

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86897; File No. SR-DTC-2019-007)

September 6, 2019

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the DTC Deposits Service Guide Relating to Procedures for the Deposit of Nontransferable Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 30, 2019, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(1) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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).

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

The proposed rule change⁵ would incorporate (a) DTC's existing Procedures⁶ for the Deposit of Nontransferable Securities⁷ at DTC, with certain technical and clarifying updates, as described below, and (b) the DTC form of Blanket Indemnification for Losses Related to Non-Transferable Certificates Deposited with DTC ("Blanket Indemnification") into the DTC Deposits Service Guide⁸ ("Deposits Guide"), with certain technical and clarifying updates, as described 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.

⁵ Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC ("Rules"), available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf.

⁶ Pursuant to the Rules, the term "Procedures" means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. See Rule 1, supra note 5.

⁷ In 1992, the Commission approved a DTC rule filing ("1992 Rule Filing") that established Procedures for the Deposit of Nontransferable Securities at DTC. See Securities Exchange Act Release No. 31673 (December 30, 1992), 58 FR 3046 (January 7, 1993) (File No. SR-DTC-92-16).

⁸ Available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Deposits.pdf>.

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

1. Purpose

The proposed rule change would incorporate (a) DTC’s existing Procedures for the Deposit of Nontransferable Securities at DTC, with certain technical and clarifying updates, as described below, and (b) the text of the existing DTC form of Blanket Indemnification into the Deposits Guide, with certain technical and clarifying updates, as described below.

Background

Eligibility and Deposit of Securities at DTC

DTC plays a critical function in the national clearance and settlement system. It is the nation’s central securities depository, registered as a clearing agency under Section 17A of the Act,⁹ and its deposit and book-entry transfer services help facilitate the operation of the nation’s securities markets.¹⁰

DTC’s participants (“Participants”) are primarily broker-dealers and banks. Participants agree to be bound by the Rules and Procedures. DTC performs various services for Participants to promote the prompt and accurate clearance and settlement of Securities, including maintaining Accounts that list a Participant’s Securities holding at DTC and allowing Participants to present Securities to be made eligible for DTC’s depository and book-entry services. If a Security is accepted by DTC as meeting DTC’s eligibility requirements for services and is Deposited with DTC for credit to the Securities Account of

⁹ 15 U.S.C. 78s(b)(1).

¹⁰ See Securities Exchange Act Release No. 20221 (September 23, 1983), 48 FR 45167 (October 3, 1983) (600–1).

a Participant, it becomes an “Eligible Security.”¹¹ Other issues of Securities may be added through corporate actions with respect to Eligible Securities, including events such as name changes, mergers and spinoffs, that are reviewed by DTC for continuing eligibility.¹² Thereafter, Participants may Deposit shares of that Eligible Security (“Deposited Securities”) into their respective DTC Accounts.¹³

To facilitate book-entry transfers and other services that DTC provides for its Participants, Deposited Securities are generally registered on the books of the respective issuer (typically, in a register maintained by a transfer agent) in DTC’s nominee name, Cede & Co. Certain Securities for which transfer services for a Security are not available (“Nontransferable Securities”), as described below, may also become eligible for DTC services. DTC maintains Deposited Securities that are eligible for book-entry services in “fungible bulk,” meaning that each Participant whose Securities of an issue have been credited to its Securities Account has a pro rata interest in DTC’s entire inventory of that issue, but none of the securities on Deposit are identifiable to or “owned” by any Participant.¹⁴

¹¹ See Rule 5, supra note 5; DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services) (“Operational Arrangements”), Section 1, available at <http://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>.

¹² See Operational Arrangements, Section 1, supra note 11.

¹³ Rule 6, supra note 5.

¹⁴ See Securities Exchange Act Release No. 19678 (April 15, 1983), 48 FR 17603, 17605, n.5 (April 25, 1983) (describing fungible bulk); See also N.Y. Uniform Commercial Code (“NYUCC”), 8-503, Off. Cmt 1 (“. . . all entitlement holders have a pro rata interest in whatever positions in that financial asset the [financial] intermediary holds”).

Security certificates are eligible for Deposit at DTC when they are delivered to DTC in accordance with the Rules and Procedures and pursuant to Article 8 (“Article 8”)¹⁵ of the NYUCC. Under Article 8, a registered owner may transfer a Securities certificate, and the Securities the certificate represents, to a “purchaser” (in this case, DTC) by means of indorsement and Delivery.¹⁶ DTC’s Rules and Procedures require that the indorsement be made in favor of DTC’s nominee, Cede & Co.¹⁷ Having thereby “acquired” the indorsed Security certificate as the purchaser, DTC comes into possession of the rights that the registered owner of the Security would have.¹⁸ Ordinarily, under the DTC Rules and Procedures, the indorsed certificate is presented to the issuer or transfer agent for registration in the name of Cede & Co., so that, in addition to physical possession of the negotiable certificate, Cede & Co. is reflected as the registered holder on the books and records of the issuer maintained by its transfer agent.¹⁹

In the case of Nontransferable Securities, the issuer of the Security could not or would not cause re-registration of the Security certificate because there is no transfer agent or for other reasons. Circumstances that may underlie this nontransferable status of a Security certificate may include the bankruptcy or insolvency of the issuer, the failure of the issuer to pay fees to a transfer agent, a final or complete liquidation of the issuer, the filing of a certificate of dissolution, the placement of the issuer in receivership and the revocation

¹⁵ NYUCC 8-101 - 8-602.

¹⁶ NYUCC 8-301, 8-304, 8-102 and Official Comment 11 thereto.

¹⁷ Rule 6, supra note 5.

¹⁸ NYUCC 8-302.

¹⁹ See Deposits Guide, supra note 8 at 13.

of the issuer's charter. In such cases, pursuant to the 1992 Rule Filing, DTC, as the legal owner of the Nontransferable Security (i) holds in custody the certificate indorsed to Cede & Co. (ii) adds the amount of the Nontransferable Security represented by the certificate to the inventory DTC holds for that issue, and (iii) credits the position to the Securities Account of the Depositing Participant, as described below.

1992 Rule Filing

Prior to the establishment of Procedures implemented pursuant to the 1992 Rule Filing ("Nontransferable Securities Procedures"), the holding and trading of Nontransferable Securities presented issues for Participants that would be addressed if the Nontransferable Securities could be Deposited at DTC and eligible for book-entry services. In this regard, failed Deliveries in Nontransferable Securities occurred regularly and remained outstanding because of ongoing trading activity in Nontransferable Securities where the underlying Securities were not on Deposit and available for Delivery at DTC. Also, Participants holding nontransferable certificates outside of DTC were burdened with the expense of safekeeping certificates.

The Nontransferable Securities Procedures reduce the burdens presented by nontransferable certificates for Participants by facilitating the Deposit of Nontransferable Securities at DTC to make them available for book-entry Delivery, thus facilitating a reduction of fails in ongoing trading activity in Nontransferable Securities, as described above, and by allowing the Participants to no longer provide their own custody services with respect to certificates for DTC-eligible Nontransferable Securities.

The 1992 Rule Filing also introduced a loss sharing allocation method to be used if a certificate that represents a Nontransferable Security is Deposited at DTC and later, most

likely after the reinstatement of transfer services and presentation of the certificate for transfer, is found to be stolen, counterfeit, or otherwise defective.

The Nontransferable Securities Procedures, as implemented pursuant to the 1992 Rule Filing are as set forth under the headings “Deposit Procedures” and “Procedures for Sharing Loss Related to Deposit of Nontransferable Certificates,” immediately below:

A. Deposit Procedures

“When DTC announces to Participants that an issue is “nontransferable,” DTC will change the transfer agent number on DTC’s records, which may be viewed by Participants via DTC’s Participant Terminal System, to reflect the fact that the issue is nontransferable. Participants will be permitted to deposit their DTC-eligible nontransferable securities by adhering to several procedures. Specifically, Participants will be asked to:

1. Send to their Participant Services representative a copy of the Blanket Indemnification executed by an authorized officer. Procedures set forth in the Indemnification will, among other things, require the Participant to verify with the Securities Information Center (“SIC”) that the certificate has not been reported to SIC as lost, stolen, missing, or counterfeit;²⁰
2. Use a Legal deposit ticket clearly marked “N/T.” No more than ten certificates may be included in each individual deposit. Participants will also be asked not to commingle different types of registrations on a single deposit

²⁰ SIC operates the Lost & Stolen Securities Program (“LSSP”) on behalf of the Commission. Rule 17f-1 under the Act, governs LSSP operations. See 17 CFR 240.17f-1. LSSP consists mainly of a database of securities that have been reported lost, stolen, missing, or counterfeit. Securities Exchange Act Release No. 48931 (December 16, 2003), 68 FR 74390 (December 23, 2003) at 74393. This note is provided for descriptive purposes only with respect to this Item 1 and is not included in the Deposit Procedures.

ticket (i.e., all nominee-name and street-name registrations will be deposited under separate tickets); and

3. Check the certificates for assignment to Cede & Co., New York State tax waiver, endorsements, and other requirements, and provide the appropriate signature guarantees.”

B. Procedures for Sharing of Loss Related to Deposit of Nontransferable Securities

“DTC has developed a loss allocation method in the event that a certificate the represents a nontransferable security is deposited at DTC and later, most likely after the reinstatement of transfer services and presentation of the certificate for transfer, is found to be stolen, counterfeit or otherwise defective. If the depositing/indemnifying participant is still in business or if DTC is holding the participant’s Participants Fund deposit in an amount sufficient to cover the loss, DTC will first seek to charge the Participant or its deposit. In the event, however, in which at the time that DTC becomes aware of the loss: (1) the depositing participant has transferred the underlying securities by book-entry; (2) the participant does not itself cover the loss because it is not in business or for some other reason; and (3) the participant’s deposit to the Participants Fund is insufficient to cover the loss, then the loss will be allocated as follows:

The loss will be shared pro rata among all participants that have a position in such issue on the date that DTC determines that the certificate is defective, excluding participants’ positions, however, to the extent that positions existed on the day that DTC first announced to participants that the issue was “nontransferable.” For example, if a participant already held a position of 1,000 shares in an issue at the time that the issue was identified by DTC as being nontransferable and then acquires 500 additional shares later,

any proportionate loss calculation would be only against the additional 500 shares and not against the 1,500 share total position. DTC will first seek to charge the participant's Participants Fund deposit in an amount sufficient to cover the loss. If the deposit will not cover the total amount of the loss, DTC will then charge the participant directly for the remaining amount. In the event, however, that the loss allocation method as described above does not cover the total amount of the loss related to the deposit of the nontransferable securities, DTC will then charge the loss in accordance with its current loss allocation scheme."

The Blanket Indemnification, the form that was filed as an exhibit to the 1992 Rule Filing states the following:²¹

"The undersigned ("Participant"), a participant in The Depository Trust Company ("DTC"), intends to deposit with DTC from time to time certain certificates (the "Certificates") representing securities for which transfer services are not available (the "Securities").

Participant wishes to deposit the Securities with DTC and to receive credit for the Securities in its DTC Participant account. To induce DTC to so credit the Securities and to make DTC's book-entry services available for transactions in the Securities, Participant represents, warrants, and covenants to DTC as follows:

1. Other than the unavailability of transfer services, Participant, after due investigation, is not aware of any impediments to transfer of the Certificates.

²¹ The footnotes shown below, with respect to the Blanket Indemnification provisions, infra notes 22 and 23, are included for descriptive purposes only and are not included in the form of Blanket Indemnification.

2. It is understood that DTC cannot provide its normal certificate withdrawal services in the Securities, including CODs and W/Ts. Participant will comply fully with applicable industry practice and rules respecting the need for it to advise other participants to which it makes book-entry deliveries of the Securities, if any, of this limitation.

3. If Participant publishes or submits for publication a quotation for the Securities where the applicable information requirements of Securities Exchange Act Rule 15c2-11²² are not satisfied, Participant shall not use DTC's book-entry services to effect contemporaneous deliveries in any such Securities.

4. The indemnification set forth in DTC Rule 2(k)²³ shall apply with respect to the Securities notwithstanding the absence of transfer services for the Securities at the time that they are first credited to Participant's DTC account.

²² See 17 CFR 240.15c2-11. Rule 15c2-11 under the Act, governs the publication of quotations for securities in a quotation medium other than a national securities exchange. See Securities Exchange Act Release No. 29094 (April 17, 1991), 56 FR 19148 (1991 Adopting Release); Securities Exchange Act Release No. 27247 (September 14, 1989), 54 FR 39194 (September 25, 1989) (1989 Proposing Release).

²³ This provision states: "Each Security delivered for the Participant's account to the Corporation for Deposit with the Corporation may be transferred into the name of any nominee designated by the Corporation or by such Custodian as the Corporation may select, if it is Delivered to such Custodian, and retained by the Corporation or Delivered to such Custodian as the Corporation may select, and the Participant shall indemnify the Corporation, and any nominee of the Corporation in the name of which Securities credited to the Participant's Account are registered, against all loss, liability and expense which they may sustain, without fault on the Corporation's part, as a result of Securities credited to the Participant's Account being registered in the name of any such nominee, including (i) assessments, (ii) losses, liabilities and expenses arising from claims of third parties and from taxes and other governmental charges, and (iii) related expenses with respect to any such Securities." See Rule 2, *supra* note 5. Pursuant to Rule 1, the term "Corporation" means DTC. See Rule 1, *supra* note 5.

5. Participant shall inquire with SIC, and as of the date of deposit with DTC the Certificates shall not have been reported to SIC as lost, stolen, missing, or counterfeit.

6. If DTC incurs any loss or liability because any of the Certificates are counterfeit, are reported stolen, or are or become, for any reason, not in good deliverable form, Participant agrees that DTC may charge such loss or liability to Participant.

7. Participant agrees that DTC may charge any future distribution of rights, including voting rights, or other property (a “Distribution”) involving the Securities to Participant’s account if DTC does not receive the Distribution on the Distribution date.”

Proposed Rule Change

Pursuant to the proposed rule change, DTC would incorporate the Nontransferable Securities Procedures, which contain two subsets of Procedures, namely “Deposit Procedures” and “Procedures for Sharing of Loss Related to Deposit of Nontransferable Securities,” as it was set forth in the 1992 Rule Filing, with certain technical and clarifying changes, as follows:

1. The provision set forth in the first sentence of A.1. above would be revised to replace the words “Send to their Participant Services representative” with the words “Provide DTC Account Administration with”. This change would conform this text with DTC’s general Participant account documentation process through which DTC’s Account Administration area collects and maintains Participant Account documentation. This provision would also be revised to (i) add the full name of the Blanket Indemnification, as defined above, where it is referenced in the first sentence and (ii) add “Blanket Indemnification” as a defined term for the Blanket Indemnification.

2. The provision set forth in A.2. above would be revised to replace the sentence that states “Use a Legal deposit ticket clearly marked “N/T” with “Use a DAM deposit ticket, whereby the certificate details on the deposit ticket match the corresponding certificates (e.g., CUSIP, certificate #, certificate denomination, total quantity).” The Legal Deposits service is a function within the Deposits Service and is not descriptive of the method used to generate a deposit ticket.²⁴ A deposit ticket is generated using DTC’s Deposit Automation Management System (DAM)²⁵ and DTC believes that using the applicable system name would clarify for Participants the method by which the necessary deposit ticket is generated. In addition, the requirement to include the text “N/T” on a deposit ticket was intended for the Participant to indicate that a Security is nontransferable. Pursuant to the proposed rule change, the “N/T” designation would not be required to be included on a deposit ticket because DTC’s own records reflect whether a given Security that is eligible for Deposit is nontransferable.
3. The text of the Nontransferable Securities Procedures would be revised to conform to capitalization of the term Participant as set forth in the Deposits Guide.

In addition, DTC would incorporate the text of the Blanket Indemnification set forth above into the Deposits Guide. The text of the Blanket Indemnification would be added under a new heading titled “Blanket Indemnification for Losses Related to Non-

²⁴ See Deposits Guide, supra note 8 at 16.

²⁵ See Deposits Guide, supra note 8.

Transferable Certificates Deposited with DTC.” Directly under this heading, and just prior to the text of the Blanket Indemnification text set forth above, the proposed rule change would include a technical change to add the following text: “Any application to become a Participant shall include a blanket indemnification for losses related to non-transferable certificates deposited with DTC in the form set forth below:”

Effective Date

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

2. Statutory Basis

Section 17A(b)(3)(F)²⁶ of the Act, requires that the rules of the clearing agency be designed, *inter alia*, to promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed rule change is consistent with this provision of the Act for the reasons described below. As described above, the proposed rule change would allow Participants to more readily understand their rights and obligations in connection with the Deposit of Nontransferable Securities by providing enhanced transparency for Participants by (i) adding the text of the Procedures implemented pursuant to the 1992 Rule Filing into the Deposits Service Guide, which is publicly available on the DTCC website, and (ii) updating the provisions set forth in the Procedures to clearly disclose to Participants the operation of the applicable services. By improving the Rules in these ways and allowing Participants to more readily understand their rights and obligations in connection with the use of DTC’s services relating to Nontransferable Securities, DTC believes that the proposed changes would facilitate

²⁶ 15 U.S.C. 78q-1(b)(3)(F).

Participants use of these services, including their ability to Deposit Nontransferable Securities. The ability to maintain Deposits in Nontransferable Securities would facilitate Participants' ability to Deliver Securities by book-entry at DTC for trading activity that might otherwise result in a failure to deliver due to the unavailability of transfer services for the Security. Therefore, by facilitating the ability of Participants to manage and resolve failures to deliver, DTC believes the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17(A)(b)(3)(f) of the Act.²⁷

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

DTC does not believe that the proposed rule changes would have any impact, or impose any burden, on competition. The proposed rule changes are designed to improve Participants' understanding of their rights and obligations with respect to the use of DTC's services relating to the Deposit of Nontransferable Securities. These proposed changes would be applicable to all Participants and would not alter Participants' rights or obligations.

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

Written comments relating to this proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

²⁷ Id.

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) of the Act²⁸ and paragraph (f) of Rule 19b-4 thereunder.²⁹ 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-2019-007 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-2019-007. This file number should be included on the subject line if e-mail is used. To help the Commission process

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 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. 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-2019-007 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.³⁰

Jill M. Peterson
Assistant Secretary

³⁰ 17 CFR 200.30-3(a)(12).