

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76283; File No. SR-DTC-2015-010)

October 27, 2015

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide Additional Details Regarding the Requirement that Participants Participate in Annual Testing of Business Continuity and Disaster Recovery Plans

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”) and Rule 19b-4² thereunder, notice is hereby given that on October 23, 2015, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II, which Items have been prepared by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)³ of the Act and Rule 19b-4(f)(6)⁴ thereunder. The proposed rule change was effective upon filing with the Commission. 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 a change to DTC’s Rule 2 to provide additional details regarding the requirement that Participants participate in annual testing

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)(6).

of DTC's business continuity and disaster recovery plans ("BCP Testing"), as more fully described 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, 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 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 DTC's Rule 2 (Participants and Pledges) to provide additional details regarding the requirement that DTC Participants participate in DTC's annual BCP Testing. Currently, pursuant to DTC's Rule 2, an applicant for membership with DTC must demonstrate that it has "adequate personnel capable of handling transactions with the Corporation and adequate physical facilities, books and records and procedures to fulfill its anticipated commitments to, and to meet the operational requirements of, the Corporation, other Participants and Pledges with necessary promptness and accuracy and to conform to any condition and requirement which the Corporation reasonably deems necessary for its protection."⁶ Once a firm becomes a Participant of DTC, DTC Rule 2 provides that Participants may be required to

⁵ Terms not otherwise defined herein have the meaning set forth in DTC's rules, available at <http://www.dtcc.com/legal/rules-and-procedures.aspx>.

⁶ DTC Rule 2, Section 1(b), supra, note 5.

fulfill certain operational testing requirements that may be imposed by DTC to test and monitor the continuing operational capability of the Participants.⁷

Recently, the Commission promulgated Regulation Systems Compliance and Integrity (“Reg. SCI”), which requires DTC to establish standards to designate members⁸ and requires participation by such designated members in scheduled BCP Testing with DTC on an annual basis.⁹ Although DTC already conducts annual BCP Testing with certain Participants,¹⁰ DTC is proposing to amend Rule 2 to further describe DTC’s requirement with respect to BCP Testing.

The proposed amendments to Rule 2 would increase transparency regarding BCP Testing, and ensure DTC’s practice with respect to such testing is consistent with Reg. SCI by setting forth DTC’s rights to: (i) designate Participants required to participate in BCP Testing using established standards; (ii) determine the scope and reporting of such BCP Testing; and (iii) require Participants to comply with such BCP Testing within specified timeframes. In connection with these proposed amendments, DTC would refine the factors that it currently uses to designate Participants for BCP Testing. For example, while DTC would continue to rely on activity-based thresholds to mandate participation

⁷ DTC Rule 2, Section 1, supra, note 5.

⁸ 17 CFR 242.1004(a). In adopting Reg. SCI, the Commission determined not to require covered entities to notify the Commission of its designations or the standards that will be used in designating members, recognizing instead that each entity’s standards, designations, and updates, if applicable, would be part of its records and, therefore, available to the Commission and its staff upon request. See Securities and Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014) (File No. S7-01-13).

⁹ 17 CFR 242.1004(a) and (b).

¹⁰ DTC Rule 2, Section 1, supra, note 5.

with annual BCP Testing, DTC would also take into account additional factors when designating firms for BCP Testing, including, but not limited to: (i) significant operational issues of the Participant during the past twelve months; and (ii) past performance of the Participant with respect to BCP Testing. Participants would be informed of the specific standards that would be used by DTC, along with any updates or changes to these standards, which would be applied on a prospective basis, through established methods of communication between DTC and its Participants. Likewise, Participants would be notified in advance that they have been designated to participate in BCP Testing for the upcoming year, and would be provided details concerning the nature of such testing as the particular test plans are determined.

DTC believes the proposed rule change would have no impact on DTC Participants relative to what Participants are currently required to do. As described above, DTC already requires certain Participants to participate in BCP Testing on an annual basis. The proposed rule change would provide further clarity with respect to these requirements for consistency with Reg. SCI.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that DTC's rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.¹¹

Rule 17Ad-22(d)(2), promulgated under the Act, requires DTC to require that its Participants have robust operational capacity to meet obligations arising from participation in the clearing agency, to monitor that its participation requirements are

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

met on an ongoing basis, and to have participation requirements that are objective and publicly disclosed.¹² Rule 17Ad-22(d)(4), promulgated under the Act, requires DTC to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures, and have business continuity plans that allow for timely recovery of operations and fulfillment of the clearing agency's obligations.¹³

Rule 1004(a) and (b) of Reg. SCI requires DTC to establish standards for the designation of those Participants that DTC reasonably determines are, taken as a whole, the minimum necessary for the maintenance of fair and orderly markets in the event of the activation of its business continuity and disaster recovery plans, and to designate Participants pursuant to those standards and require participation by such designated Participants in scheduled BCP Testing annually.¹⁴

By facilitating the testing of how business continuity and disaster recovery plans function between DTC and its Participants during an emergency, the proposed rule change would facilitate the prompt and accurate clearance and settlement of securities transactions and protect investors and the public interest consistent with of the Act. The proposed rule change would provide additional details to DTC's rules regarding the requirement for Participants to take part in its BCP Testing annually, strengthening its compliance with Rule 17Ad-22(d)(2) and (4).¹⁵ Further, the proposed rule change would

¹² 17 CFR 240.17Ad-22(d)(2).

¹³ 17 CFR 240.17Ad-22(d)(4).

¹⁴ 17 CFR 242.1004(a) and (b).

¹⁵ 17 CFR 240.17Ad-22(d)(2) and (4).

foster the objectives of the Commission under Reg. SCI by helping to ensure resilient and available markets.¹⁶

As such, DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act, Rule 17Ad-22(d)(2) and (d)(4), promulgated under the Act, and Rule 1004(a) and (b) of Reg. SCI, cited above.

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

DTC does not believe that the proposed rule change would impose any burden on competition because the proposed rule change would apply to all Participants and only provides additional details regarding an existing requirement.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

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

¹⁶ 17 CFR 242.1004(a) and (b).

pursuant to Section 19(b)(3)(A)¹⁷ of the Act and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii)²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

NSCC has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. According to NSCC, the proposed rule change does not present any novel or controversial issues. Rather, NSCC is merely providing additional details regarding BCP Testing requirements or adding provisions that are consistent with or required by Reg. SCI. Accordingly, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow NSCC to incorporate changes required under Reg. SCI prior to the November 3, 2015 compliance date.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires DTC to give the Commission written notice of DTC's 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 of the proposed rule change, or such shorter time as designated by the Commission. The Commission deems this requirement to have been met.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

Therefore, the Commission designates the proposed rule change to be operative upon filing.²¹

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-2015-010 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-DTC-2015-010. 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

²¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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; 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-2015-010 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.²²

Robert W. Errett
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).