

Required fields are shown with yellow backgrounds and asterisks.

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 type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<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 checked="" 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"/>
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**Description**  
 Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).  
 Modify the Operational Arrangements and Fee Guide Relating to Structured Securities

**Contact Information**  
 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 \* John      Last Name \* Petrofsky  
 Title \* Director and Assistant General Counsel  
 E-mail \* jpetrofsky@dtcc.com  
 Telephone \* (813) 470-2115      Fax

**Signature**  
 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 06/05/2019      Managing Director and Deputy General Counsel  
 By Lois J. Radisch        
 (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.  
 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”) is annexed hereto as Exhibit 5 and consists of proposed modifications to (i) the DTC Operational Arrangements (Necessary for Securities to Become and Remain Eligible for DTC Services) (“OA”)<sup>1</sup> to eliminate the requirement that an Issuer’s paying agent (“Paying Agent”), and a Participant that is the managing underwriter (“Underwriter”), for certain 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”)<sup>2</sup> relating to the Non-Conforming Structured Securities, as described below; (ii) the Guide to the DTC Fee Schedule (“Fee Guide”)<sup>3</sup> 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.<sup>4</sup>

(b) Not applicable.

(c) Not applicable.

## 2. Procedures of the Clearing Agency

The proposed rule change was approved by the Businesses, Technology & Operations Committee of the Board of Directors on February 13, 2018.

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<sup>1</sup> Available at <http://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>.

<sup>2</sup> 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.

<sup>3</sup> Available at <http://www.dtcc.com/~media/Files/Downloads/legal/fee-guides/dtcfeeguide.pdf>.

<sup>4</sup> 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](http://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf), and the OA, supra note 1.

### **3. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

#### **(a) Purpose**

The proposed rule change consists of proposed modifications to (i) the OA<sup>5</sup> to eliminate the requirement that a Paying Agent, and an Underwriter, for Non-Conforming Structured Securities, submit an Attestation<sup>6</sup> relating to the Non-Conforming Structured Securities, as described below; (ii) the Fee Guide<sup>7</sup> 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.

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.<sup>8</sup> At the same time, the OA was amended to add a requirement for Underwriters and Paying Agents to submit the Attestation<sup>9</sup> to identify Non-Conforming Structured Securities

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<sup>5</sup> Supra note 1.

<sup>6</sup> Supra note 2.

<sup>7</sup> Supra note 3.

<sup>8</sup> See Securities Exchange Act Release No. 57193 (January 24, 2008), 73 FR 5614 (January 30, 2008).

<sup>9</sup> Supra note 2.

as they are made eligible for DTC services.<sup>10</sup> In addition, DTC expanded the distribution of “Report Cards” to Paying Agents relating to the tracking and evaluating of Paying Agent performance with regard to timeliness and accuracy of payment rate reporting on Structured Securities, to make the Report Cards available to the public on DTC’s website.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup> 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 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,<sup>14</sup> without additionally charging an Exception Processing Fee.

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<sup>10</sup> See Securities Exchange Act Release No. 57542 (March 20, 2008), 73 FR 16403 (March 27, 2008).

<sup>11</sup> See id.

<sup>12</sup> 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](https://www.finra.org/sites/default/files/Analysis_of_Securitized_Asset_Liquidity.pdf).

<sup>13</sup> 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>.

<sup>14</sup> See Fee Guide, supra note 3.

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.

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 Securities and Exchange Commission ("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.

#### (b) Statutory Basis

Section 17A(b)(3)(F) of the Securities Exchange Act of 1934 ("Act")<sup>15</sup> 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 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

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

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 Act<sup>16</sup> 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.<sup>17</sup>

#### **4. Clearing Agency's Statement on Burden on Competition**

DTC believes that the proposed rule change could impact competition.<sup>18</sup> 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 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

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

<sup>17</sup> See Fee Guide, supra note 3.

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

Processing Fee, may facilitate a Participant's ability to request eligibility for such Securities at DTC.

**5. 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.

**6. Extension of Time Period for Commission Action**

Not Applicable

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

Pursuant to Section 19(b)(3)(A) of the Act<sup>19</sup> and Rule 19b-4(f)(6) thereunder,<sup>20</sup> the proposed rule change is filed for immediate effectiveness because (i) DTC believes that it does not significantly affect the protection of investors or the public interest; (ii) DTC believes that it does not impose any significant burden on competition; and (iii) by its terms it would not become operative for at least 30 days after the date of filing, or such shorter time as the Commission may designate.

DTC has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change, or such shorter time as designated by the Commission.<sup>21</sup>

DTC believes that the proposed rule change to eliminate the Attestation and the Exception Processing Fee does not significantly affect the protection of investors or the public interest. While the elimination of the Attestation and Exception Processing Fee would promote operational efficiencies and reduce costs for DTC and its Participants, the elimination of the Attestation and Exception Processing Fee would not impact the safekeeping or transaction processing at DTC of Non-Conforming Structured Securities, and therefore would not have an impact on the protection of investors and the general public.

DTC believes that the proposed rule change that would eliminate the exclusion of Non-Conforming Securities from the Report Cards does not significantly affect the protection of investors or the public interest. As stated above in Item 3, DTC believes that due to the small percentage of Non-Conforming Structured Securities issued in relation to all other Structured Securities issued, Non-Conforming Structured Securities can be included in the Report Cards without materially impacting results reflected in the Report Cards. Therefore, while the Report

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<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> Id.



Card results are available to the public on DTC's website, as described in Item 3 above, because the inclusion of Non-Conforming Structured Securities in the Report Cards would not have a material impact on results, the elimination of the exclusion of Non-Conforming Structured Securities from the Report Cards would not have a material effect on investors, or the public interest.

DTC believes that the proposed rule change would not impose any burden on competition for the reasons set forth in Item 4 above.

As stated in Item 3, the proposed rule change would not be implemented for at least 30 days after the date of filing, or such shorter time as the Commission may designate.

For the foregoing reasons, DTC believes that this proposed rule change qualifies as a "non-controversial" rule change under Rule 19b-4(f)(6) promulgated under the Act, which renders the proposed rule change effective upon filing with the Commission.<sup>22</sup> At any time within 60 days of the filing of this 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. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

**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.

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<sup>22</sup>

Id.

Exhibit 3 – Not applicable.

Exhibit 4 – Not applicable.

Exhibit 5 – Proposed changes to the Rules.

**EXHIBIT 1A**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-[\_\_\_\_\_]; File No. SR-DTC-2019-002)

[DATE]

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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June \_\_, 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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”)<sup>5</sup> to eliminate the requirement that an Issuer’s paying agent (“Paying

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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> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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

Agent”), and a Participant that is the managing underwriter (“Underwriter”), for certain 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”)<sup>6</sup> relating to the Non-Conforming Structured Securities, as described below; (ii) the Guide to the DTC Fee Schedule (“Fee Guide”)<sup>7</sup> 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.<sup>8</sup>

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

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<sup>6</sup> 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.

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

<sup>8</sup> 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](http://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf), and the OA, supra note 5.

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 consists of proposed modifications to (i) the OA<sup>9</sup> to eliminate the requirement that a Paying Agent, and an Underwriter, for Non-Conforming Structured Securities, submit an Attestation<sup>10</sup> relating to the Non-Conforming Structured Securities, as described below; (ii) the Fee Guide<sup>11</sup> 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.

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<sup>9</sup> Supra note 5.

<sup>10</sup> Supra note 6.

<sup>11</sup> 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.<sup>12</sup> At the same time, the OA was amended to add a requirement for Underwriters and Paying Agents to submit the Attestation<sup>13</sup> to identify Non-Conforming Structured Securities as they are made eligible for DTC services.<sup>14</sup> In addition, DTC expanded the distribution of “Report Cards” to Paying Agents relating to the tracking and evaluating of Paying Agent performance with regard

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

<sup>13</sup> Supra note 6.

<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup> 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.<sup>17</sup> 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

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<sup>15</sup> See id.

<sup>16</sup> 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](https://www.finra.org/sites/default/files/Analysis_of_Securitized_Asset_Liquidity.pdf).

<sup>17</sup> 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,<sup>18</sup> 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.

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<sup>18</sup> 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 Act<sup>19</sup> 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

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<sup>19</sup> 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 Act<sup>20</sup> 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.<sup>21</sup>

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

DTC believes that the proposed rule change could impact competition.<sup>22</sup> 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

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<sup>20</sup> 15 U.S.C. 78q-1(b)(3)(D).

<sup>21</sup> See Fee Guide, supra note 7.

<sup>22</sup> 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 Act<sup>23</sup> and Rule 19b-4(f)(6) thereunder.<sup>24</sup>

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.

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<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 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](mailto: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.<sup>25</sup>

Secretary

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<sup>25</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

**Bold, underlined** text indicates proposed additions.

**~~Bold, strikethrough~~** text indicates proposed deletions.

**The Depository Trust Company,**  
a subsidiary of The Depository Trust & Clearing Corporation

**OPERATIONAL ARRANGEMENTS**

(Necessary for Securities to Become  
and Remain Eligible for DTC Services)

**[Changes to these Procedures, as amended by File No. SR-DTC-2019-002, are available at [dtcc.com/~media/Files/Downloads/legal/rule-filings/2019/DTC/SR-DTC-2019-002.pdf](http://dtcc.com/~media/Files/Downloads/legal/rule-filings/2019/DTC/SR-DTC-2019-002.pdf). These changes became effective upon filing with the SEC but have not yet been implemented. The proposed changes will be implemented 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. Upon implementation, this legend will automatically be removed from these Procedures.]**

~~June~~-[Month] 2019

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***IV. Dividend and Income Payment Notification Procedures***

***A. Dividend and Income Payment Details***

Issuer or Agent shall provide a notice of dividend and income payment information to DTC electronically, as previously arranged by Issuer or Agent and DTC, as soon as the information is available. This information shall include:

- Security description and CUSIP number;
- record date;
- payable date; and
- dividend (rate per share) or interest rate (per \$1,000 principal amount) and the potential tax liability, including but not limited to capital gains, liquidations, and cash liquidating distributions.

***Note: Payment notices for exchange traded funds (“ETF”) are generally not required, unless specifically requested by DTC, as this information is sourced from the exchanges on which the ETFs are listed.***

If electronic transmission has not been arranged, absent any other arrangements between Issuer or Agent and DTC, such information shall be sent to DTC's Announcements Department by e-mail to [dividendannouncements@dtcc.com](mailto:dividendannouncements@dtcc.com).

If electronic or e-mail transmission is not available, such notice may be sent by overnight courier or by hand to:

Attn: P&I Announcements  
The Depository Trust Company  
570 Washington Blvd.; 4<sup>th</sup> Floor  
Jersey City, NJ 07310

## 1. Structured Securities

A debt Security that is backed by a pool of underlying financial assets is a structured security ("Structured Security"). In order for DTC to provide minimal notification of Structured Security rate information to its Participants, the paying agent or any source acceptable to DTC shall provide the following information prior to the payable date **but no later than 3:00 a.m. ET on the payable date**:

- Security description and CUSIP number(s);
- record date;
- payable date
- current interest rate;
- coupon rate, expressed as a percentage;
- principal pay-down rate;
- beginning and ending pool factor (which is the remaining balance per \$1,000 of face value);
- Agent's contact name and phone number;
- interest shortfall rate;
- deferred interest/negative amortization rate;
- method of calculation (e.g. 30/360, 30/365, actual/360); and
- interest accrual period (record date to record date or payable date to payable date)

All rates must be expressed and calculated on the original principal amount of \$1,000 per bond (or other minimum authorized amount if less than \$1,000 face value). This information shall be sent electronically to DTC, using the protocol/file format previously published by the Bond Market Association (which is now known as the Securities Industry Financial Markets Association) and DTC. On an exception basis, DTC will accept this information by e-mail sent to [dividendannouncements@dtcc.com](mailto:dividendannouncements@dtcc.com).

### ~~a. Non-Conforming Structured Securities~~

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~~The complex structure of some types of Structured Securities ("Non-Conforming Structured Securities") eliminates the possibility of paying agents meeting timely notification of payment rate information on securities with variable rates. DTC requires that final payment rates be calculated, properly expressed and disseminated to DTC by 3:00 a.m. ET on the payable date for all Structured Securities. In the event an issue of Non-Conforming Structured Securities is structured in a way that it is unlikely to provide the final payment rate as required, DTC must be notified in writing prior to the Non-Conforming Structured Security being made eligible. Paying agent and underwriter must provide notice stating the reason for the inability to conform with DTC's requirements, most notably DTC's time constraints for receiving final payment rates. The letter~~



~~shall also attest that the particular issue is structured in a way that makes it unlikely for the final rate to be calculated and disseminated to DTC prior to the payable date. Such notice will be in the form of a signed Non-Conforming Structured Securities Attestation letter. (A copy of the attestation letter can be obtained at <http://www.dtcc.com/legal/issue-eligibility>.)~~

~~The underwriter will pay an exception processing fee as a condition for making eligible such issue of Non-Conforming Structured Securities. Exception processing fees will be collected in a revenue pool to be allocated and distributed net of expenses to the applicable holders of Structured Securities.~~

~~b. a. Report Cards~~

~~Except for Non-Conforming Structured Securities, DTC will publish report cards disclosing statistics on timeliness for Structured Securities, grouped by their paying agent. The report cards will also include payment rate accuracy statistics on all Structured Securities.~~

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### Guide to the DTC Fee Schedule

[Changes to this Guide to the DTC Fee Schedule, as amended by File No. SR-DTC-2019-002, are available at [dtcc.com/~media/Files/Downloads/legal/rule-filings/2019/DTC/SR-DTC-2019-002.pdf](http://dtcc.com/~media/Files/Downloads/legal/rule-filings/2019/DTC/SR-DTC-2019-002.pdf). These changes became effective upon filing with the SEC but have not yet been implemented. The proposed changes will be implemented 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. Upon implementation, this legend will automatically be removed from this Guide to the DTC Fee Schedule.]

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Underwriting Services

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Eligibility Surcharges

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FEE NAME	AMOUNT (\$)	CONDITIONS
<del>Nonconforming structured securities (surcharge)</del>	<del>4,200.00</del>	<del>Per CUSIP see important notice: <a href="http://www.dtcc.com/downloads/legal/imp_notices/2008/dtc/ope/3289-08.pdf">http://www.dtcc.com/downloads/legal/imp_notices/2008/dtc/ope/3289-08.pdf</a></del>

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