

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-83712; File No. SR-DTC-2018-004)

July 26, 2018

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Clarifying Changes and Updates to the DTC Underwriting Service Guide

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 July 20, 2018, 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)(4) 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 of DTC<sup>5</sup> consists of modifications to the DTC Underwriting Service Guide (“Underwriting Guide”)<sup>6</sup> to (i) promote consistency with

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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)(4).

<sup>5</sup> Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (the “Rules”), available at [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 DTC Operational Arrangements for Securities to Become and Remain Eligible for DTC Services (“OA”), available at <http://www.dtcc.com/~/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf>.

respect to processes and requirements described in other Procedures that are related to those set forth in the Underwriting Guide, (ii) make clarifying and technical changes and (iii) provide enhanced readability and transparency for users of DTC’s underwriting service (“Underwriting Service”), as described below.

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

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

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<sup>6</sup> Available at <http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Underwriting-Service-Guide.pdf>. The Underwriting Guide and the OA constitute Procedures of DTC. Pursuant to the Rules, the term “Procedures” means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. See Rule 1, Section 1, *supra* note 5. DTC’s Procedures are filed with the Commission. They are binding on DTC and each Participant in the same manner as they are bound by the Rules. See Rule 27, *supra* note 5. The OA is also binding on each Issuer and Agent of an Eligible Security. See OA at 5, *supra* note 5. DTC also maintains service guides that constitute Procedures relating to other services it offers, including the “Canadian-Link Service Guide,” “Custody Service Guide” (defined below as “Custody Guide”), “Deposits Service Guide,” “Distributions Service Guide,” “Redemptions Service Guide,” “Reorganizations Service Guide” and “Settlement Service Guide.” Available at <http://www.dtcc.com/legal/rules-and-procedures?subsidiary=DTC&pgs=1>.

(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 the Underwriting Guide to (i) promote consistency with respect to processes and requirements described in other Procedures that are related to those set forth in the Underwriting Guide, (ii) make clarifying and technical changes and (iii) provide enhanced readability and transparency for users of DTC’s Underwriting Service, as described below.

Background

Eligible Securities<sup>7</sup> may be introduced into DTC as new issuances (“New Issues”) through the Underwriting Service, in connection with a Participant, or a correspondent working though a Participant’s Account, submitting an eligibility request.<sup>8</sup> In addition to the process for New Issues, there are separate eligibility processes for (i) older issues (“Older Issues”), i.e., those already available in the market but not previously made eligible for deposit at DTC<sup>9</sup> and (ii) Eligible Securities in the MMI Program.<sup>10</sup> Other issues of Securities may be added through corporate actions with respect to existing

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<sup>7</sup> Generally, Eligible Securities must have been issued in a transaction: (i) registered with the Commission pursuant to the Securities Act; (ii) exempt from registration pursuant to a Securities Act exemption without transfer or ownership restrictions; or (iii) pursuant to Rule 144A, 17 C.F.R. 230.144A, or Regulation S, 17 C.F.R. 230.901-230.905, under the Securities Act. See OA, supra note 5 at 2-3.

<sup>8</sup> See OA, supra note 5 at 1-2.

<sup>9</sup> Id.

<sup>10</sup> Id. at 3.

Eligible Securities, including events such as name changes, mergers and spinoffs, which are also reviewed for continuing eligibility.<sup>11</sup>

The Underwriting Service also supports other DTC functions and services relating to the underwriting function, including the IPO Tracking system,<sup>12</sup> eligibility processing for the DTC custody service (“Custody Service”),<sup>13</sup> and the security holder tracking service (“Security Holder Tracking Service”).<sup>14</sup>

The proposed rule change would make modifications to the Underwriting Guide to (i) promote consistency with respect to processes and requirements described in other Procedures that are related to those set forth in the Underwriting Guide, specifically the OA<sup>15</sup> and the Custody Guide,<sup>16</sup> (ii) make clarifying and technical changes and (iii)

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<sup>11</sup> Id. at 1.

<sup>12</sup> The IPO Tracking system allows a Participant that is the lead underwriter of an issue to track certain Deliveries of equity Securities during the period known as the underwriting stabilization period (“Stabilization Period”). See Underwriting Guide, supra note 6 at 3. The Stabilization Period is the duration of time immediately after the Closing of an issue during which the lead manager of an underwriting may purchase Securities in the open market in order to stop a decline in the price of the Securities. Id. at 5.

<sup>13</sup> See Custody Service Guide (“Custody Guide”), available at <http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Custody.pdf>, at 17-18. In 2016, DTC’s Custody Service Procedures were revised pursuant to a rule change (“Custody Rule Filing”) that amended the text of the Custody Guide with respect to making Securities eligible for the Custody Service. See Securities Exchange Act Release No. 34-79252 (November 7, 2016), 81 FR 79543 (November 14, 2016) (SR-DTC-2016-011). As described more fully below, the proposed change would conform the Custody Service section of the Underwriting Guide for consistency to the provisions set forth in the Custody Rule Filing.

<sup>14</sup> The Security Holder Tracking Service facilitates the ability of an issuer or a third party administrator designated by the issuer to track the number of beneficial holders of an issue. See Underwriting Guide, supra note 6 at 22-23.

<sup>15</sup> Supra note 5.

provide enhanced readability and transparency for users of DTC’s Underwriting Service, as described in the sections below. These would include (1) the modification of applicable text of the Underwriting Guide relating to (a) the section currently titled “Introduction,” (b) a section on the closing of an initial issue (“Closing”), (c) MMI Securities, (d) New Issue Eligibility, (e) Older Issues, (f) the Custody Service and (g) packaging inquiries; (2) technical changes; and (3) the deletion of a section titled “Processing Inquiries,” as described below.

**Proposed Changes to the Underwriting Guide**

**Introduction/Overview Section**

The text of the Introduction section of the Underwriting Guide contains four subsections, titled, respectively, “Overview,” “About Underwriting,” “Preparing to Use the Products,” and “Understanding Relevant Dates.” Pursuant to the proposed rule change, to enhance readability and improve the overall flow of this section, the (i) title of the section would be changed from “Introduction” to “Overview,” and (ii) subsection titles mentioned above would be deleted and the four subsections would be consolidated into one section under the new “Overview” title.

In addition, the text of the consolidated section would be revised for enhanced clarity of the description of the Underwriting Service and overall readability for Participants.

References to the DTC Participant Terminal System (“PTS”) and other systems that Participants may use in connection with the Underwriting Service would be deleted from this section, because, as proposed and discussed below, other sections of the

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<sup>16</sup> Supra note 13.

Underwriting Guide would include information on systems applicable to the aspect of the Underwriting Service covered by the respective sections, obviating the necessity of including such systems-related information in the Overview.

Also, because DTC's Securities eligibility Procedures are primarily contained in the OA, a cross-reference to, and a brief description of, the OA would be added under the Overview section to promote a more comprehensive understanding by readers with respect to the DTC requirements to make Securities eligible for DTC services. Also, to reduce repetition between the Underwriting Guide and the OA, (i) a description of eligibility criteria for Securities would be deleted from this section of the Underwriting Guide and (ii) a table of requirements and relevant dates included in the Understanding Relevant Dates subsection would be deleted and, as discussed below, would be replaced with a cross-reference in the Closing section to the requirements and dates as set forth in Exhibit B<sup>17</sup> of the OA.

### **Closing**

In order to provide for enhanced clarity, readability and flow of the text in the Underwriting Guide with respect to Closing processing, the proposed rule change would (i) revise text describing the function of the DTC Closing area and (ii) consolidate the Closing section into one section from two subsections that are titled "About the Product" and "How the Product Works," respectively, and eliminate the respective titles of the subsections. The proposed rule change would also update information for Participants to contact the DTC Closing desk.

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<sup>17</sup> See OA, supra note 5 at 60.

Also, as mentioned above, to reduce repetition of the content of the Underwriting Guide versus the OA, a table of requirements and relevant dates included in the Understanding Relevant Dates subsection of the Introduction to the Underwriting Guide would be deleted and would be replaced with a cross-reference to these requirements and dates as set forth in Exhibit B<sup>18</sup> of the OA. The cross-reference would be positioned at the end of the Closing section as the referenced information in the OA includes key dates that must be met in relation to the closing date for an issue. In this regard, the proposed rule change would also remove a reference in the Closing section to deadlines for notifications that must be made to DTC with respect to the processing of the distribution of Securities on closing date, because the applicable timeframes are covered within the Exhibit B to the OA, cited above.

### **MMI Program**

In order to provide enhanced clarity and readability in the Underwriting Guide with respect to Procedures for processing eligibility requests for the MMI Program, the proposed rule change would (i) revise the text of the description of the MMI Program and its eligibility process, (ii) revise information relating to systems used to access MMI Program eligibility services and include a reference to DTC’s web-based underwriting application, (iii) remove a descriptive sentence relating to functionality for issuances and deliveries by an Issuing and Paying Agent (“IPA”) in the MMI Program, because it is not relevant to the eligibility process covered by the Underwriting Guide, but rather to issuances and deliveries of MMI Securities that are conducted through DTC’s settlement

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<sup>18</sup> Id.

service in accordance with the Rules<sup>19</sup> and the Settlement Service Guide,<sup>20</sup> and (iv) update a reference relating to documentation that must be submitted in connection with an MMI Program eligibility request, to remove an outdated reference to an “Issuer Program Eligibility Form” signed by the IPA, and instead add a list of required program-level details which would be submitted in place of the form in an online format through the MMI Program web-based application.

### **New Issue Eligibility**

The provisions governing DTC’s Securities eligibility processes for New Issues are primarily contained in the Rules and the OA; however the Underwriting Guide does contain text intended to provide information that enhances transparency for Participants regarding applicable Procedures.

In order to provide enhanced clarity in the Underwriting Guide with respect to Procedures for processing eligibility requests for New Issues and promote enhanced consistency of the content of the Underwriting Guide with the provisions of the OA, the proposed rule change would (i) eliminate details in the text describing the New Issue eligibility Procedures and requirements that are repetitive or inconsistent with text contained in the OA, including with respect to (a) the documentation requirements for eligibility requests and (b) types of issues that require additional documentation or special processing, (ii) replace outdated references to the DTC website with a link to the OA for Procedures relating to eligibility and related requirements, and (iii) update references

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<sup>19</sup> See Rule 9(A), Rule 9(B) and Rule 9(C), supra note 5.

<sup>20</sup> See Settlement Service Guide, available at <http://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Settlement.pdf>.

with respect to systems used for access to New Issue-related services to (a) delete references to PTS and PTS functions and (b) add a reference to UW Source, because, in accordance with the OA, UW Source is the system that Participants are required to use to access eligibility services.<sup>21</sup>

### **Older Issue Eligibility**

As mentioned above, the provisions governing DTC’s Securities eligibility processes for Older Issues are primarily contained in the Rules and the OA; however the Underwriting Guide also contains information in this regard.

In order to provide consistency of the content of the Underwriting Guide with the provisions of the OA, the proposed rule change would rename the section relating to Older Issues from “Older Issue Eligibility” to “Secondary Market (Older Issue) Eligibility” for clarity and to reflect that Older Issues are issues that are on the secondary market when they are made eligible at DTC (as opposed to New Issues that are the subject of initial offerings), and insert a link to the OA for Procedures relating to eligibility and related requirements.

### **Custody Service**

In order to provide enhanced clarity and transparency in the Underwriting Guide with respect to Procedures for processing eligibility requests for the Custody Service, the proposed rule change would (i) change the Custody Service section from being a subsection of the Older Issue Eligibility section to its own section of the Underwriting Guide, because the Custody Service, while administered by the same area within DTC that administers eligibility processing for Older Issues and New Issues, is a separate

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<sup>21</sup> See OA, supra note 5 at 2.

function with different eligibility requirements,<sup>22</sup> (ii) update the text for enhanced readability and consistency of content, including with respect to systems requirements, with applicable Procedures set forth in the Custody Guide,<sup>23</sup> (iii) add a link to the Custody Guide for cross-reference purposes, and (iv) add a link to the DTCC website that provides additional information regarding the Custody Service.

### **Packaging Inquiries**

The proposed rule change would modify the text of the section titled “Packaging Inquiries” (i) for readability, (ii) to eliminate content that is repetitive of related content in the OA section named “Possession and Inspection,”<sup>24</sup> (iii) to add a link to the OA for additional information and (iv) to provide an updated link to the DTC form of letter of securities possession, which must be executed by a lead underwriter in order for DTC to process a distribution of an issue by book-entry on closing date if a Security certificate has not been provided to DTC within required timeframes.<sup>25</sup>

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<sup>22</sup> Compare Custody Guide, supra note 13 at 11-16 (describing the Custody Service function and eligibility requirements), with OA, supra note 5 at 1-9 (describing DTC’s eligibility requirements for Securities to be made eligible for DTC’s book-entry services, including New Issues and Older Issues).

<sup>23</sup> See Custody Guide, supra note 13 at 15-16. In 2016, DTC’s Custody Service Procedures were revised pursuant to the Custody Rule Filing, which amended the applicable text of the Custody Guide. See Securities Exchange Act Release No. 34-79252 (November 7, 2016), 81 FR 79543 (November 14, 2016) (SR-DTC-2016-011). The proposed change would conform the Custody Service section of the Underwriting Guide for consistency to the provisions set forth in the Custody Rule Filing.

<sup>24</sup> See OA, supra note 5 at 15.

<sup>25</sup> See Underwriting Guide, supra note 6 at 18-19.

## **Processing Inquiries**

The proposed rule change would remove the section titled “Processing Inquiries” from the Underwriting Guide. This section contains information relating to internal processes for data entry and billing information that is not necessary to be included in a Procedure. In addition, this section refers to special forms for the processing of eligibility of retail certificates of deposit, unit investment trusts and municipal and corporate products, which forms are obsolete because eligibility requests for all Security types, other than Securities in the MMI Program, must be submitted through UW Source.<sup>26</sup>

## **Other Proposed Changes**

The proposed rule change would make technical changes to (i) add to the front of the Underwriting Guide a title page with DTC’s name and the title “Underwriting Service Guide,” (ii) update (a) the address of DTC’s Internet site and (b) the copyright date of the Underwriting Guide, (iii) delete outdated contact information within the “Important Legal Information” included at the beginning of the Underwriting Guide and (iv) add a link to a user guide relating to the IPO Tracking system that is referenced in the “IPO Tracking System” section of the Underwriting Guide.

### **2. Statutory Basis**

Section 17A(b)(3)(F) of the Act<sup>27</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 the text of the Underwriting Guide to (i)

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<sup>26</sup> See OA, supra note 5 at 1-2.

<sup>27</sup> 15 U.S.C. 78q-1(b)(3)(F).

promote consistency with respect to processes and requirements described in other Procedures that are related to those set forth in the Underwriting Guide, specifically the OA and Custody Guide, (ii) make clarifying changes, (iii) provide enhanced readability and transparency for users of DTC's Underwriting Service, and (iv) make other technical changes, the proposed rule change would provide Participants with an enhanced understanding with respect to the DTC Procedures relating to making Securities eligible for DTC services, as described above. Therefore, by providing Participants with enhanced understanding of DTC eligibility requirements and processing in this regard, and therefore facilitating their ability to request that Securities be made eligible for DTC services, DTC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions consistent with the Act.

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

DTC does not believe that the proposed rule change would have any impact on competition. The proposed rule change would merely clarify and provide enhanced transparency with respect to the DTC Underwriting Service by amending the text of the Underwriting Guide (i) for enhanced readability, transparency and flow of content, (ii) to update (a) details on existing processes and (b) contact information, (iii) for enhanced consistency with respect to processes and requirements described in other Procedures that are related to those set forth in the Underwriting Guide, specifically the OA and Custody Guide and (iv) to make other technical changes, as described above, which amendments would not significantly affect the rights and obligations of users of DTC's services, and would not disproportionately impact any users.

(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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>28</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>29</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.

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-2018-004 on the subject line.

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<sup>28</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>29</sup> 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-2018-004. 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-2018-004 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>30</sup>

Robert W. Errett  
Deputy Secretary

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<sup>30</sup> 17 CFR 200.30-3(a)(12).