

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70198; File No. SR-DTC-2013-09)

August 14, 2013

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate Special Procedures for Securities Offered Pursuant to Regulation S, Category 3, under the Securities Act of 1933

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 July 31, 2013, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II and III below, which Items have been prepared primarily by DTC. DTC filed the rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(4)⁴ thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to eliminate special procedures of DTC for securities offered pursuant to Regulation S⁵ (“Reg S”), Category 3, under the Securities Act of 1933 (“Securities Act”).⁶

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).

⁵ 17 CFR 230.901-230.905 and Preliminary Notes.

⁶ 15 U.S.C. 77a et seq.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(i) DTC's Policy Statement on the Eligibility of Foreign Securities (the "Policy") sets forth 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.⁷ Foreign Securities eligible for book-entry services include those offered and sold without registration under the Securities Act⁸ pursuant to Regulation S ("Reg S Securities").⁹ This includes Category 1 securities, Category 2 securities, and Category 3 securities as defined therein ("Category 1, 2,

⁷ For additional information please see the Policy as set forth in the DTC Rules. See also SEC Release No. 34-56277 (August 17, 2007), 72 FR 48709 (August 24, 2007) [File No. DR-DTC-2007-04] for the rule filing implementing the Policy.

⁸ 15 U.S.C. 77a et seq.

⁹ Regulation S provides an exemption from the Section 5 registration requirements of the Securities Act of 1933, as amended, for offerings made outside the United States by both U.S. and foreign issuers. A securities offering, whether private or public, made by an issuer outside of the United States in reliance on safe harbors provided under Regulation S need not be registered under the Securities Act. See 17 CFR 230.901-230.905 and Preliminary Notes.

and 3 Securities”, respectively).¹⁰ Category 3 of the primary offering safe harbor of Regulation S includes the equity securities of non-reporting foreign issuers with substantial U.S. market interest in the subject securities. In addition to an offshore transaction requirement and prohibition on directed selling efforts, further requirements might have to be met to qualify for the first safe harbor. The applicable requirements depend on the extent to which there is a nexus with the United States, with more stringent requirements applying the greater the need is for protection of U.S. investors. The spectrum ranges from Category 1, where the likelihood of the securities flowing back into the United States is least, to Category 3, where that likelihood is greatest.¹¹ This rule filing relates to a change in procedures for Category 3 Securities.

Historically, at the request of issuers in consideration of their own requirements for compliance with applicable law, Category 3 Securities held at DTC have been more tightly controlled than the other Categories. DTC accordingly required additional documentation from issuers for chills on deliveries of Category 3 Securities among Participants for a limited period in connection with the underwriting distribution of those securities. For the reasons described below, DTC hereby proposes to eliminate these additional requirements and the related chills.

Pursuant to the Policy noted above, Issuers and Participants are responsible to comply with the Securities Act and the rules and regulations of the Commission thereunder in any

¹⁰ Category 1 of the primary offering safe harbor of Reg S includes the securities of foreign issuers for which there is no substantial U.S. market, securities being offered by foreign (or domestic) issuers in overseas directed offerings, securities of foreign governments and securities being offered by foreign issuers pursuant to employee benefit plans. Category 2 of the primary offering safe harbor of Reg S includes the equity securities of reporting foreign issuers, the debt securities of foreign (or domestic) reporting issuers, and the debt securities of nonreporting foreign issuers even if there is substantial U.S. market interest in the securities.

¹¹ See 17 CFR 230.903.

transaction in Foreign Securities through the facilities of DTC. Additionally, prior to securities being made eligible at DTC, issuers are required to deliver a Letter of Representations (“LOR”) to DTC which reflects the issuer’s agreement to comply with the requirements set forth in DTC’s Operational Arrangements (the “OA”) with respect to securities it has issued that are held at DTC.¹² With respect to Reg S Securities, the LOR also includes a “Reg S Rider” with representations of the Issuer that, at the time of initial issuance, the securities were subject to applicable transfer restrictions but were eligible for transfer under Regulation S.¹³ In addition to the above, the Reg S Rider includes a further rider for Category 3 Securities (the “Category 3 Rider”). The Category 3 Rider reflects the issuer’s acknowledgement that the subject securities will be subject to a “Deliver Order Chill”¹⁴ until DTC receives a notice from the issuer or agent that the chill should be removed (except that the chill may be temporarily lifted for certain transfers relating to depository banks of certain non-U.S. clearing entities).¹⁵

The Category 3 Rider is a redundant statement of issuer’s obligations under the applicable securities laws and DTC’s Rules & Procedures and is generally no longer used

¹² The Operational Arrangements set forth the criteria for eligibility of securities for DTC services. See www.dtcc.com for a copy of the OA.

¹³ Pursuant to its Rules & Procedures (including the OA), DTC does not in any way undertake, or have any responsibility, to monitor or ascertain the compliance of any transactions in the securities with any of the provisions of: (i) Rule 144A; (ii) of other exemptions from registration under the Securities Act or any other state or federal securities laws; or (iii) of offering documents. The Reg S Rider provides for the issuer’s acknowledgement of DTC’s role in this regard.

¹⁴ A chill imposed by DTC automatically prevents processing of certain transactions among Participants.

¹⁵ Specifically, the chill does not encompass deliveries via DTC’s Deposit/Withdrawal at Custodian (DWAC) system in Participant accounts maintained by banks that act as depositories for Clearstream S.A. and Euroclear.

efficiently or effectively by Issuers. Further, DTC is not responsible for issuer and Participant compliance with Reg S and is unable to determine whether the Category 3 chill is properly imposed or lifted. Also, the existence of a chill relating to the Category 3 Rider may preclude timely deliveries among Participants. For these reasons, DTC proposes to delete the Category 3 Rider to the Reg S LOR and to eliminate Category 3 Deliver Order Chills. As a conforming change to the OA, DTC will delete any reference to the Category 3 Reg S Rider.

(ii) The proposed rule change is consistent with the requirements of Section 17A(b)(3)(F)¹⁶ of the Securities Exchange Act of 1934, as amended (the “Act”), and the rules and regulations thereunder applicable to DTC as it is designed to promote the prompt and accurate clearance and settlement of securities transactions. The rule filing will harmonize DTC’s processes across Categories of Reg S Securities, reduce costs and operational burden associated with the imposition and lifting of Deliver Order Chills by DTC, and promote efficiency with respect to deliveries of affected securities, as applicable.

(B) Self-Regulatory Organization’s Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact, or impose any burden, on competition since it relates solely to the elimination of a redundant procedure, which may create a processing burden for DTC, Participants, and issuers.

(C) Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC.

¹⁶ 15 U.S.C. 78q-1(b)(3)(F).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change will become effective pursuant to Section 19(b)(3)(A)¹⁷ of the Act and paragraph (f)(4) of Rule 19b-4¹⁸ thereunder on a date to be announced by DTC via Important Notice. 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-2013-09 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-DTC-2013-09. 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

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(4).

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 such filings also will be available for inspection and copying at the principal office of DTC. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2013-09 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.¹⁹

Kevin M. O'Neill
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).