

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96060; File No. SR-DTC-2022-010)

October 13, 2022

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Procedures Set Forth in the Custody Guide and the Underwriting Guide Including the Policy Statement on the Eligibility of Foreign 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 October 7, 2022, 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.

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).

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

The proposed rule change consists of amendments to Procedures⁵ set forth in the Custody Guide⁶ and the Underwriting Guide,⁷ as well as the Policy Statement on the Eligibility of Foreign Securities ("Policy Statement") set forth in the Rules,^{8, 9} to make technical and clarifying changes, as described in greater detail below.

⁵ 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. Rule 1, Section 1, infra note 9. DTC's Procedures are filed with the Securities and Exchange Commission ("Commission"). They are binding on DTC and each Participant in the same manner that they are bound by the Rules. Rule 27, infra note 9.

⁶ The Custody Guide, infra note 9, contains Procedures for DTC's Custody Service. The Custody Service allows a Participant to deposit (i) Securities not eligible for DTC book-entry services, (ii) Securities that would otherwise be eligible for DTC book-entry services but are not registered in the name of DTC's nominee, Cede & Co., and (iii) certain "non-standard assets." Custody Guide, infra note 9, at 7. The Custody Service also includes DTC services for Deposit and Safekeeping, Withdrawal, Regular Transfer, Restricted Deposits and Transfer, Reorganization, Branch Deposits, and Physical Clearance and Settlement services. Custody Guide, infra note 9, at 8.

⁷ The Underwriting Guide, infra note 9, contains Procedures for DTC's Underwriting Service. The Underwriting Service allows Participants to request eligibility for Securities and deposit securities eligible for depository services. Underwriting Guide, infra note 9, at 7.

⁸ The purpose of the Policy Statement is to set forth in an accessible manner the criteria and procedures for making the securities of foreign issuers ("Foreign Securities") eligible for deposit and book-entry transfer through the facilities of DTC in accordance with the Securities Act of 1933 and the rules and regulations of the Commission thereunder. See Securities Exchange Act Release No. 56277 (August 17, 2007), 72 FR 48709 (August 24, 2007) (File No. SR-DTC-2007-04).

⁹ Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of The Depository Trust Company ("Rules"), available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>, the DTC Custody Service Guide ("Custody Guide"), available at <https://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Custody.pdf> and the DTC Underwriting Service Guide ("Underwriting Guide"), available at

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

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

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

1. Purpose

The proposed rule change would amend the Procedures¹⁰ set forth in the Custody Guide¹¹ and the Underwriting Guide,¹² as well as the Policy Statement on the Eligibility

<https://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Underwriting-Service-Guide.pdf>.

¹⁰ 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. Rule 1, Section 1, supra note 9. DTC’s Procedures are filed with the Securities and Exchange Commission (“Commission”). They are binding on DTC and each Participant in the same manner that they are bound by the Rules. Rule 27, supra note 9.

¹¹ The Custody Guide, supra note 9, contains Procedures for DTC’s Custody Service. The Custody Service allows a Participant to deposit (i) Securities not eligible for DTC book-entry services, (ii) Securities that would otherwise be eligible for DTC book-entry services but are not registered in the name of DTC’s nominee, Cede & Co., and (iii) certain “non-standard assets.” Custody Guide, supra note 9, at 7. The Custody Service also includes DTC services for Deposit and Safekeeping, Withdrawal, Regular Transfer, Restricted Deposits and Transfer, Reorganization, Branch Deposits, and Physical Clearance and Settlement services. Custody Guide, supra note 9, at 8.

¹² The Underwriting Guide, supra note 9, contains Procedures for DTC’s Underwriting Service. The Underwriting Service allows Participants to request

of Foreign Securities (“Policy Statement”) set forth in the Rules,¹³ to make technical and clarifying changes, as described below.

Proposed Rule Change

Custody Guide

The proposed rule change would make the following changes to the text of the Custody Guide.

First, the section of the Custody Guide titled “Requesting Custody Eligibility for a Security”¹⁴ would be revised to delete text that directs Participants with questions regarding the section to a phone number for the DTC Underwriting Hotline.¹⁵ The more appropriate party for a Participant to contact is its relationship manager, which is already noted in the section.¹⁶ Deleting the reference to the Underwriting Hotline would provide greater clarity as to where Participants should direct their inquiries relating to this aspect of the Custody Service.

eligibility for Securities and deposit securities eligible for depository services. Underwriting Guide, supra note 9, at 7.

¹³ The purpose of the Policy Statement is to set forth in an accessible manner the criteria and procedures for making the securities of foreign issuers (“Foreign Securities”) eligible for deposit and book-entry transfer through the facilities of DTC in accordance with the Securities Act of 1933 and the rules and regulations of the Commission thereunder. See Securities Exchange Act Release No. 56277 (August 17, 2007), 72 FR 48709 (August 24, 2007) (File No. SR-DTC-2007-04).

¹⁴ Custody Guide, supra note 9, at 20-21.

¹⁵ Custody Guide, supra note 9, at 21.

¹⁶ Custody Guide, supra note 9, at 20.

Second, the subsection titled “Short-Term Maturity”¹⁷ under the “Custody Reorganization” section of the Custody Guide would be deleted as the functionality described in the subsection will be retired. The functionality described in the subsection relates to a process for the automatic redemption of Securities with short terms to maturity, including, but not limited to, bankers’ acceptances and certificates of deposit.¹⁸ This functionality provides that DTC will track payment details for short-term Securities held in the Custody Service and provides a projection report of maturities to occur within the next 5 Business Days to the applicable Participant for balancing purposes. DTC then arranges for the certificate to be automatically routed to an internal Short-Term Maturity Prep box (“Short-Term Maturity Box”) to then be presented to the paying agent on the payable date, along with a system-generated instruction for the paying agent to wire the proceeds to the bank account designated by the Participant.

DTC is retiring this Short-Term Maturity functionality as it has not been used by a Participant in over five years, and such transactions have been rare since the implementation of the Short-Term Maturity functionality. Based on DTC’s observation of existing Participant deposits and activity, DTC does not anticipate future demand for this process.

Once the Short-Term Maturity process described in the subsection is discontinued, Participants holding any applicable Securities through the Custody Service would need to track any such maturity details on their own and provide appropriate

¹⁷ Custody Guide, supra note 9, at 24.

¹⁸ See Securities Exchange Act Release No. 42597 (March 30, 2000), 65 FR 18399 (April 7, 2000) (File No. SR-DTC-99-26).

instructions relating to matured Securities through the DTC system via the general Custody Service system functionality, as they would for other transaction types not otherwise specified in the Custody Guide, using the Participant Terminal System (PTS)/Participant Browser System (PBS) function CUST or via messaging.¹⁹

In discontinuing this function, the Custody Guide would be updated to delete, (i) a reference to the Short-Term Maturity Box under the heading “Custody Reorganization Boxes,” and (ii) a reference to short-term maturities under the heading “Reorganization and Redemption Activities.”

Finally, in the “Copyright” section of the Custody Guide, the date would be changed from 2021 to 2022.

Underwriting Guide

The proposed rule change would make the following changes to the text of the Underwriting Guide.

First, the heading titled “Service Topics”²⁰ would be deleted. The heading follows a section titled “Overview” that explains that the Underwriting Guide describes services offered under the Underwriting Service and related requirements. Also, the “Service Topics” heading immediately precedes descriptions of the various service offerings that DTC provides as part of the Underwriting Service. Because the Overview section provides sufficient context for the reader to understand that the Underwriting Guide provides such descriptions, the inclusion of the “Service Topics” heading is not needed as a reference point for readers to understand the context or purpose of the service

¹⁹ Custody Guide, supra note 9, at 16.

²⁰ Underwriting Guide, supra note 9, at 10.

descriptions that follow. In this regard, DTC believes the elimination of this heading would enhance readability by reducing unnecessary wording.

Second, the section of the Underwriting Guide titled “Custody Service”²¹ would be deleted. Although, the section provides a brief overview of the Custody Service and related Procedures, the Custody Service is already described in the Custody Service Guide. So, inclusion of the description of the Custody Service within the Underwriting Guide is duplicative and unnecessary. The deletion of this section from the Underwriting Guide will not affect the Custody Service or the Procedures described in the Custody Guide.

Third, references to “data distribution boxes” and references to distributions of hard copy reports²² would be deleted from the Underwriting Guide. The glossary included in the Underwriting Guide defines data distribution boxes as receptacles located in the central delivery area of DTC used for distributing hard copy reports and notices to Participants.²³ A subsection titled “About the Product” under the “IPO Tracking System” section of the Underwriting Guide provides that reports are issued daily in hard copy form and are distributed through DTC’s data distribution boxes or DTC’s Interface Department. The “How the Product Works” subsection of the “IPO Tracking System” section also contains a cross reference regarding instructions on data distribution boxes to the text in the “About the Product” subsection described above.

²¹ Underwriting Guide, supra note 9, at 18.

²² Underwriting Guide, supra note 9, at 8, 12 and 13.

²³ Underwriting Guide, supra note 9, at 8.

Today, IPO Tracking reports are transmitted in electronic format, and Participants no longer retrieve such reports in hard copy form. As such, DTC would update the Underwriting Guide to delete the above-described references to data distribution boxes and distribution of hard copy reports from the glossary and the “IPO Tracking System” section.

Finally, in the “Copyright” section of the Underwriting Guide, the date would be changed from 2021 to 2022.

Policy Statement

The proposed rule change would make a technical amendment to the Policy Statement to align a provision of the Policy Statement with the Procedures.

The Policy Statement covers eligibility provisions for both Foreign Securities deposited with DTC at the time that such Foreign Securities are first distributed (referred to as “new issues”) and Foreign Securities deposited with DTC subsequent to the time that such Foreign Securities are first distributed (referred to as “older issues”).

Section 3 (“Section 3”) of the Policy Statement provides for a variety of measures designed to facilitate compliance by issuers and Participants with their obligations to DTC and pursuant to the federal securities laws.

Among requirements for new issues, Section 3 references an “Eligibility Questionnaire” that sets forth, inter alia, the basis on which the securities are eligible for deposit and book-entry transfer through the facilities of DTC that must be provided by a Participant seeking eligibility of a Foreign Security. However, today, in accordance with the Procedures, namely the Underwriting Guide²⁴ and the Operational Arrangements

²⁴ Underwriting Guide, supra note 9, at 16.

(Necessary for an Issue to Become and Remain Eligible for DTC Services) (“OA”),²⁵ Participants submit eligibility requests through DTC’s systems designated for this purpose.

In this regard, the proposed rule change would make a technical change to the above-referenced text in the Policy Statement to remove the reference to an “Eligibility Questionnaire” and replace it with a reference to an “eligibility request, to be submitted to the Corporation in accordance with the Procedures.”

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (“Act”), and the rules and regulations thereunder applicable to DTC, in particular Section 17A(b)(3)(F)²⁶ of the Act.

Section 17A(b)(3)(F) of the Act requires, inter alia, that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.²⁷ As described above, the proposed rule change revises the Custody Guide, the Underwriting Guide, and the Policy Statement to remove references to obsolete functions and make other technical changes. In this regard, the proposed rule change helps clarify the Procedures set forth in the Custody Guide, the Underwriting Guide, and the Policy Statement with respect to services and functions offered by DTC to Participants for processing of applicable transactions. Therefore, by improving the

²⁵ OA, available at <https://www.dtcc.com/~media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf> at 6-19.

²⁶ 15 U.S.C. 78q-1(b)(3)(F).

²⁷ Id.

clarity of those documents with respect to those services and functions, the proposed rule change would help promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act, cited above.

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

DTC does not believe that the proposed rule change will have an impact on competition because the proposed rule change consists of updates relating to obsolete functions and technical changes that would not significantly affect Participants' use of the applicable services.

(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 would 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)²⁸ of the Act and paragraph (f)²⁹ 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-2022-010 on the subject line.

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f).

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-2022-010. 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-2022-010 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

J. Matthew DeLesDernier,
Deputy Secretary.

³⁰ 17 CFR 200.30-3(a)(12).