC would not process any Delivery or Pledge instruction order from a CMSP Account that would cause the Participant to exceed its Net Debit Cap or to have insufficient DTC Collateral to secure its obligations to DTC. Deliveries would be processed in the same order and with the same priority as otherwise provided in the Rules and Procedures (i.e., such Deliveries and Pledges would not take precedence over any other type of Delivery or Pledge in the DTC system).

Title. DTC is proposing to replace the current title “CMS Reporting” with “CMSP Reports and Instructions,” to reflect the amended substance of the proposed rule.

Section 1. For stylistic consistency, DTC is proposing to insert the title “Certain Defined Terms” for Section 1. For the reasons explained above, DTC is further proposing to (i) delete the definitions of CMS, CMS Participant, CMS Representative, CMS Securities, DEGCL, and DTCC; (ii) add definitions for CMSP, CMSP Account, CMSP Instruction, and CMSP Reports; (iii) replace the defined term “CMS Delivery Information” with “CMSP Information” and simplify the definition by referring to “a copy of any message sent to the Participant or Pledgee” with respect to a CMSP Account, instead of “a copy of any Delivery, Pledge, or Release message sent to the CMS Participant by DTC, including the following information: (x) the CUSIP, ISIN, or other identification number of such CMS Securities, and (y) the number of shares or other units or principal amount of such CMS Securities”; and (iv) replace the defined term “CMS Report” with “CMSP Position Report” and simplify the definition by removing the DEGCL specifications of “(i) the CUSIP, ISIN, or other identification number of the CMS Securities, and (ii) the number of shares or other units or principal amount of the CMS Securities.”

Proposed Section 2 (New). DTC is proposing to insert a new proposed Section 2, titled “Qualification as a CMSP.” As discussed above, Section 2 would set forth the requirements that an entity must satisfy to become a CMSP.

Section 2 (Proposed Section 3). DTC is proposing to renumber Section 2 to Section 3, and to change the title of proposed Section 3 to “CMSP Accounts.” DTC is further proposing to modify subsection (a) to delete DEGCL CMS-specific terms and to

reflect that (i) a Participant or Pledgee can designate one or more CMSP Accounts, as well as designate one or more CMSPs for each CMSP Account, and (ii) the designation of a CMSP with respect to a CMSP Account by a Participant or Pledgee would constitute: (1) the appointment of the CMSP by the Participant or Pledgee of the CMSP to act on its behalf under Proposed Rule 35; (2) the authorization of the appointed CMSP by the Participant or Pledgee to receive CMSP Reports and to provide CMSP Instructions; (3) the authorization of DTC by the Participant or Pledgee to act in accordance with any CMSP Instructions of such CMSP; and (4) the representation and warranty of the Participant or Pledgee that it is duly authorized to instruct DTC to provide CMSP Reports to the CMSP and to act in accordance with CMSP Instructions. DTC is further proposing to modify subsection (b) to remove CMS-specific references, to reflect the inclusion of Pledgees, CMSPs, and CMSP Instruction in the proposed rule, and to make ministerial changes. Additionally, DTC proposes to remove subsection (c) as it would be no longer relevant because it relates exclusively to DEGCL.

Section 3 (Proposed Section 4). DTC is proposing to renumber Section 3 as Section 4, and to change the title of the section to “Instructions on a CMSP Account.” DTC is further proposing to (i) modify subsection (a) to remove provisions relating to the transfer of Securities to a CMS Sub-Account, and to insert a provision stating that a Participant or Pledgee retains its right to instruct DTC with respect to its CMSP Account, and (ii) modify subsection (b) to remove provisions relating to the transfer of Securities to a CMS Sub-Account, and to insert a provision specifying that a CMSP may instruct the Delivery, Pledge, or Release of Securities to or from a CMSP Account for which it is designated pursuant to proposed Section 3 of Rule 35. Further, DTC proposes to insert

proposed subsection (c) that would state that all Deliveries, Pledges, and Releases to or from a CMSP Account would be subject to the terms and conditions of the Rules and Procedures applicable to Deliveries, Pledges, and Releases of Securities generally.

Section 4. DTC proposes to delete this section, as it relates to DEGCL specifications for a CMS Report and would no longer be relevant.

Section 5. DTC is proposing to replace the current title of “CMS Delivery Information” with “CMSP Reports.” DTC is further proposing to insert proposed subsection (a) to provide for the provision of CMSP Position Reports and CMSP Information to each CMSP for each CMSP Account for which it is designated. DTC additionally proposes to delete the following language, because it relates to DEGCL-specific requirements: “CMS Delivery Information. The Corporation shall, for purposes of CMS, provide CMS Delivery Information to the CMS Representative, in real-time, with respect to (i) each Delivery or Pledge from, and (ii) Delivery or Release to, any CMS Sub-Account.” Further, DTC proposes to incorporate the remaining language of Section 5, modified to conform with the defined terms of the proposed rule change, into proposed subsection (b).

Section 6. DTC is proposing to modify the section to (i) add references to CMSPs, Pledgees, CMSP Reports, and CMSP Instructions, (ii) remove references to CMS Participant, CMS Report, Delivery Information, and CMS Representative, and (iii) update a cross-reference relating to CMSP Reports. DTC is further proposing to add disclaimers of liability to (i) a Participant or Pledgee for acting in accordance with, or relying upon, CMSP Instructions, or (ii) any CMSP as a result of DTC acting in accordance with, or relying upon, instructions of any other Person, including, but not

limited to, the Participant or Pledgee or any other designated CMSP, with respect to a CMSP Account.

For additional clarity, DTC is also proposing to make ministerial changes to (i) update articles, pronouns, and determiners, and (ii) modify language for stylistic conformity within the proposed rule.

#### Implementation Timeframe

DTC will implement the proposed rule change two Business Days after approval of this filing by the Commission. Participants would be advised of the implementation date of this proposed rule change through the issuance of a DTC Important Notice.

#### 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>18</sup>

Section 17A(b)(3)(F) of the Act<sup>19</sup> requires, inter alia, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions. By amending Rule 35 (i) to expand its application to CMSPs generally, and (ii) to provide that Pledgees, in addition to Participants, may designate an Account under Rule 35, the proposed rule change would provide any Participant or Pledgee the opportunity to choose one or more CMSPs that align most efficiently with its specific collateral management needs and to structure its Accounts accordingly. In addition, by amending Rule 35 to permit any Participant or Pledgee to designate one or more CMSPs to provide CMSP

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

<sup>19</sup> Id.

Instructions to DTC with respect to a CMSP Account, the proposed rule change would reduce the number of actions that a Participant or Pledgee that has a CMSP would need to take in order to effect the settlement of collateral transactions at DTC, thereby adding efficiency by providing straight-through submission and processing of settlement instructions by a CMSP without further actions by the Participant or Pledgee. Further, for enhanced clarity, the proposed rule change would make ministerial changes to Rule 35 so the processes relating to CMSPs are clear and consistent. Therefore, by (i) providing Participants and Pledgees the opportunity to choose a CMSP that aligns most efficiently with its needs, (ii) providing streamlined submission and processing of settlement instructions by a CMSP on behalf of the Participant or Pledgee, and (iii) providing a clear and consistent rule relating to CMSPs, the proposed rule change is designed to improve efficiency in the processing and settlement of collateral transactions, thereby promoting the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F).

Rule 17Ad-22(e)(21) promulgated under the Act requires, inter alia, that each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves.<sup>20</sup> By amending Rule 35 to permit a Participant or Pledgee to designate one or more CMSPs to provide CMSP Instructions to DTC with respect to a CMSP Account, the proposed rule change would provide (i) an efficient mechanism for a Participant or Pledgee to designate collateral

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<sup>20</sup> 17 CFR 240.17Ad-22(e)(21).

management service providers for its Account at DTC, and (ii) flexibility to a Participant or Pledgee to structure its Accounts in a manner that is most effective for the collateral management needs of that Participant or Pledgee and for the specifications of its designated CMSP(s), and is therefore designed to be efficient and effective in meeting the requirements of Participants, consistent with the requirements of the Act, in particular Rule 17Ad-22(e)(21).

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

DTC believes that the proposed rule change to amend Rule 35 to (i) expand its application to CMSPs generally, (ii) provide that Pledgees, in addition to Participants, may designate an Account under Rule 35, and (iii) provide for CMSP Instructions to DTC with respect to a CMSP Account, would have an impact on competition by potentially promoting competition, and would not impose a burden on competition.<sup>21</sup> By removing provisions particular to DEGCL only, and providing that any Participant or Pledgee can designate a CMSP for a CMSP Account, the proposed rule change would (i) offer collateral management service providers (in addition to DEGCL) the opportunity to provide collateral management services to Participants and Pledgees under proposed Rule 35, and (ii) provide any Participant or Pledgee the opportunity to choose from among competing collateral management service providers. In addition, by providing that a Participant or Pledgee can designate one or more CMSPs to provide CMSP Instructions to DTC with respect to a CMSP Account for which it is designated, the proposed rule change would provide CMSPs the opportunity to include direct messaging to DTC as part

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<sup>21</sup> 15 U.S.C. 78q-1(b)(3)(I).

of their services to Participants or Pledgees. Therefore, DTC believes that the proposed rule change would not impose a burden on competition but may promote competition.

DTC does not believe that the proposed ministerial changes to Rule 35 would have any impact on competition because these clarifications would merely make changes for accuracy and consistency and therefore would not affect the rights and obligations of any Participant or Pledgee or other interested party.

(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.

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-2018-006 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-2018-006. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information

from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2018-006 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.<sup>22</sup>

Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).

**Bolded, underlined text** indicates added language.

**~~Bolded, strikethrough text~~** indicates deleted language.

RULE 35

**CMS REPORTING CMSP REPORTS AND INSTRUCTIONS**

*Section 1.* **For purposes of this Rule 35: Certain Defined Terms.**

**For purposes of this Rule:**

**“CMS” means collateral management services provided by DEGCL. “CMSP” means a collateral management service provider designated to the Corporation by a Participant or Pledgee to act on behalf of the Participant or Pledgee under this Rule, subject to Section 2 of this Rule.**

**“CMSP Account” means an Account of a Participant or Pledgee that the Participant or Pledgee, respectively, has designated as subject to this Rule.**

**“CMSP Delivery Information” means, with respect to CMS Securities and any Delivery or Pledge thereof from, or Delivery or Release thereof to, a CMSP Sub-Account of a Participant or Pledgee, a copy of any Delivery, Pledge, or Release message sent to the CMS Participant or Pledgee by DTCThe Corporation, including the following information: (x) the CUSIP, ISIN, or other identification number of such CMS Securities, and (y) the number of shares or other units or principal amount of such CMS Securities.**

**“CMS Participant” means a Participant for which the Corporation maintains at least one CMS Sub-Account. “CMSP Instruction” has the meaning provided in Section 4 of this Rule.**

**“CMSP Position Report” means, with respect to a CMS Participant and its CMSP Sub-Account, the following information identifying the CMS Securities that are, at the time of such report, credited to such the CMSP Sub-Account: (i) the CUSIP, ISIN, or other identification number of the CMS Securities, and (ii) the number of shares or other units or principal amount of the CMS Securities.**

**“CMS Representative” means the Person that a CMS Participant has authorized to receive CMS Delivery Information and CMS Reports with respect to any CMS Sub-Account of such CMS Participant. “CMSP Reports” means, collectively, CMSP Position Reports and CMSP Information.**

~~“CMS Securities” means Eligible Securities that are credited to a CMS Sub-Account of a CMS Participant. “CMS Sub-Account” means a sub-Account of a CMS Participant as to which CMS Reports and CMS Delivery Information will be provided to the CMS Representative of such CMS Participant.~~

~~“DEGCL” means DTCC Euroclear Global Collateral Ltd., a company organized in the United Kingdom that is a joint venture between DTCC and Euroclear SA/NV.~~

~~“DTCC” means The Depository Trust & Clearing Corporation, a company organized in New York that is the corporate parent of the Corporation and a party to the DEGCL joint venture.~~

**Section 2. Qualification as a CMSP.**

**A partnership, corporation or other organization or entity is eligible to become a CMSP for purposes of this Rule if it satisfies the following requirements:**

**(a) it is designated to the Corporation by one or more Participants or Pledges as a collateral management service provider for purposes of this Rule;**

**(b) it (i) satisfies at least one of the qualifications set forth in Section 1(a)-(h) of Rule 3, or (ii) is organized in a country other than the United States, is regulated by a financial regulatory authority in the country in which it is organized, and demonstrates that it has notified the Securities and Exchange Commission in writing of its intention to operate under this Rule; and**

**(c) it establishes a connection to the Corporation in accordance with the reasonable requirements of the Corporation in order to be able to receive CMSP Reports and submit CMSP Instructions.**

**The Corporation may, in its sole discretion, reject any proposed CMSP if it would present material risk to the Corporation, its Participants and Pledges, or impose material costs to the Corporation.**

**Section 32. Establishment of a CMSP Sub-Accounts for a CMS Participant; Authorization of the CMS Representative.**

(a) A Participant or Pledgee may, in the manner specified by the Corporation, ~~request designate one or more that the Corporation establish and maintain a CMSP Sub-Accounts and, concurrently, designate one or more CMSPs with respect to each CMSP Account for such Participant.~~ **The request designation of a CMSP with respect to a CMSP Account by a Participant or Pledgee to establish such CMS Sub-Account shall constitute: (i) such Participant’s authorization of the CMS Representative to receive CMS Reports and CMS Delivery Information with respect to such CMS Sub-Account and CMS Securities credited thereto; (ii) the representation and warranty of the Participant that it is duly authorized to instruct the Corporation to provide the CMS Reports and CMS Delivery Information about such CMS Sub-Account to the CMS Representative; and (iii) the representation and warranty of the Participant that it will conduct business in such CMS**

~~Sub-Account as provided in this Rule 35 and otherwise pursuant to the Rules and Procedures of the Corporation, and in compliance with applicable law. A CMS Participant may have one or more CMS Sub-Accounts.~~

(1) the appointment of the CMSP by the Participant or Pledgee of the CMSP to act on its behalf hereunder;

(2) the authorization of the appointed CMSP by the Participant or Pledgee to receive CMSP Reports and to provide CMSP Instructions;

(3) the authorization of the Corporation by the Participant or Pledgee to act in accordance with any CMSP Instruction of such CMSP; and

(4) the representation and warranty of the Participant or Pledgee that it is duly authorized to instruct the Corporation to provide CMSP Reports to the CMSP and to act in accordance with CMSP Instruction.

(b) Each ~~CMS Participant~~ and Pledgee that appoints and authorizes a CMSP hereunder (i) shall be liable as principal for the actions of ~~its~~the ~~CMSP Representative with respect to all matters provided herein or otherwise on its behalf,~~ and (ii) shall indemnify the Corporation, and any nominee of the Corporation, against ~~all any~~ loss, liability ~~and/or~~ expense as a result of any claim arising from: ~~(xa) any act or omission of its~~the ~~CMSP Representative in contravention of this Rule 35, and~~ ~~(yb) the provision of the~~ CMSP Reports, or (z) compliance of the Corporation with CMSP Instructions and CMS Delivery Information to the CMS Representative or the receipt and use thereof by the CMS Representative or any officer, employee, agent thereof or service provider thereto, except to the extent such loss, liability, or expense is caused directly by the Corporation's gross negligence or willful misconduct.

~~(c) Each CMS Participant's CMS Representative shall be DEGCL.~~

*Section 43.* ~~CMS Securities; Deliveries and Pledges~~ Instructions on a CMSP Account.

(a) ~~A CMS Participant may, from time to time, instruct the Corporation to make a Free Delivery of Eligible Securities from its Account to its CMS Sub-Account, whereupon such Securities shall be CMS Securities when credited to such CMS Sub-Account. Eligible Securities Delivered or Released to a CMS Sub-Account from an Account of another Participant or from a Pledge Account, respectively, shall also be CMS Securities when credited to such CMS Sub-Account. With respect to a CMSP Account, the Participant or Pledgee, as the case may be, retains the right to instruct the Corporation as otherwise provided in the Rules and Procedures.~~

(b) ~~A CMS Participant may, from time to time, instruct the Corporation to make a Delivery or Pledge of CMS Securities from its CMS Sub-Account in accordance with the Rules and Procedures of the Corporation applicable to any such Delivery or Pledge. A CMSP may instruct the Delivery, Pledge, or Release of Securities to or from a CMSP~~

Account for which it is designated pursuant to Section 3 of this Rule (a “CMSP Instruction”).

(c) All Deliveries, Pledges, and Releases to or from a CMSP Account shall be subject to the terms and conditions of the Rules and the Procedures applicable to Deliveries, Pledges, and Releases of Securities generally.

~~Section 4. — CMS Report. The Corporation shall, for purposes of CMS, provide a CMS Report to the CMS Representative once each Business Day, at such time as the Corporation may determine, with respect to a CMS Sub-Account. The Corporation shall provide such CMS Report to the CMS Representative through such dedicated communications channels, satisfactory to the Corporation in its sole discretion, as the Corporation shall afford such CMS Representative for this purpose.~~

Section 5. CMSP Reports.

(a) The Corporation shall provide to a CMSP a CMSP Position Report for each CMSP Account for which it is appointed, once each Business Day, at such time as the Corporation may determine. The Corporation shall provide CMSP Information to each CMSP, in real-time, for each CMSP Account for which it is designated pursuant to Section 3 of this Rule.

~~Section 5.(b) CMS Delivery Information. The Corporation shall, for purposes of CMS, provide CMS Delivery Information to the CMS Representative, in real-time, with respect to (i) each Delivery or Pledge from, and (ii) Delivery or Release to, any CMS Sub-Account. The Corporation shall provide such CMS Delivery Information to the CMS Representative CMSP Reports to CMSPs through such dedicated communications channels, satisfactory to the Corporation in its sole discretion, as the Corporation shall afford such CMS Representative for this purpose.~~

Section 6. Certain Other Matters. The Corporation shall have no liability:

(a) to any ~~CMS~~ Participant or Pledgee as a result of the Corporation:

(1) providing anyone or more ~~CMSP Reports relating to such CMS Participant to the CMS Representative to any CMSP~~ pursuant to Section ~~45~~ of this Rule ~~35~~;

(2) ~~providing Delivery Information relating to such CMS Participant to the CMS Representative pursuant to Section 5 of this Rule 35~~ acting in accordance with, or relying upon, CMSP Instructions; or

(b) to any CMSP as a result of the Corporation acting in accordance with, or relying upon, instructions of any other Person, including, but not limited to, the Participant or Pledgee or any other designated CMSP, with respect to a CMSP Account; or

~~(c)~~ to any ~~CMS~~ Participant, Pledgee, or ~~the~~ CMSP Representative as a result of (i) any loss or liability suffered or incurred by such ~~CMS~~ Participant, Pledgee, or CMSP arising

out of or relating to the matters subject to this Rule ~~35~~, unless caused directly by the Corporation's gross negligence, willful misconduct, or violation of Federal securities law for which there is a private right of action; or (ii) any force majeure, market disruption, or technical malfunction that prevents the Corporation from performing its obligations to the parties pursuant to this Rule ~~35~~; or

(~~d~~e) to any third party for any reason, including, without limitation, ~~the~~any CMSP **Representative**.