

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-90747; File No. SR-DTC-2020-019)

December 21, 2020

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change to Update the Distributions 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 December 9, 2020, 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. 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<sup>3</sup> consists of amendments to the DTC Corporate Actions Distributions Service Guide (“Distributions Guide”)<sup>4</sup> to (i) more clearly explain the interim accounting process, generally; (ii) provide an explanation for the interim accounting process for a security being delisted; (iii) change how DTC manages interim accounting when an ex-date<sup>5</sup> is changed due to an unscheduled closure of a stock

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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> Capitalized terms not defined herein are defined in the Rules, By-Laws and Organization Certificate of DTC (“Rules”) available at [http://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc\\_rules.pdf](http://www.dtcc.com/~media/Files/Downloads/legal/rules/dtc_rules.pdf).

<sup>4</sup> Available at <http://www.dtcc.com/~media/Files/Downloads/legal/service-guides/Service%20Guide%20Distributions.pdf>.

<sup>5</sup> The “ex-date” or “ex-dividend date” is the day the stock starts trading without the value of its next dividend payment.

exchange; (iv) remove the statements that (A) DTC's U.S. Tax Withholding ("UTW") service is available to subaccounts of U.S. Participants, and (B) users of the UTW service must enter into a Withholding Agent Agreement; (v) update the copyright date in the Important Legal Information section; and (vi) make certain conforming and technical changes, as described in greater detail 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.

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

1. Purpose

The purpose of the proposed rule change is to update the Distributions Guide to (i) more clearly explain the interim accounting process, generally; (ii) provide an explanation for the interim accounting process for a security being delisted; (iii) change how DTC manages interim accounting when an ex-date is changed due to an unscheduled closure of a stock exchange; (iv) remove the statements that (A) the UTW service is available to subaccounts of U.S. Participants, and (B) users of the UTW service must enter into a Withholding Agent Agreement; (v) update the copyright date in the Important Legal Information section; and (vi) make certain conforming and technical changes.

*Interim Accounting*

Interim accounting is an important part of the entitlements and allocations process for distributions. The interim period (also referred to as the due bill period) is the period during which a settling trade has due bills attached to it. A due bill is an indication of a seller's obligation to deliver a pending distribution (e.g., cash dividend, stock dividend, interest payment, etc.) to the buyer in a securities transaction. For distributions that are the subject of a due bill, the interim period extends from the Interim Accounting Start Date (i.e., record date +1)<sup>6</sup> up to the Due Bill Redemption Date (which is typically ex-date +1 for equities and payable date -1 for debt).<sup>7</sup>

Normally, the registered holder of a security on the close of business on the record date is entitled to the distribution. There are times, however, when that is not the case. Such times generally fall into two categories. First, for equity issues, there are times when the listed exchange will declare an ex-date that is not one business day prior to the record date (e.g., an ex-date that equals payable date +1). At such times, a buyer is entitled to the distribution when the registered holder of an equity issue sells the security prior to the ex-date. Second, for most bonds, the buyer of the security is entitled to the interest payment (i.e., the distribution) on trades that settle up to and including the day before the payable date, even though the buyer is not the record date holder.

Without DTC's interim accounting process, due-bill processing can be more cumbersome. For example, trades that settle after the record date "with distribution," thus

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<sup>6</sup> The record date is the cut-off date used to determine which shareholders are entitled to a corporate dividend. The record date will usually be the day following the ex-date.

<sup>7</sup> The payable date refers to the date that any declared stock dividends are due to be paid out. Investors who purchased their stock before the ex-date are eligible to receive dividends on the payable date.

entitling the buyer to the distribution, will have a due bill attached to them (i.e., the seller owes the buyer the distribution). Without DTC's interim accounting process, the distribution will need to be handled between the seller and the buyer outside of DTC's distribution processing service, potentially in the form of a payment order, wire or postdated check equal to the amount of the distribution.

With DTC's interim accounting process, during a due bill period, DTC will track all settled activity, where the receiver (typically a buyer) is entitled to a distribution, and adjust Participants' record-date positions, crediting the receiver (typically a buyer) and debiting the deliverer (typically a seller) the distribution amount.<sup>8</sup> This process helps ensure accurate payment on the payable date and eliminate time-consuming, costly paper processing.

In order to provide a clearer understanding of the interim accounting process, generally, DTC proposes to update the Distributions Guide to better reflect the description provided here.

#### *Interim Accounting on a Security being Delisted*

Listed exchanges are often unable to announce an ex-date that is on or after the date the corresponding security is being delisted. In these instances, if the listed exchange does not declare an ex-date, but it provides direction that trades in that security up to a

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<sup>8</sup> It is important to note that the physical movement of securities (such as, deposits, withdrawals-by-transfer, and certificates-on-demand) are not transactions that are included in the interim accounting process; thus, they do not result in adjustments between Participants.

specified date include the distribution, then DTC will capture interim accounting based on the exchange's direction.<sup>9</sup>

Following an exchange's direction in such circumstances has been a longstanding DTC practice; however, that practice is not clearly described in the Distributions Guide. As such, DTC proposes to update the Distributions Guide to reflect the description provided here.

*Interim Accounting for an Ex-Date Change Due to Unscheduled Closing of a Stock Exchange*

Occasionally, there is an unscheduled closing of one or more stock exchanges (e.g., a national day of mourning, an event causing significant market disruption or regional impact, etc.). During an unscheduled closing, a listed exchange will typically move ex-dates that were scheduled for that date to the next business day that the exchange is open, which is usually the record date. Such a move is necessary because ex-dates must occur on a business day that the listed exchange is open.<sup>10</sup>

Currently, when there is an unscheduled closing of a stock exchange and an ex-date is moved, DTC continues to apply the interim accounting process described above. However, because ex-date and record date now would be the same date (due to the exchange moving the ex-date to account for the unscheduled closure) and because the interim accounting process is based on a two-day settlement cycle, this results in due bills

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<sup>9</sup> Please note that on the rare occasion that a corporate action event (e.g., a merger) would occur during an interim period, special processing arrangements with the industry may be required.

<sup>10</sup> See, e.g., FINRA Rule 11140 – Transactions in Securities “Ex-Dividend,” “Ex-Rights” or “Ex-Warrants” available at <https://www.finra.org/rules-guidance/rulebooks/finra-rules/11140>.

being applied to activity one day after record date. This, however, is not the intended result of the exchanges moving the ex-date. It is DTC's general understanding that when there is an unscheduled closure, the intent is for the last day of trading with a due bill to be the business day prior to the unscheduled closure because there should not be any executed trades in the security on the day of closure.<sup>11</sup>

As a result of DTC continuing to apply its standard interim accounting process under such circumstances, Participants must then perform adjustments to reverse the interim accounting on activity to which the interim accounting should not have applied, creating unnecessary work for the Participants. Therefore, to avoid the need for such adjustments, DTC proposes to no longer let the moving of an ex-date impact the interim accounting process when the change is the result of an unexpected closure of a stock exchange.

#### *UTW Service*

DTC's UTW service helps ensure that the appropriate non-resident alien withholding tax is applied to U.S.-sourced income paid to DTC's direct non-U.S. Participants. The applicable withholding tax is determined based on the type of income being paid along with the tax forms provided by the Participant.

The Distributions Guide currently states that the UTW service is available to non-U.S. Participants, "*including subaccounts of U.S. participants*" and that "*Users [of the UTW service] must enter into a Withholding Agent Agreement*" (emphasis added).<sup>12</sup>

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<sup>11</sup> DTC has participated in various conversations with exchanges, industry representatives, and Participants to better understand and help address this issue.

<sup>12</sup> Distributions Guide, U.S. Tax Withholding, supra note 4.

However, after performing a periodic review of the Distributions Guide, DTC determined that these two statements need to be removed.

Pursuant to U.S. tax regulations,<sup>13</sup> DTC, as a withholding agent, is obligated to withhold U.S. tax on payments it makes to its non-U.S. Participants. This obligation does not apply to U.S. Participants, only non-U.S. Participants. It is DTC's understanding that U.S. tax regulations do not contemplate a process under which DTC would withhold tax obligations of its U.S. Participants. However, DTC's obligation does apply regardless of whether there is or is not an agreement between DTC and its Participants to do so. Therefore, DTC proposes to remove (A) the "including subaccounts of U.S. participants" statement because DTC is not able to do so, and (B) the Withholding Agent Agreement statement because such an agreement is unnecessary.

#### *Changes to the Rules*

To effectuate the proposed changes to the Distributions Guide described above, (i) the following subsections of the "Interim Accounting" section would be updated to provide a clearer description of the interim accounting process, generally, including conforming and technical changes: "Overview," "Reasons for Interim Accounting," "Without DTC's Interim Accounting," "With DTC's Interim Accounting," and "Interim Accounting Usage;" (ii) a new "Interim Accounting for an Ex-Date Change Due to Unscheduled Closing of a Stock Exchange" subsection would be added; (iii) a new "Interim Accounting on a Security being Delisted" subsection would be added; and (iv) the "U.S. Tax Withholding" section would be updated to remove the statements that (A) the UTW service is available to subaccounts of U.S. Participants, and (B) users of the

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<sup>13</sup> See 26 CFR 1.1441-7(a).

UTW service must enter into a Withholding Agent Agreement. Finally, the Important Legal Information section would be updated to change the copyright date from 2019 to 2020.

#### *Implementation Timeframe*

The proposed changes described above would take effect upon approval by the U.S. Securities and Exchange Commission.

#### 2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC, as a registered clearing agency. Specifically, DTC believes the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>14</sup> and Rule 17Ad-22(e)(21) promulgated under the Act,<sup>15</sup> for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the rules of a clearing agency be designed, in general, to protect investors and the public interest.<sup>16</sup> As described above, the proposal would update the Distributions Guide to more clearly explain the interim accounting process and, more specifically, provide an explanation of the interim accounting process for a security being delisted, as well as update the copyright date. By providing greater clarity and information about how the interim accounting process works, both generally and for delisted securities specifically, as well as updating the copyright date, DTC is better informing Participants, investors, and the general public

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<sup>14</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>15</sup> 17 CFR 240.17Ad-22(e)(21).

<sup>16</sup> 15 U.S.C. 78q-1(b)(3)(F).



about how DTC manages due bill activity associated with Participants' securities transactions and its copyright information.

The proposal also would remove statements in the Distributions Guide that the UTW service is available to subaccounts of U.S. Participants and that users of the UTW service must enter into a Withholding Agent Agreement, as described above. Because DTC cannot offer the UTW service to such subaccounts and because requiring such an agreement is not necessary, removing the statements would clarify which Participants may use the UTW service and what is required to do so, all of which helps to better inform Participants, investors, and the general public.

Section 17A(b)(3)(F) of the Act also requires, in part, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.<sup>17</sup> As described above, the proposal would change how DTC manages interim accounting when an ex-date is changed due to an unscheduled closure of a stock exchange, so that DTC would no longer capture interim activity that results from a stock exchange moving ex-dates due to an unexpected closure. With this change, Participants would no longer need to spend time and energy performing adjustments to reverse the interim accounting on activity to which the interim accounting should not have otherwise applied. By freeing Participants of this need, the proposal would help perfect DTC's interim accounting process for tracking due bills associated with Participants' securities transactions.

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<sup>17</sup> Id.

For these reasons, DTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.<sup>18</sup>

Rule 17Ad-22(e)(21) under the Act requires that DTC establish, implement, maintain and enforce written policies and procedures reasonably designed to, in part, be efficient and effective in meeting the requirements of its Participants and the markets it serves.<sup>19</sup> As described above, the proposal would update the Distributions Guide to (i) more clearly explain the interim accounting process, generally; (ii) provide an explanation for the interim accounting process for a security being delisted; (iii) no longer apply interim accounting when an ex-date is changed due to an unscheduled closure of a stock exchange; and (iv) remove the statements that the UTW service is available to subaccounts of U.S. Participants, and (B) users of the UTW service must enter into a Withholding Agent Agreement.

Collectively these proposed changes are designed to more efficiently and effectively describe DTC's interim accounting practices, as well as the application and requirements of the UTW service, so that Participants are better informed about the practices, generally. With respect to the proposed change to no longer apply interim accounting when there is an unscheduled closure of an exchange, specifically, that proposed change is designed to more efficiently and effectively meet the needs of DTC's Participants, based on discussions with Participants.

Therefore, for the above reasons, DTC believes that the proposed rule change is designed to help DTC be more efficient and effective in meeting the requirements of its

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<sup>18</sup> Id.

<sup>19</sup> 17 CFR 240.17Ad-22(e)(21).

Participants and the markets it serves, consistent with Rule 17Ad-22(e)(21) under the Act.<sup>20</sup>

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

DTC does not believe that the proposed changes to the Distributions Guide to (i) clarify the interim accounting process, generally, (ii) add a description regarding DTC's interim accounting process for a security being delisted, or (iii) update the copyright date, as described above, will have any impact on competition because none of these changes will alter DTC's current practices. Rather, the changes are simply intended to provide more clarity and information for Participants.

Similarly, DTC does not believe the proposed changes to the Distributions Guide to remove the statements that (A) the UTW service is available to subaccounts of U.S. Participants, and (B) users of the UTW service must enter into a Withholding Agent Agreement, as described above, will impact competition because DTC is not able to provide the UTW service to subaccounts of U.S. Participants, anyway, and DTC will remain obligated to withhold U.S. tax on payments it makes to its non-U.S. Participants even without an agreement. As such, these changes should not have any practical implications on Participants or DTC's practices.

As for the proposed change to the Distributions Guide regarding how DTC manages interim accounting when an ex-date is changed due to an unscheduled closure of a stock exchange, as described above, DTC believes the change may impact competition. Specifically, the change could promote competition because Participants could redirect

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<sup>20</sup> Id.

resources that would otherwise have been used to reverse the interim accounting to more competitive-focused activities.

(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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change

should be disapproved.

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](mailto:rule-comments@sec.gov). Please include File Number SR-DTC-2020-019 on the subject line.

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-2020-019. 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-2020-019 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>21</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>21</sup> 17 CFR 200.30-3(a)(12).