

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93669; File No. SR-DTC-2021-016)

November 24, 2021

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Make Certain Revisions and Clarifications to the Rules

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 November 15, 2021, 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)(4) 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 DTC’s Rules, Bylaws and Organization Certificate (“Rules”) to (1) incorporate into the Rules the governing law of agreements and other documents provided to DTC pursuant to the Rules; (2) incorporate in the Rules the affirmative undertakings that Participants currently make in onboarding membership agreements; (3) clarify that Participants shall appoint a duly authorized

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)(4).

representative in connection with their membership, and remove the requirement that DTC approve the form of power of attorney or resolutions of the Participant's board of directors that evidences such authorization; and (4) clarify DTC's ability to rely on electronic signatures on agreements and other documents provided to DTC pursuant to the Rules, as described in greater detail below.⁵

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

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

DTC is proposing amendments that would clarify, simplify and improve the disclosures in the Rules, primarily related to onboarding and other membership documentation between DTC and its Participants. DTC, along with its affiliates, National Securities Clearing Corporation and Fixed Income Clearing Corporation, has recently completed a review of the templates of onboarding agreements and other

⁵ Capitalized terms not defined herein are defined in the Rules, available at <https://www.dtcc.com/legal/rules-and-procedures>. Unless otherwise indicated by the context, the term "Participant" as used herein includes the term "Limited Participant."

documents that are provided to DTC in connection with a firm's application for membership, and the templates of agreements and documents Participants may provide to DTC during the course of their membership pursuant to the Rules. In connection with this review, DTC is proposing to make certain revisions and clarifications to the Rules.

More specifically, the proposed rule changes would (1) incorporate into the Rules the governing law of agreements and other documents provided to DTC pursuant to the Rules; (2) incorporate in the Rules the affirmative undertakings that Participants currently make in onboarding membership agreements; (3) clarify that Participants shall appoint a duly authorized representative in connection with their membership, and remove the requirement that DTC approve the form of power of attorney or resolutions of the Participant's board of directors that evidences such authorization; and (4) clarify DTC's ability to rely on electronic signatures on agreements and other documents provided to DTC pursuant to the Rules, as described in greater detail below.

Proposed Revisions to Rules Regarding Governing Law

DTC is proposing to revise Section 4 of Rule 1 (Definitions; Governing Law), which currently states that the Rules are governed by New York law.⁶ The proposed change would revise Section 4 of Rule 1 to include a statement that agreements and other documents that are entered into between DTC and its Participants are also governed by New York law, unless otherwise expressly provided. Currently, agreements and other documents entered into between DTC and its Participants either include a governing law provision or are governed by New York law through the application of both Section 4 of Rule 1, which provides that the rights and obligations under the Rules are governed by

⁶ Id.

New York law, and the DTC membership agreements, which provide that the Rules (including Section 4 of Rule 1) govern the matters and transactions between DTC and its Participants.

This proposed change would both clarify the governing law of the agreements and other documents entered into between DTC and its Participants pursuant to the Rules, and would allow DTC to simplify those documents by removing the governing law provisions in such documents.

Proposed Revisions to Incorporate Participant Undertakings into the Rules

DTC is proposing to revise Section 1 of Rule 2 (Participants and Pledges) to incorporate affirmative undertakings that Participants currently make in their onboarding membership agreements.⁷ This section currently provides that an applicant for membership with DTC shall sign and deliver to DTC an agreement under which the applicant would agree to the affirmative undertakings that are listed in this Section 1 of Rule 2.⁸ These undertakings include, for example, to abide by the Rules and be bound by all the provisions thereof, and to pay any amounts that become payable by the Participant to DTC pursuant to the Rules.⁹

To simplify and standardize the membership onboarding documentation, DTC is proposing to revise Section 1 of Rule 2 to state directly that Participants agree to each of the undertakings listed in that section. DTC would also make an identical revision to Rule 9(D) (Settling Banks) regarding the undertakings of Settling Banks. In connection

⁷ Section 1 of Rule 2, id.

⁸ Id.

⁹ See Sections 1(a) and (d) of Rule 2, id.

with this proposed change, DTC would remove these undertakings from the template membership agreement, which already provides that Participants are bound by the Rules.

Proposed Revisions to Requirements Related to Participants' Authorized Representatives

DTC is proposing to revise Sections 1 and 2 of Rule 7 (Participant Representatives), which describes Participants' requirement to appoint an authorized representative in connection with their membership with DTC.¹⁰ Currently, Section 1 of Rule 7 provides that a Participant may designate an authorized representative that is not either a general partner or an officer of the Participant, by either a power of attorney or resolutions of the Participant's board of directors, and requires such power of attorney and resolutions be in a form approved by DTC.¹¹ Section 2 of Rule 7 requires Participants to provide DTC with the signatures of individuals who are authorized representatives for purposes of conducting business with DTC.¹²

In order to simplify the onboarding membership requirements, DTC is proposing to amend Section 1 of Rule 7 to clarify that a Participant's representative must be duly appointed and authorized, and to remove references to a power of attorney or resolutions of the Participant's board of directors. The proposed change would also remove the requirement that DTC approve the form of power of attorney or resolutions of the Participant's board of directors that evidences the due authorization of that representative.

¹⁰ Sections 1 and 2 of Rule 7, id.

¹¹ Id.

¹² Id.

Finally, DTC is proposing to remove Section 2 of Rule 7, which includes the requirement that Participants provide DTC with the signatures of representatives who are authorized to conduct business with DTC.¹³ In connection with this proposed change, DTC would renumber the remaining sections in Rule 7.

Proposed Revisions to Rules Regarding DTC's Reliance on Electronic Signatures

DTC is proposing to revise Rule 26, which is currently titled “Facsimile Signatures” and lists the circumstances in which DTC would rely on an electronic signature.¹⁴ The proposed revision to this Rule 26 would rename the rule to remove the word “Facsimile,” and would also revise the rule to clarify that DTC may rely on an electronic signature with respect to any and all agreements and other documents delivered pursuant to the Rules. DTC would also remove reference to the circumstances in which it would accept an electronic signature, to make clear that DTC would do so in any circumstances. The proposed revisions would clarify and modernize the language in Rule 26, which still refers to outdated modes of electronic communication, such as telex, and would align the language in this Rule to language used in the New York Electronic Signatures and Records Act.¹⁵

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires that the rules of DTC be designed to, among other things, promote the prompt and accurate clearance and settlement of

¹³ Id.

¹⁴ Id.

¹⁵ N.Y. State Tech. Law § 304(2) (McKinney 2021).

securities transactions.¹⁶ DTC believes the proposed changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act because such changes would clarify and improve the transparency of the Rules and would allow DTC to simplify the membership agreements and other documentation provided to it by Participants pursuant to the Rules.

More specifically, the proposed changes would make clarifications to the Rules regarding (i) Participants' duly authorized representatives in connection with their memberships; and (ii) DTC's ability to rely on electronic signatures on agreements and other documents provided to it pursuant to the Rules. The proposed changes would also update the Rules in order to allow DTC to simplify the onboarding and other membership agreements and documents by incorporating in the Rules (1) the governing law of agreements and other documents provided to DTC pursuant to the Rules; and (2) the affirmative undertakings that Participants currently make in onboarding membership agreements.

By enhancing the clarity and transparency of the Rules, and allowing DTC to simplify the membership agreements and other documents, the proposed changes would allow Participants to more efficiently and effectively conduct their business in accordance with the Rules, which DTC believes would promote the prompt and accurate clearance and settlement of securities transactions. As such, DTC believes that the proposed changes would be consistent with Section 17A(b)(3)(F) of the Act.¹⁷

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

¹⁷ Id.

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

DTC does not believe the proposed rule changes would impact competition. The proposed rule changes would merely enhance the clarity and transparency of the Rules and would simplify the documentation that is provided to DTC by Participants pursuant to the Rules. Therefore, the proposed changes would not affect DTC's operations or the rights and obligations of membership. As such, DTC believes the proposed rule changes would not have any impact on competition.

(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. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b-4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b-4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at <https://www.sec.gov/regulatory-actions/how-to-submit-comments>. General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at tradingandmarkets@sec.gov or 202-551-5777.

DTC reserves the right to not respond to any comments received.

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)¹⁸ of the Act and paragraph (f)¹⁹ of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2021-016 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

¹⁸ 15 U.S.C 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-DTC-2021-016. 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-2021-016 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.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).