

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86099; File No. SR-DTC-2019-002)

June 13, 2019

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the Operational Arrangements and Fee Guide Relating to Structured Securities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 5, 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)(6) thereunder.⁴ 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 consists of modifications to (i) the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services) (“OA”)⁵ to eliminate the requirement that an Issuer’s paying agent (“Paying Agent”), and a Participant that is the managing underwriter (“Underwriter”), for certain

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Available at <http://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>.

issuances of structured securities (“Structured Securities”) that have features that may affect the timeliness of payment of principal and interest (“Non-Conforming Structured Securities”), submit an attestation (“Attestation”)⁶ relating to the Non-Conforming Structured Securities, as described below; (ii) the Guide to the DTC Fee Schedule (“Fee Guide”)⁷ to eliminate an exception processing fee (“Exception Processing Fee”) charged to Underwriters relating to making Non-Conforming Structured Securities eligible for DTC services; and (iii) the OA to eliminate a provision that excludes Non-Conforming Structured Securities from statistics published by DTC regarding the timeliness of submission of rate information for Structured Securities, as described below.⁸

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

⁶ Available at <http://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/special-letters/Non-Conforming-Structured-Securities-Attestation-Letter.pdf> (Non-Conforming Structured Securities Attestation). A Paying Agent and Underwriter must provide an Attestation to DTC to inform DTC when a Security to be made eligible for DTC services is a Non-Conforming Structured Security. The Attestation also documents the understanding of the Underwriter that DTC would charge the Exception Processing Fee with regard to the Non-Conforming Structured Security.

⁷ Available at <http://www.dtcc.com/~media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf>.

⁸ Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (the “Rules”), available at http://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf, and the OA, supra note 5.

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 consists of proposed modifications to (i) the OA⁹ to eliminate the requirement that a Paying Agent, and an Underwriter, for Non-Conforming Structured Securities, submit an Attestation¹⁰ relating to the Non-Conforming Structured Securities, as described below; (ii) the Fee Guide¹¹ to eliminate the Exception Processing Fee; and (iii) the OA to eliminate a provision that excludes Non-Conforming Structured Securities from statistics published by DTC regarding the timeliness of submission of rate information for Structured Securities, as described below.

Background

A Structured Security, such as a collateralized mortgage obligation or asset-backed security, is a debt security backed by a pool of underlying financial assets. The underlying assets generally consist of receivables such as mortgages, credit card receivables, student or other bank loans for which the timing of principal payments by the underlying obligors may be variable and unpredictable. A Structured Security may also incorporate credit enhancements or other rights that affect the amount and timing of payments to investors.

⁹ Supra note 5.

¹⁰ Supra note 6.

¹¹ Supra note 7.

Communication of periodic payment rates of principal and interest to the end investors in Structured Securities depends on information reporting and significant interdependencies among servicers of the underlying assets, trustees, custodians, Paying Agents, DTC, and the financial intermediaries that act on behalf of the investors. Historically, given the complexity of structure and calculations of cash flow from the underlying assets, and the interdependencies on timeliness and accuracy of performance throughout the chain of servicers and intermediaries, payment rates for Non-Conforming Structured Securities were often announced late. Processing inefficiencies and inaccuracies associated with late payment rate reporting led to increased costs for DTC associated with processing Non-Conforming Structured Securities.

In 2008, in order to recoup its processing costs relating to Non-Conforming Structured Securities, DTC implemented the Exception Processing Fee in the amount of \$4,200 per CUSIP to an Underwriter at the time of a Non-Conforming Structured Security becoming eligible for DTC services.¹² At the same time, the OA was amended to add a requirement for Underwriters and Paying Agents to submit the Attestation¹³ to identify Non-Conforming Structured Securities as they are made eligible for DTC services.¹⁴ In addition, DTC expanded the distribution of “Report Cards” to Paying Agents relating to the tracking and evaluating of Paying Agent performance with regard

¹² See Securities Exchange Act Release No. 57193 (January 24, 2008), 73 FR 5614 (January 30, 2008).

¹³ Supra note 6.

¹⁴ See Securities Exchange Act Release No. 57542 (March 20, 2008), 73 FR 16403 (March 27, 2008).

to timeliness and accuracy of payment rate reporting on Structured Securities, to make the Report Cards available to the public on DTC's website.¹⁵

The volume of new issuances of Structured Securities coming to market, including those relating to mortgages and other asset types, have significantly declined since 2007 and the beginnings of the financial crisis.¹⁶ The decline has been attributed, at least in part, to structural changes made to the Structured Securities marketplace that have occurred since the financial crisis, including regulatory changes related to credit-related risk controls for the underwriting of Structured Securities and standards by which loans that underlie Structured Securities are originated.¹⁷ At DTC, volumes of Structured Securities processed at DTC ranged from 52,000-55,000 issuances per year from 2004-2008. Since that time, due largely to changes in the marketplace, volumes of Structured Securities issuances have steadily dropped with average volumes since 2009 falling below 10,000 issuances per year. Additionally, the number of Non-Conforming Structured Securities at DTC has fallen as a percentage of overall Structured Securities issuances. Currently 6.4% of the active Structured Securities on DTC's security master file are marked as Non-Conforming Structured Securities, but since the beginning of

¹⁵ See id.

¹⁶ See An He & Bruce Mizrach, FINRA Office of the Chief Economist, Analysis of Securitized Asset Liquidity (June 2017) at 5, available at https://www.finra.org/sites/default/files/Analysis_of_Securitized_Asset_Liquidity.pdf.

¹⁷ See S&P Global Ratings, Ten Years after the Financial Crisis, Global Securitization Lending Transformed by Regulation and Economic Growth (July 21, 2017) at 1-6, available at <https://www.spratings.com/documents/20184/1393097/SF10Years/b0f1300a-5ed5-407d-8d3b-77fdc3b1f20c>.

2014 less than 1% of newly issued Structured Securities have been marked as Non-Conforming Structured Securities.

Proposed Changes to the OA and the Fee Guide

The processing of the Attestation by DTC increased the amount of resources necessary for DTC staff to facilitate Non-Conforming Structured Securities becoming eligible for DTC services. However, the reduction of new issues of Non-Conforming Structured Securities, as described above, has reduced the resources required by DTC, including manual processing of paperwork and data entries in the DTC system by DTC staff, to efficiently process Non-Conforming Structured Securities. In this regard, DTC would be able to balance its costs associated with the processing of Non-Conforming Structured Securities with its service fees applicable to securities processing,¹⁸ without additionally charging an Exception Processing Fee. Therefore, DTC proposes to eliminate the Exception Processing Fee, which would facilitate DTC's ability to balance its costs with its service fees. Also, because DTC proposes to eliminate the Exception Processing Fee, DTC has determined that it is no longer necessary for it to obtain an Attestation from a Paying Agent and Participant by which they notify DTC that an issue comprises Non-Conforming Structured Securities and the Participant agrees to pay the Exception Processing Fee.

Therefore, pursuant to the proposed rule change, DTC would modify (i) the OA to eliminate the requirement that a Paying Agent, and an Underwriter, for Non-Conforming Structured Securities, submit an Attestation relating to the Non-Conforming Structured Securities; and (ii) the Fee Guide to eliminate the Exception Processing Fee.

¹⁸ See Fee Guide, supra note 7.

Since, pursuant to the proposed rule change, DTC would no longer receive Attestations from Paying Agents and Underwriters notifying DTC that Structured Securities are non-conforming, and therefore would not distinguish between Non-Conforming Structured Securities and other Structured Securities for the purposes described above, DTC would amend the OA to eliminate a provision that excludes Non-Conforming Structured Securities from statistics published by DTC regarding the timeliness of submission of rate information for Structured Securities. In this regard, the OA would be amended to remove text providing for the exclusion of Non-Conforming Structured Securities from the Report Card results. DTC believes the due to the small percentage of Non-Conforming Structured Securities issued in relation to all other Structured Securities issued, that Non-Conforming Structured Securities can be included in the Report Cards without materially impacting results reflected in the Report Cards.

Implementation Timeframe

DTC would implement the proposed changes no earlier than thirty (30) days after the date of filing, or such shorter time as the Commission may designate, and no later than July 10, 2019. DTC would announce the implementation date of the proposed changes by Important Notice, posted to its website.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act¹⁹ 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 because by amending (i) the OA to eliminate the requirement for the

¹⁹ 15 U.S.C. 78q-1(b)(3)(F).

Attestation and (ii) the Fee Guide to remove the Exception Processing Fee, the proposed rule change would eliminate extra steps necessary for Participants to request eligibility for Non-Conforming Structured Securities that are not otherwise required for other Structured Securities. By eliminating the requirements as described in (i) and (ii) above, the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions by facilitating the ability of Participants to make Non-Conforming Structured Securities eligible for DTC's book-entry settlement services, without requiring the Participant to take the extra step of submitting an Attestation and incurring the cost associated with the Exception Processing Fee as part of the standard eligibility process for such Securities.

DTC believes the removal of text from the OA that provides for the exclusion of Non-Conforming Structured Securities from the Report Card, as described above, would be consistent with the above cited provision of the Act. While the inclusion of Non-Conforming Structured Securities in the Report Cards would not have a material effect on results reflected in Report Cards, no longer excluding Non-Conforming Structured Securities results would allow Report Cards to provide for a complete overview with respect to timeliness and accuracy of payment rate reporting for Participants with respect to all Structured Securities processed at DTC. By providing more complete information with respect to payment rate reporting for Structured Securities, the proposed rule change would allow Report Cards to include information that would facilitate (i) Participants' understanding of the timeliness and accuracy of payment rate reporting on Structured Securities and (ii) decisions they may they might make with respect to transactions in Structured Securities. Therefore, by facilitating Participants' understanding of payment

rate information in this regard, the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions consistent with the Act.

Section 17A(b)(3)(D) of the Act²⁰ requires that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees, and other charges among its participants. As described above, DTC would eliminate the Exception Processing Fee pursuant to the proposed rule change because the reduction of new issues of Non-Conforming Structured Securities has reduced the resources required by DTC to efficiently process Non-Conforming Structured Securities. In this regard, DTC would be able to cover its costs associated with the processing of Non-Conforming Structured Securities with its service fees applicable to securities processing, without additionally charging an Exception Processing Fee. Therefore, DTC believes that the proposed rule change provides for the equitable allocation of reasonable fees among its participants by eliminating a fee that is no longer necessary for DTC to charge to balance its costs associated with the processing of Non-Conforming Structured Securities with its service fees applicable to securities processing.²¹

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

DTC believes that the proposed rule change could impact competition.²² DTC does not believe the proposed rule change would impose any burden on competition, because as discussed above, the volume of new issuances in Non-Conforming Structured Securities is very low compared to Structured Securities generally, and the proposed

²⁰ 15 U.S.C. 78q-1(b)(3)(D).

²¹ See Fee Guide, supra note 7.

²² 15 U.S.C. 78q-1(b)(3)(I).

changes described above would not have a material effect with respect to (a) the obligations and costs of Participants utilizing DTC services, or (b) information included on Report Cards. DTC believes the proposed rule change may promote competition, because the reduced cost to Participants to request eligibility for Non-Conforming Structured Securities, due to the proposed elimination of the Exception Processing Fee, may facilitate a Participant's ability to request eligibility for such Securities at DTC.

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

DTC has not received or solicited any written comments relating to this proposal.

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

Because the foregoing proposed rule change does not:

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

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²³ and Rule 19b-4(f)(6) thereunder.²⁴

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.

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 17 CFR 240.19b-4(f)(6).

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-2019-002 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-2019-002. 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-2019-002 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.²⁵

Eduardo A. Aleman
Deputy Secretary

²⁵ 17 CFR 200.30-3(a)(12).